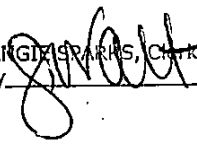


FILED

AUG 15 2022

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By  Deputy Clerk

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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

<p>RIKKI HELD, et al., Plaintiffs, v. STATE OF MONTANA, et al., Defendants.</p>	<p>No. CDV-2020-307 Hon. Kathy Seeley DECLARATION OF NATHAN BELLINGER IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR RULE 26(f) DISCOVERY CONFERENCE</p>
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Pursuant to MCA §1-6-105, Nathan Bellinger, hereby declares as follows:

1. I am an attorney admitted *pro hac vice* before the Montana First Judicial District Court, Lewis and Clark County, in the State of Montana and an attorney of record for Plaintiffs herein. I have personal knowledge of the facts stated herein, except as to those stated on information and belief and, if called to testify, I would and could testify competently thereto.
2. On **March 22, 2022**, Defendants served their first discovery requests on Plaintiffs. Doc. 68.
3. On **April 20**, Plaintiffs timely served their discovery responses on Defendants. Doc 78. Since then, Plaintiffs have supplemented their discover responses four times: May 27, June 10, July 27, and July 28. Plaintiffs' July 27 and 28, supplemental discovery responses were in response to letters set by Defendants on July 12 and July 25, where, three months after Plaintiffs' initial discovery responses, Defendants outlined perceived deficiencies in Plaintiffs' discovery responses.
4. On **April 20**, Plaintiffs served their first discovery requests on Defendants. Doc. 78.
5. On **May 20**, Defendants timely served their discovery responses on Plaintiffs. Doc. 101.
6. On **June 3**, on behalf of Plaintiffs, I sent Defendants a detailed letter outlining numerous deficiencies in Defendants' discovery responses. (See Attachment 1 hereto). The letter requested Defendants' supplement their responses by June 10.
7. On **June 6**, along with my co-counsel Roger Sullivan and Melissa Hornbein, I spoke with Timothy Longfield in an attempt to resolve various discovery issues. Mr. Longfield stated Defendants were reviewing the June 3 discovery letter and would respond "in due course."

8. On **June 23**, the parties held a telephonic conference both to discuss the June 15, 2022 Modified Scheduling Order (Doc. 145) and to try and resolve outstanding discovery issues. At this conference, counsel for Plaintiffs and Defendants discussed a general schedule for depositions – tentatively establishing the depositions of Plaintiffs for the month of August, the depositions of Defendants’ fact witnesses and Rule 30(b)(6) depositions for the month of September, the depositions of Plaintiffs’ experts in October, the depositions of Defendants’ experts in November, and the depositions of rebuttal experts in December. The parties also discussed how a discovery conference with the Court would be helpful to resolve ongoing discovery disputes. At this conference, Defendants indicated that, by July 7, they expected to be able to supplement their discovery responses to address the deficiencies Plaintiffs identified.
9. On **June 27**, I wrote to counsel for Defendants to outline and confirm the matters discussed and agreed upon during the June 23 telephonic meet and confer. (See Attachment 2 hereto).
10. On **June 28**, counsel for Defendants responded via letter to my June 27 letter. (See Attachment 3 hereto). In this June 28 letter, Defendants’ counsel “agree[d] to the general deposition schedule laid out” in Plaintiffs’ June 27 letter and discussed on the June 23 call. In this letter, Defendants repeated their position that all Plaintiff depositions should take place in Helena.
11. On **June 29**, I sent a meet-and-confer letter to counsel for Defendants responding to Defendants’ June 28 letter. (See Attachment 4 hereto). This June 29 letter noted Plaintiffs would provide Defendants with a proposed schedule for Plaintiffs’ depositions by July 6. The letter objected to Defendants’ request that all Plaintiffs depositions take place in Helena, noted Mont. R. Civ. P. 45(c)(2) undermined Defendants’ position, and reiterated

Plaintiffs' opposition to Defendants' plan to depose the four youngest Plaintiffs rather than their legal guardians. The letter also noted that Nathaniel, Jeffrey, Lilian, and Ruby will not testify at trial.

12. On **July 6**, I sent a meet-and-confer letter to Defendants (see Attachment 5 hereto) setting forth a proposed schedule for depositions of 13 Plaintiffs and the two guardians over three week in August. The letter continued to object to Defendants' insistence on deposing Plaintiffs Nathaniel, Jeffrey, Lilian, and Ruby and again offered to make these Plaintiffs' legal guardians available for depositions instead. The letter requested a response from Defendants about the deposition dates "as soon as possible."
13. On **July 12**, counsel for Defendants sent a meet-and-confer letter noting alleged deficiencies only in Plaintiffs' responses to Defendants' Requests for Production Nos. 1 and 17, over two months after Plaintiffs responded. (See Attachment 6 hereto).
14. On **July 13**, I sent a meet-and-confer letter to counsel for Defendants, noting Defendants had not responded to Plaintiffs' July 6 letter containing a proposed deposition schedule for Plaintiffs and the guardians. (See Attachment 7 hereto). The July 13 letter again included an August schedule of 13 Plaintiffs and the two guardians and requested Defendants confirm the deposition calendar by July 15. The July 13 letter further noted Plaintiffs would endeavor to supplement their responses to Defendants' Request for Production Nos. 1 and 17 by July 19. The July 13 letter asked Defendants again to supplement their discovery responses to address the deficiencies Plaintiffs raised in their June 3 letter.
15. On **July 19**, counsel for Defendants responded to my July 13 letter stating Defendants "will tentatively hold the dates [Plaintiffs] propose for depositions in this matter" but "cannot commit to these dates without your clients providing full and complete responses to our

discovery requests.” (See Attachment 8 hereto, letter dated June 24 but sent on July 19). Sent three months after Plaintiffs had served their April 20 discovery responses, Defendants’ July 19 letter, for the first time, noted “deficient discovery responses”: Interrogatories 1, 5, 8, 9–26, and 28–39; Requests for Production 1, 6–7, 9–13, 16–19, 22, and 26–29. However, the July 19 letter failed to identify any of the alleged deficiencies, only noting Defendants were “working on a letter that more comprehensively addresses the deficiencies of your responses.”

16. On July 22, I wrote to counsel for Defendants to try and “prompt[] a more candid discovery process between now and the close of discovery on January 9, 2023.” (See Attachment 9 hereto). The July 22 letter objected to Defendants’ continued delay in agreeing to the proposed August dates proposed for depositions of the 13 Plaintiffs and the two guardians. The July 22 letter reiterated Plaintiffs’ prior objections to the depositions of Nathaniel and Jeffrey, as well as the deposition of former guardians for Plaintiffs who have reached the age of 18. The July 22 letter also requested from Defendants details about the alleged written discovery deficiencies referenced in Defendants’ July 19 letter, and sought updates from Defendants concerning Defendants’ supplementing their responses to the written discovery requests identified in Plaintiffs’ June 3 letter. The July 22 letter stressed the need for a Rule 26(f) discovery conference.

17. On July 25, Mr. Longfield wrote in response to Plaintiffs’ July 22 letter. (See Attachment 10 hereto). Defendants agreed “a Rule 26(f) conference should assist all parties.” However, Defendants again refused to agree to the proposed August dates for depositions of the 13 Plaintiffs and the two guardians, maintaining “[t]he first issue obstructing the scheduling of Plaintiffs’ depositions is your deficient responses to the State’s first discovery requests.”

In their July 25 letter, for the first time, Defendants outlined additional purported deficiencies in Plaintiffs' April 20 written discovery responses.

18. On **July 25**, Defendants finally served their supplemental discovery responses, seven weeks after Plaintiffs first informed Defendants of the deficiencies. Doc. 175.
19. On **July 27**, as requested by Defendants on July 12, Plaintiffs served supplemental discovery responses to Defendants' Request for Production Nos. 1 and 17. (See Attachment 11 hereto). This July 27 supplemental production also supplemented Plaintiffs' response to Defendants' Request for Production Nos. 2 and 3. The July 27 letter once again asked Defendants to "confirm that you will take the depositions for the 13 Plaintiffs and two guardians on the dates and in the locations that we provided three weeks ago." The July 27 letter provided a cut-off date for Defendants to respond by Friday, July 29, 2022 at 5:00 PM MST, or availability for the August deposition dates could not be guaranteed.
20. On **July 28**, I wrote a response to Defendants' July 25 letter. (See Attachment 12 hereto). The July 28 letter reiterated the July 29 deadline to respond to the proposed deposition dates. The July 28 letter also responded to the alleged deficiencies identified in Defendants' July 25 letter. The July 28 letter also noted Plaintiffs were pleased Defendants agreed that a "Rule 26(f) conference is appropriate under the circumstances" and that Plaintiffs would draft a Rule 26(f) motion for Defendants' review.
21. By 5:00 pm MST on **July 29**, counsel for Defendants had not confirmed the proposed August depositions. That evening, I wrote counsel for Defendants that the proposed August depositions "will not be going forward on the dates and in the locations outlined in my letters from July 6, 2022 and July 13, 2022." My July 29 email also noted "Plaintiffs plan

- on circulating a draft of the Rule 26(f) Motion next week.” Based on the parties’ prior correspondence, it was my understanding the parties would file a Joint Rule 26(f) motion.
22. On August 3, I wrote counsel for Defendants in “another attempt to make progress on the scheduling of depositions.” (See Attachment 13 hereto.) This August 3 letter requested Defendants to provide dates in September for the Rule 30(b)(6) depositions of Defendants Montana Department of Environmental Quality and Montana Department of Natural Resources and Conservation, and for a number of fact witnesses identified in Defendants’ April 18 fact witness disclosure. The August 3 letter also requested Defendants let me know “when you will be prepared to take Plaintiffs’ depositions,” stating Plaintiffs would work with Defendants to “come up with an alternative calendar that works with [Plaintiffs’] school schedule[.]”
23. On August 4, Mr. Longfield wrote that the State was “working to confirm availability for the five fact witnesses and two 30(b)(6) witnesses [] identified in your August 3, 2022, letter, and will provide [Plaintiffs] with dates and times as soon as possible.” As of filing this Response, more than 10 days later, Plaintiffs have not received any dates or times from Defendants.
24. On August 8, counsel for Defendants wrote identifying additional written discovery requests that Defendants believed Plaintiffs had not adequately answered. (See Attachment 14 hereto). Without previously setting forth a deadline, Defendants’ August 8 letter requested an August 17 response or Defendants would file a Motion to Compel.
25. On August 12, counsel for Plaintiffs wrote Defendants identifying deficiencies with Defendants’ written discovery responses that had still not been addressed, despite being brought to Defendants’ attention over two months ago. (See Attachment 15). The August

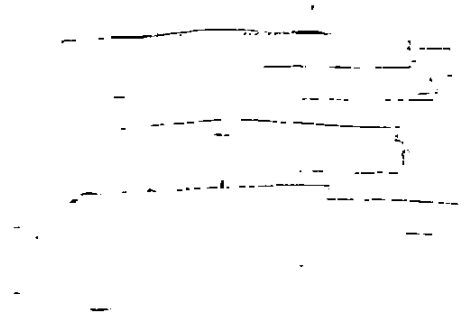
12 letter requested Defendants supplement their responses by August 19, 2022. As of filing this Response, Plaintiffs have not received a response from Defendants to the August 12 letter.

Pursuant to MCA §1-6-105, I declare that the foregoing is true and correct.

Executed this 15th day of August, 2022

/s/ Nathan Bellinger
Nathan Bellinger (*pro hac vice*)

ATTACHMENT 1





June 03, 2022

Via E-mail Only

Re: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307, Discovery

Dear Counsel,

We have received your responses to Plaintiffs' First Discovery Requests and this letter serves as a good faith attempt by Plaintiffs to meet and confer regarding deficiencies with respect to your responses. Given the upcoming deadline of July 15, 2022 to complete discovery, we trust that Defendants will promptly respond to the issues raised in this letter, as we appreciate that neither side would want to unnecessarily involve the Court in a discovery dispute. We are happy to discuss all of these matters with you over the telephone at your convenience.

1. Failure to Produce Responsive Documents

Your response to RFPs No. 1, 2, and 16 states "additional documentary support will be provided with Defendants' expert disclosures pursuant to Mont. R. Civ. P. 26(b)(4) and the Court's scheduling order." However, the deadline for expert disclosures was June 1, and no documentary support was included within your expert disclosures. If you have any documentary support for your denials of these paragraphs in the Complaint, they need to be identified and produced on or before **June 10**, or please amend your response to state there is no factual basis for your denials.

In your answer to Interrogatory No. 4, you state: "The EPA state-federal cooperative agreement provides federal resources to DEQ but also directs much of the agency activity," but this document was not produced in response to RFP No. 4. Please produce that document on or before **June 10**.

In your answer to RFP No. 17, you state: "Defendants are gathering further responsive documents and will supplement this Response if required by the Montana Rules of Civil Procedure and the Court's scheduling order." If you have responsive documents, they need to be produced on or before **June 10**. If no such additional documents exist, please let us know so we can consider your response to this RFP complete.

In your answer to Interrogatory No. 21, you state: "There are currently 419,199 mineral interest acres managed by the Trust Land Management Division being leased" for oil and gas exploration, extraction or development as well as 364,945 acres managed by the Trust Land Management Division overlying the mineral leases. Yet, in response to RFP 25, no responsive documents are produced. Please produce the documents that these numbers were obtained from on or before **June 10**.

You indicate that you are gathering information that is responsive to Interrogatories No. 22, 23, and 24 and RFPs No. 26, 27, 30, and 31. Please produce this information on or before **June 10**.

Your objections and failure to respond to Interrogatories No. 26 and 27, and RFP No. 32 have no basis in law. You have identified these individuals as potential witnesses in this case, and if you are in possession of the information requested, you are obligated to produce it. It does not matter whether they are identified as lay or expert witnesses. We ask that you produce all responsive documents on or before **June 10**.

2. Failure to Cite Legal Authority

In your answers to both Interrogatories Nos. 4 and 5, you state: “The DEQ is limited in its ability to enact any air, water, hazardous waste, etc. regulation that is more stringent than a federal requirement,” but you fail to cite any legal authority for this proposition. Because most federal environmental laws set a floor, rather than a ceiling, for environmental protection (*see, e.g.*, 42 U.S.C. § 7416 (with limited exceptions, “nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants . . .”), please state the legal basis for this statement in your answer on or before **June 10**.

3. Privilege Log

In your answer to RFP Nos. 28 and 29, you object to each request to the extent it seeks documents subject to the attorney-client privilege, the work product privilege or are otherwise confidential or protected under the law. We do not believe that all Defendants’ communications related to these bills and legislation could possibly be subject to the privileges that you assert. In any event, we ask that you create a privilege log for this information and that the privilege log be produced to us no later than **June 10, 2022**.

4. Points of Clarification and Correction

In your answer to RFP No. 31, in the second bullet point, your list a document with bates numbers “D00019–D000120” as responsive. We believe this should be D000119–D000120. Please confirm on or before **June 10**.

In your answer to RFP No. 31, in the second bullet point, your list a document with a bates number “D000”. Please clarify what the proper bates numbers are supposed to be on or before **June 10**.

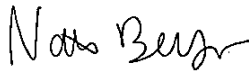
In your answer to RFP No. 31, in the third bullet point, your list a document with bates numbers “D000253–D000257”. We believe this should be D000253–D000267. Please confirm on or before **June 10**.

In your answer to Interrogatory No. 17, you provided a link that does not work (<https://www.pdfFiller.com/jsfillerdesk16/?requestHash=6cc39559e3222deaba24efcaec5fd2295c>)

[305c38ec446b26e0b6945fd8d84c77&projectId=1008735411&loader=tips&replace_gtm=false#07c330c1dc8b40528272181efe1d8d99](https://www.courts.mt.gov/cases/305c38ec446b26e0b6945fd8d84c77&projectId=1008735411&loader=tips&replace_gtm=false#07c330c1dc8b40528272181efe1d8d99)). Please provide the correct link on or before **June 10**.

We are happy to discuss all of these matters with you over the telephone at your convenience. We hope Defendants promptly will comply with the issues raised in this letter and not require us to involve the Court.

Sincerely,



Nathan Bellinger

CC: Roger Sullivan, Melissa Hornbein, Barbara Chillcott

ATTACHMENT 2



Our Children's Trust Youth v. Gov

June 27, 2022

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Via Email Only

Re: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307 – Meet and Confer on
Discovery Issues

Dear Counsel,

Thank you for taking the time to confer telephonically with us on June 23, 2022. The purpose of this letter is to confirm the matters that we agreed upon, areas of disagreement, and outline next steps. As noted herein, we believe the parties should be able to resolve outstanding discovery issues and this letter contains proposals to resolve those areas where the parties did not come to agreement, as a good faith effort to avoid unnecessarily involving the Court in discovery disputes.

1. June 15, 2022 Scheduling Order

Because the Parties have already disclosed experts, the parties discussed modifying the June 15 Scheduling Order by moving up the deadline by 30 days for Plaintiffs to disclose expert witnesses (current deadline is September 30, 2022; new deadline – August 31, 2022); for Defendants to disclose expert witnesses (current deadline is October 31, 2022; new deadline – October 3, 2022); and for both parties to disclose rebuttal expert witnesses (current deadline is November 30, 2022; new deadline – October 31, 2022) to allow for additional time to complete expert depositions

before the discovery deadline (current deadline is January 9, 2023). Plaintiffs are in favor of this approach. Defendants are considering it and indicated that they need to confer with their experts to see if an earlier deadline would work with their experts' schedules. We understand that Defendants primary concern with an earlier deadline is getting a ruling from the District Court on their proposed Motion for Independent Medical Examinations, and allowing enough time for their medical expert to complete a report, should Defendants' motion be granted. As noted below, Plaintiffs object to the need for any Independent Medical Examinations.

That said, Plaintiffs are willing to agree to move up the deadlines for all expert disclosures by 30 days, with an exception for Defendants' medical expert. Please let us know as soon as possible whether Defendants will agree to moving up the deadlines for expert disclosures by 30 days.

2. General Deposition Schedule

In light of the June 15 scheduling order, the Parties discussed the following, general schedule for depositions. This is not intended to be a firm schedule that locks in the timing for all depositions but rather a rough guide that is adhered to as much as possible, depending on the availability of witnesses. And, of course, this timing could shift if the parties reach an agreement on moving the deadlines as discussed above. Please confirm Defendants' general agreement to these time frames.

- **Late July-August:** Depositions of Plaintiffs
- **September:** Depositions of Defendants' fact witnesses and 30(b)(6) depositions
- **October:** Depositions of Plaintiffs' experts
- **November:** Depositions of Defendants' experts
- **December:** Depositions of rebuttal experts

3. Independent Medical Examinations

Defendants indicated that they intend to file a Rule 35 Motion for Independent Medical Examinations of Plaintiffs Rikki, Sariel, Georgianna, Kathryn, Mica, Olivia, Badge, and Lander. Plaintiffs indicated that they will oppose such a motion on the basis that IME's are not appropriate in this case under Rule 35.

4. Depositions of Plaintiffs

Plaintiffs are putting together a proposed calendar for Plaintiffs' depositions in late July and August and will share that with Defendants as soon as possible.

Regarding the location of Plaintiffs' depositions, Defendants' position is that all Plaintiffs' depositions must take place in Helena. Plaintiffs submit that there is no legal basis for that position. Plaintiffs have proposed that Plaintiffs' depositions be in three cities, Kalispell, Missoula, and Bozeman close to where each Plaintiff resides – requiring counsel to make one trip to each city. We are also conferring with Plaintiffs about their availability to travel to Helena for their deposition and any hardships that would be incurred. We anticipate some Plaintiffs will be able to travel to Helena for their depositions, but not all. In the interest of working together on deposition scheduling, and to avoid needing the Court's intervention on this matter, we hope that you will be

willing to either travel to the location of some Plaintiffs or take those depositions via Zoom. We will include proposed locations for those Plaintiff depositions in our calendar.

Regarding the length of Plaintiff depositions, Defendants indicated that they expect to be able to take two to three depositions in a day, depending on the age of Plaintiff (with less time needed for the younger plaintiffs).

Regarding the depositions of the youngest Plaintiffs, Nathaniel (age 4), Jeffrey (age 8), Lilian (age 11), Ruby (age 14), Plaintiffs object to these depositions as unnecessary and unlikely to yield relevant information that Defendants could not get by deposing their guardians, Laura King (Nathaniel and Jeffrey) and Shane Doyle (Lilian and Ruby). Moreover, we explained that none of these four Plaintiffs will testify at trial. Defendants stated that they would like to depose all sixteen Plaintiffs, including these four young children.

Problem solving as to these four children, Plaintiffs propose Defendants depose the guardians Laura King and Shane Doyle first, and then determine whether they need to depose Nathaniel, Jeffrey, Lilian, and Ruby. If you are amenable to that approach, it would alleviate the need to take this matter before the Court at this point.

Regarding the depositions of the remaining Plaintiff guardians, with the exception of Laura King and Shane Doyle, Plaintiffs continue to believe these depositions are unnecessary. Defendants continue to want to take these depositions. Plaintiffs propose that Defendants depose the other 12 youth Plaintiffs first (excluding Nathaniel, Jeffrey, Lilian, and Ruby), and then determine whether they continue to believe that they also need to depose the guardians for the other Plaintiffs. If you are amenable to that approach, it would alleviate the need to take this matter before the Court at this point.

5. Written Discovery

Defendants are preparing a letter to send to Plaintiffs identifying areas where they believe Plaintiffs still need to supplement their responses to Defendants' discovery requests.

Defendants are working to resolve the deficiencies Plaintiffs identified with Defendants' discovery responses in their June 3, 2022 letter and Defendants will supplement their responses within two weeks (by July 7, 2022).

6. Acknowledgment of Service of Deposition Notices

All Parties agreed to accept service of deposition notices on behalf of their experts, including hybrid experts.

7. Zoom Deposition Protocols

For any depositions that take place over Zoom, the Parties agreed to share exhibits with opposing counsel, the witness, and the court reporter prior to the deposition in searchable PDF form. The witness shall be physically present with the court reporter for the deposition. If, in limited

circumstances, it is not practical or feasible for the witness to be in the same location as the court reporter, the Parties will discuss alternative accommodations, but the preference is to have the witness in the same physical location as the court reporter. As to the court reporter, Plaintiffs suggest using Fisher Court Reporting, which has a state-wide presence, Zoom capacity, and familiarity with remote viewing of exhibits.

We did not discuss how far in advance parties should share exhibits with opposing counsel. We propose that exhibits are shared at least 24 hours prior to the deposition. Will you agree to that?

If you agree with the contents of this letter, and in particular the proposals related to depositions of Plaintiffs and guardians, we think that we can avoid the need for a discovery conference with the Court. As you know, these types of discovery matters are routinely worked out between the parties without judicial intervention and we believe that should be the case here. Please let us know your response as soon as possible.

Additionally, I will be out of the office the remainder of the week of June 27, so in addition to sending any correspondence to Roger, Melissa, and Barbara, please include Mat dos Santos, who joined the June 23 meet and confer call (mat.dossantos@ourchildrenstrust.org).

Sincerely,

/s/ Nathan Bellinger

Nathan Bellinger

cc: Roger Sullivan, Melissa Hornbein, Barbara Chillcott, Andrea Rodgers, Mat dos Santos, Phil Gregory

ATTACHMENT 3

AUSTIN KNUDSEN



STATE OF MONTANA

June 28, 2022

Nate Bellinger
Mat dos Santos
nate@ourchildrenstrust.org
mat.dossantos@ourchildrenstrust.org

VIA E-MAIL

RE: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307

Dear Counsel,

This letter responds to your correspondence sent yesterday, June 26, 2022, and addresses our telephonic meet and confer on June 23, 2022.

June 15, 2022, Scheduling Order - Expert Disclosures

The State is willing to consider Plaintiffs' proposal to move up the deadlines for all expert disclosures by 30 days, with an exception for our medical expert. As noted in your letter, we are checking with our experts to ensure this proposal does not put us at a disadvantage. We will advise you of our position once we have an opportunity to confirm they can all meet your proposed deadline.

Deposition Schedules

We agree to the general deposition schedule laid out in your letter but acknowledge as you stated, it is a guide and does not lock in timing for any depositions. We reserve the right to modify this general proposed schedule at any time based on the needs of the case. The State will make good faith efforts to complete Plaintiffs' depositions and potential IMEs before the start of the school year. In order to meet this schedule, we need to begin depositions of the Plaintiffs and their guardians soon. You agreed to draft and send to the State a proposed deposition schedule for these deponents. Please send this calendar to us at your earliest convenience.

DEPARTMENT OF JUSTICE

215 North Sanders
PO Box 201401
Helena, MT 59620-1401

(406) 444-2026
Contactdoj@mt.gov
mtdoj.gov

Depositions of Plaintiffs and Legal Guardians

Plaintiffs suggested that the State not depose the four youngest Plaintiffs and instead depose their parent/guardian. The State requested that you dismiss the youngest Plaintiffs, narrow the scope of this declaratory action, and choose your best 3-5 Plaintiffs to move this case forward. While we would prefer not to depose the very young children and think it is not appropriate to have them in the case, if they and their guardians insist on remaining parties to the case, we will depose all Plaintiffs and their guardians. As we stated on the call, we are entitled to test all the factual allegations of the Complaint, even (and especially), those made for standing purposes. We are not willing—and have no obligation—to simply accept these allegations as true.

While we appreciate that some of the Plaintiffs may be willing to travel to Helena for their depositions, we continue to hold the position that all Plaintiffs' depositions will be held in Helena since it is the venue Plaintiffs chose for their lawsuit. The State is not willing to expend taxpayer dollars to travel to depose Plaintiffs and is not aware of any authority requiring us to incur those costs. Please provide us with the legal authority you rely upon for your position that the State is required to travel to the Plaintiffs' location, rather than having Plaintiffs travel to the county where the lawsuit is venued.

Notices of Depositions

Both parties agreed to accept service of deposition subpoenas on behalf of their respective experts. Both parties also agreed to conduct depositions by Zoom for out of state experts. As protocol for Zoom depositions, the parties agreed that the deponents would be in the room with the court reporter and that exhibits should be sent to the court reporter and all counsel prior to the deposition. We do not agree to the 24-hour period you suggest. At a normal, in person deposition, you would not receive advanced copies of the deposition exhibits. While we agree to act in good faith to get you the exhibits in advance of a Zoom deposition, organized in a way that makes them easy to follow, we decline to agree to any specific deadline by which to get the exhibits to you.

Supplemental Discovery

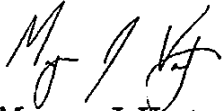
The State notified Plaintiffs that it intends to request supplemental discovery responsive to State's RFP 1 and 17. The State is also aware that Plaintiffs have notified the State of some outstanding discovery supplementation. Counsel for the State is working with the various State agencies to gather additional information and intends to timely supplement. We represented we are attempting to get that to you within the next few weeks. We did not give a specific date. As we have repeatedly informed you, we are working with multiple state agencies to search for and gather responsive information that potentially spans decades. This process takes time.

Rule 26(f) Conference

The parties agreed that a Mont. R. Civ. P. 26(f) conference might assist the parties in resolving outstanding discovery issues. Plaintiffs stated they would begin drafting a joint motion and send it to the State for additions and review.

We appreciate your efforts to work together with us to resolve these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Morgan J. Varty". The signature is stylized and cursive.

Morgan J. Varty
Assistant Attorney General

ATTACHMENT 4



Our Children's Trust Youth v. Gov

June 29, 2022

David Dewhirst, Solicitor General
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Emily Jones, Special Assistant Attorney General
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Via Email Only

Re: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307 – Meet and Confer on
Discovery Issues

Dear Counsel,

Thank you for your letter of June 28, 2022. We continue to believe the parties should be able to resolve outstanding discovery issues without unnecessarily involving the Court in discovery disputes at this time.

1. June 15, 2022 Scheduling Order

We appreciate that the State is willing to consider Plaintiffs' proposal to move up the deadlines for all expert disclosures by 30 days, with an exception for the State's medical expert. When will we receive confirmation of the State's position? If the parties can informally resolve this issue, we will not need to address it in our joint motion under Mont. R. Civ. P. 26(f). To reiterate, Plaintiffs' proposal is to modify the June 15, 2022 Scheduling Order by moving up the deadline by 30 days for Plaintiffs to disclose expert witnesses (current deadline is September 30, 2022; new deadline would be August 31, 2022); for Defendants to disclose expert witnesses (current deadline is October 31, 2022; new deadline would be October 3, 2022), with an exception for Defendants' medical expert, who would be governed by the current deadline of October 31, 2022; and for both parties to disclose rebuttal expert witnesses (current deadline is November 30, 2022; new deadline would be October 31, 2022) with an exception for Plaintiffs' rebuttal medical expert, who would be governed by the current deadline of November 30, 2022. This proposal would allow additional time to complete expert depositions before the discovery deadline (current deadline is January 9, 2023).

2. General Deposition Schedule

Thank you for agreeing to the general deposition schedule, as a guide, laid out in our June 27 Letter and to make good faith efforts to complete Plaintiffs' depositions and potential IMEs before the start of the school year. We are in the process of working out a proposed deposition schedule for these deponents and will send you a schedule by July 6. We will include proposed locations for those depositions in our calendar, with further discussion of locations below. As to the current status:

We anticipate being able to make Olivia Vesovich, Georgianna Fischer, Taleah Hernández, Rikki Held, Eva L., Laura King, and Shane Doyle available for depositions between August 9-12 and 15-16. Plaintiffs Mica and Grace may also be available for their depositions during this time period. We are still working with Sariel to identify dates for her deposition.

For Plaintiffs Lander B., Badge B., and Kian T., we will make them available for a deposition at a court reporter's office in Kalispell for an in-person deposition or Zoom deposition. We are still confirming dates with them.

The deposition of Plaintiff Claire Vlases will need to take place via Zoom as she will not be available for a deposition in Montana in July or August (as previously communicated she would have been available in June).

3. Independent Medical Examinations

While your June 28 Letter mentioned potential IMEs, it did not address whether Defendants will file a Rule 35 Motion for Independent Medical Examinations of Plaintiffs Rikki, Sariel, Georgianna, Kathryn, Mica, Olivia, Badge, and Lander. Can you please give us the status on this motion?

4. Depositions of Plaintiffs and Legal Guardians

Regarding the location of Plaintiffs' depositions, Defendants have cited no legal authority for their position that all Plaintiffs' depositions must take place in Helena, despite Plaintiffs' request for the basis for Defendants' position. There is ample authority to the contrary, such as Mont. R. Civ. P. 45(c)(2), where, in the case of subpoenas for residents located within the state, the deposition must be "within 100 miles of where that person resides ... or at such other convenient place as is fixed by order of court." Moreover, our Montana counsel confirm that it is common practice in Montana—as it is in many jurisdictions—for attorneys to take depositions at a location convenient to the witness.

Plaintiffs await legal authority supporting Defendants' position. To reiterate, Plaintiffs propose that Plaintiffs' depositions be held in three cities: Kalispell, Missoula, and Bozeman. These locations are reasonably close to where each Plaintiff resides and would require counsel to make one trip to each city. Finally, to address Defendants' concern of spending "taxpayer dollars to travel to depose Plaintiffs," we have agreed that Defendants can take depositions via Zoom.

Regarding the depositions of the youngest Plaintiffs, Nathaniel (age 4), Jeffrey (age 8), Lilian (age 11), Ruby (age 14), Plaintiffs continue to object to these depositions as unnecessary and unlikely to yield relevant information that Defendants could not get by deposing their guardians, Laura King (Nathaniel and Jeffrey) and Shane Doyle (Lilian and Ruby). Your June 28 Letter asserts Defendants are “entitled to test all the factual allegations of the Complaint, even (and especially), those made for standing purposes.” However, Montana bypasses individualized standing inquiries when additional plaintiffs raise the same issues as original plaintiffs with standing. *See Aspen Trails Ranch, LLC v. Simmons*, 2010 MT 79, ¶ 45, 356 Mont. 41, 230 P.3d 808 (“As a practical matter . . . the District Court, Landowners, and the Commission were correct in agreeing that if standing was established for one of the Landowners the suit could go forward, because the Landowners both sought to void the preliminary plat. . . .” (citing *Clinton v. City of New York*, 524 U.S. 417, 431 n.19 (1998))). These four Plaintiffs will not be testifying at trial; their guardians will. Thus, these four Plaintiffs will not be offered for standing purposes. Plaintiffs therefore reiterate their proposal that, as to these four children, Defendants depose the guardians Laura King and Shane Doyle first, and then determine whether Defendants need to depose Nathaniel, Jeffrey, Lilian, and Ruby. If Defendants are amendable to that approach, it would alleviate the need to take this matter before the Court at this point.

Your June 28 Letter does not address the depositions of the remaining Plaintiff guardians, with the exception of Laura King and Shane Doyle. Plaintiffs proposed that Defendants depose the other 12 youth Plaintiffs first (excluding Nathaniel, Jeffrey, Lilian, and Ruby), and then determine whether Defendants continue to believe they also need to depose the other guardians who remain in the case after the Court rules on Plaintiffs’ pending Motion as to guardians. If you are amendable to that approach, it would alleviate the need to take this matter before the Court at this point.

5. Written Discovery

We appreciate that Defendants are preparing a letter to send to Plaintiffs identifying areas where they believe Plaintiffs still need to supplement their responses to Defendants’ RFPs 1 and 17.

We also understand Defendants are working to resolve the deficiencies Plaintiffs identified with Defendants’ discovery responses in their June 3 Letter. Defendants have not yet indicated when they will supplement their responses. We would appreciate it if Defendants would provide a reasonable deadline to avoid the need to take this matter before the Court.

6. Zoom Deposition Protocols


We understand the Parties have the following issues:

- a. For any depositions that take place over Zoom, Defendants do not agree to share exhibits with opposing counsel, the witness, and the court reporter at least 24 hours prior to the deposition in searchable PDF form. Plaintiffs are curious: will Defendants be providing these documents during the course of the deposition for the first time? Hopefully Defendants appreciate how unwieldy such a process will be, requiring witnesses to use time during the deposition simply to have documents loaded and reviewed.

- b. Defendants agreed the witness shall be physically present with the court reporter for the deposition, if possible. Our June 27 Letter also considered that if, in limited circumstances, it is not practical or feasible for the witness to be in the same location as the court reporter, the Parties should discuss alternative accommodations, but the preference is to have the witness in the same physical location as the court reporter. Can you please clarify Defendants' position on this issue?
- c. As to the court reporter, your June 28 Letter does not respond to Plaintiffs' suggestion of using Fisher Court Reporting, which has a state-wide presence, Zoom capacity, and familiarity with remote viewing of exhibits. Please let us know your position.

In sum, we too appreciate the efforts made to work together to resolve these issues. If Defendants agree with the contents of this letter, and in particular the proposals related to depositions of Plaintiffs and guardians, a substantial amount of discovery can be accomplished without the need for a Rule 26(f) discovery conference with the Court at this time. Please let us know your response as soon as possible.

Sincerely,



Mathew W. dos Santos

cc/ Roger Sullivan, Melissa Hornbein, Barbara Chillcott, Andrea Rodgers, Nathan Bellinger, Phil Gregory

ATTACHMENT 5



July 06, 2022

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Emily Jones, Special Assistant Attorney General
Jones Law Firm, PLLC
emily@joneslawmt.com

Via Email Only

Re: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307 – Plaintiff Deposition Calendar

Dear Counsel,

Below you will find a calendar for the Plaintiff depositions, including locations for the depositions. We believe this calendar will minimize travel across Montana by grouping depositions in geographic regions and by accommodating in part, Defendants request for depositions to take place in Helena, even though we continue to believe there is no legal basis and it is contrary to common practice in Montana (and elsewhere) for Defendants to demand that Plaintiff depositions occur in Helena. Should the Defendants decline to travel to Missoula or Kalispell, we will make the Plaintiffs available at a court reporter's office in those cities for a videoconference deposition.

1. Plaintiff Deposition Calendar:

- **Tuesday, August 9th – Missoula**
 - o 2pm, Olivia Vesovich
- **Wednesday, August 10th – Missoula**
 - o 9am, Mica K.
 - o 1pm, Taleah Hernandez
- **Thursday, August 11th – Missoula**
 - o 9am, Kathryn Grace Gibson-Snyder
- **Friday, August 12th – Missoula**
 - o 9am, Rikki Held
- **Monday, August 15th – Helena**
 - o 9am, Georgianna Fischer



Our Children's Trust Youth v. Gov

- o 1pm, Eva L.
- **Tuesday, August 16th – Helena**
 - o 9am, Shane Doyle
 - o 1pm, Ruby D.
 - o 3pm, Lilian D.
- **Wednesday, August 17th – Helena**
 - o 9am, Laura King
- **August 22-25 – in Kalispell**
 - o We anticipate being able to make Plaintiffs Lander, Badger, Kian, and Sariel Sandoval available for their depositions in Kalispell between August 22 and 25 but still need to confirm the precise dates and time. We will confirm these ASAP.
- Claire Vlases will be unavailable all of August. We will propose alternate dates for her deposition ASAP.

2. Depositions of Nathaniel (age 4), Jeffrey (age 8), Lilian (age 11), and Ruby (age 14):

Plaintiffs continue to object to these depositions as unnecessary and unlikely to yield relevant information that Defendants could not get by deposing their guardians, Laura King (Nathaniel and Jeffrey) and Shane Doyle (Lilian and Ruby). However, as you can see from the calendar above, we will make Shane Doyle available for a deposition on August 16th, and then if necessary, Lilian and Ruby can be available the same day for a deposition.

For Nathaniel and Jeffrey, given their age (four and eight) we continue to object to you taking their depositions. We are making Laura King, their mother and legal guardian, available for a deposition, as noted above.

We believe the schedule outlined herein is fair and reasonable and, if agreed to by Defendants, will obviate the need to involve the Court to assist with deposition scheduling of the Plaintiffs. Please let us know your response as soon as possible.

Sincerely,


Nathan Bellinger

cc: Roger Sullivan, Melissa Hornbein, Barbara Chillcott, Andrea Rodgers, Mathew dos Santos, Phil Gregory

ATTACHMENT 6

AUSTIN KNUDSEN



STATE OF MONTANA

July 12, 2022
VIA E-MAIL

RE: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307

Dear Counsel,

As we briefly discussed on June 23, 2022, the State believes at least two of your responses to our Requests for Production are deficient. Please consider this our attempt to meet and confer with you regarding these matters pursuant to the Montana Rules of Civil Procedure. The following discovery responses require supplementation:

Request for Production No. 1: Please complete Plaintiffs' responses to this Request by producing all documents that support the specific and individualized damages or injuries you claim for each Plaintiff.

Request for Production No. 17: Please complete Plaintiffs' responses to these Requests by producing all documents specifically responding to the allegations of each Plaintiff identified in paragraphs 22, 44, 47, 48, 53, 55, 59, 60, and 73 of your Complaint.

Our review of your production so far indicates that you haven't produced any documents directly relevant to the individual plaintiffs' alleged physiological and psychological injuries. We cannot begin the plaintiffs' or their guardians' depositions without full and complete responses to these requests.

We would appreciate supplemental production by July 19, 2022. We are continuing to review your production thus far and may request additional supplementation if needed.

Sincerely,

Timothy Longfield

DEPARTMENT OF JUSTICE

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ATTACHMENT 7



Our Children's Trust Youth v. Gov

July 13, 2022

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Emily Jones, Special Assistant Attorney General
Jones Law Firm, PLLC
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Via Email Only

Re: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307 – Plaintiff Deposition
Calendar and Discovery

Dear Counsel,

It has been one week since we sent you a letter on July 6th, 2022 with dates for Plaintiff depositions and we have not received a response from you confirming any of the August dates. This letter is another attempt to resolve outstanding discovery issues and set a deposition schedule for Plaintiffs. The first Plaintiff depositions are set to commence in less than one month. Based on the general deposition schedule that all parties have agreed to (Plaintiff depositions in August; Defendant fact witness and 30(b)(6) depositions in September; Plaintiff expert depositions in October; Defendant expert depositions in November; rebuttal expert depositions in December), it is important that Plaintiff depositions occur as planned during August.

1. Plaintiff Deposition Calendar:

Below is a calendar for the Plaintiff depositions, including locations for the depositions. This calendar contains specific dates and times for four additional Plaintiffs, so please use this calendar instead of the one sent on July 6th.

We believe this calendar will minimize travel across Montana by grouping depositions in geographic regions and by accommodating, in part, Defendants request for depositions to take place in Helena, even though we continue to believe there is no legal basis and it is contrary to common practice in Montana (and elsewhere) for Defendants to demand that Plaintiff depositions occur in Helena. Should Defendants decline to travel to Missoula or Kalispell, we will make each



Our Children's Trust Youth v. Gov

Plaintiff available at a court reporter's office in those cities for a videoconference deposition on the date and at the time indicated.

- **Tuesday, August 9th – Missoula**
 - o 2pm, Olivia Vesovich
- **Wednesday, August 10th – Missoula**
 - o 9am, Kian T.
 - o 1pm, Taleah Hernandez
- **Thursday, August 11th – Missoula**
 - o 9am, Kathryn Grace Gibson-Snyder
 - o 1pm, Mica K.
- **Friday, August 12th – Missoula**
 - o 9am, Rikki Held
- **Monday, August 15th – Helena**
 - o 9am, Georgianna Fischer
 - o 1pm, Eva L.
- **Tuesday, August 16th – Helena**
 - o 9am, Shane Doyle
 - o 1pm, Ruby D.
 - o 3pm, Lilian D.
- **Wednesday, August 17th – Helena**
 - o 9am, Laura King
- **Monday, August 22 – Kalispell**
 - o 1pm, Sariel Sandoval
- **Wednesday, August 24th – Kalispell**
 - o 9am, Badge B.
 - o 1pm, Lander B.
- Claire Vlases will be unavailable all of August. We will propose a date for her deposition later this summer, but it will need to occur sometime this fall.

2. Depositions of Nathaniel (age 4), Jeffrey (age 8), Lilian (age 11), and Ruby (age 14):

Plaintiffs continue to object to these depositions as unnecessary and unlikely to yield relevant information that Defendants could not get by deposing their guardians, Laura King (Nathaniel and Jeffrey) and Shane Doyle (Lilian and Ruby). However, as you can see from the calendar above, we will make Shane Doyle available for a deposition on August 16th, and then, if necessary, Lilian and Ruby can be available the same day for a deposition.

For Nathaniel and Jeffrey, given their age (four and eight) we continue to object to you taking their depositions. We are making Laura King, their mother and legal guardian, available for a deposition, as noted above.

3. Written Discovery



Our Children's Trust Youth v. Gov

- a. **Plaintiffs' Responses:** We received your letter today regarding supplementing Plaintiffs' responses to Defendants' discovery requests by July 19th. We anticipate being able to meet your request to send any supplemental materials within one week, as you have requested. Regardless, we will provide you with an update by July 19, 2022.
- b. **Defendants' Responses:** As to Defendants' supplemental responses to Plaintiffs' discovery requests, we first identified deficiencies with your discovery responses in a letter dated June 3, 2022. We also discussed this matter on our telephonic meet and confer on June 23, 2022, and counsel for Defendants indicated that they intended to have the supplemental responses to us by July 7, 2022. We have still not received any supplemental responses. Can you please supplement your discovery responses by July 19th, as you have requested we do?

4. June 15, 2022 Scheduling Order

In your June 28, 2022 letter, you indicated that you are considering our proposal to move up the deadline for expert disclosures by 30 days, with an exception for your medical expert. Can you please let us know if a decision has been made about that and, if not, when you anticipate being able to let us know your position?

We continue to believe that the parties can work together to schedule depositions and resolve other discovery matters without needing to involve the Court. We believe the Plaintiff deposition schedule outlined herein is fair and reasonable and, if agreed to by Defendants, will obviate the need to involve the Court to assist with deposition scheduling of the Plaintiffs. Because Plaintiffs have busy schedules, and some will need to travel for their depositions, it is important to confirm the Plaintiff deposition schedule ASAP. Will you please confirm the Plaintiff deposition calendar outline herein by the end of the week (July 15, 2022)?

Sincerely,



Nathan Bellinger

cc: Roger Sullivan, Melissa Hornbein, Barbara Chillcott, Andrea Rodgers, Mathew dos Santos, Phil Gregory

ATTACHMENT 8

AUSTIN KNUDSEN



STATE OF MONTANA

June 24, 2022

VIA E-MAIL

RE: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307

Dear Counsel,

This letter responds to Nate's letter of July 13, 2022, and to notify you of the State's request for additional supplementation of your discovery responses.

We will tentatively hold the dates you propose for depositions in this matter, but we cannot commit to these dates without your clients first providing full and complete responses to our discovery requests. We will not be forced to start depositions in this case without access to all responsive documents we have requested. As such, we will not serve any deposition notices until we receive full responses to our discovery requests. In addition to RFP 1 and 17 that we previously discussed with you, we have identified numerous additional deficient discovery responses, including, but not limited to your responses to Interrogatories 1, 5, 8, 9–26, and 28–39 Requests for Production 1, 6–7, 9–13, 16–19, 22, and 26–29. We are working on a letter that more comprehensively addresses the deficiencies of your responses. As stated above, we simply aren't in a position to begin depositions until Plaintiffs have fully answered all of the State's discovery requests.

Additionally, your proposed schedule does not provide any dates for Mark Lighthiser, Todd Tanner, Michael Vlases, Cesar Hernandez, Cristen Twoteeth, Douglas Fischer, Mark Gibson-Snyder, Lynn Purl, Sara Busse, or Rachel Kantor. We specifically requested to depose all the original guardians because they are undisputedly witnesses even if they are no longer parties. Please provide dates for these depositions.

Regarding depositions of Nathaniel and Jeffrey, we maintain our position that we are entitled to depose every named plaintiff in this case. You're right: these plaintiffs are young and should not be subject to the stresses of litigation. We again request that you dismiss them from this case because they are not necessary parties.

DEPARTMENT OF JUSTICE

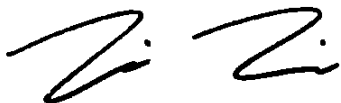
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But if you insist on keeping them as plaintiffs in this case, we will depose them. You've made clear that each plaintiff alleges "unique" harms—the State must test those claims if it is to present a full and fair defense against their claims. We note your response to our Interrogatory No. 2, which states in relevant part: "Plaintiffs will testify to harms suffered because of Defendants' challenged conduct. See Paragraphs 14-81 of the Complaint." (Emphasis in the original). This Answer clearly implicates Nathaniel and Jeffrey's claims.

Finally, we will have our Second Supplemental Discovery Responses to you by the end of this week.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Longfield". The signature is stylized with a large, sweeping initial "T" and a long, horizontal stroke extending to the right.

Timothy Longfield
Assistant Attorney General

Enc.

ATTACHMENT 9



Our Children's Trust Youth v. Gov

July 22, 2022

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Emily Jones, Special Assistant Attorney General
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Via Email Only

Re: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307 – Discovery Issues

Dear Counsel,

We hope this letter prompts a more candid discovery process between now and the close of discovery on January 9, 2023.

1. **Delay:** It is obvious Defendants are making every effort to delay completing discovery (e.g., your second motion for clarification; your July 19 letter noting additional, unspecified deficiencies in Plaintiffs' discovery responses more than three months after Plaintiffs served their responses). We had hoped the parties could work together to schedule depositions and resolve other discovery matters without needing to involve the Court, especially since the Court granted your request to modify the Scheduling Order. Given Defendants' consistent delay, that hope has been dashed. We believe it is appropriate to present these discovery issues to the Court and to request an appropriate order. As the discovery clock is ticking without any firm dates or clear direction from Defendants, you give us no choice but to do so.
2. **Depositions of Plaintiffs:** As we have written on several occasions (June 27, June 29, July 6, and July 13), Plaintiffs are available during the month of August on specific dates in specific locations. Despite you agreeing nearly a month ago to take the Plaintiff depositions in August, you have yet to confirm the dates we have proposed. What is your plan?
 - a. If you intend to take these depositions during the month of August, please confirm the dates and times proposed in our July 13th letter.
 - b. If you intend to wait for resolution of your Rule 35 motion, or for other discovery to be conducted or supplemented before you are going to take Plaintiffs'



depositions, please tell us and we will release these August dates. With a lack of clarity as to whether Plaintiffs' depositions are starting in less than three weeks, it is professional courtesy to be straightforward with us about whether you intend to take these depositions. Perhaps Plaintiffs will be available for depositions later in the year, perhaps not, but you will have made the decision not to take their depositions on the dates Plaintiffs are available in August after previously agreeing to take their depositions in August. This issue is an example of why we need a Rule 26(f) discovery conference.

3. **Depositions of Nathaniel and Jeffrey:** Plaintiffs have repeatedly set forth their position on why these depositions are inappropriate given that Nathaniel and Jeffrey are only four and eight and given that their guardian and mother is available for a deposition. This issue is an example of why we need a Rule 26(f) discovery conference.
4. **Depositions of Former Guardians:** Defendants claim to be concerned about saving taxpayer dollars in, for example, attempting to engineer all depositions to be in Helena, yet that concern is belied by your insistence on deposing Plaintiffs' former guardians. Your letter of July 19 requests dates for Mark Lighthiser, Todd Tanner, Michael Vlases, Cesar Hernandez, Cristen Twoteeth, Douglas Fischer, Mark Gibson-Snyder, Lynn Purl, Sara Busse, and Rachel Kantor. There is no legitimate reason at this stage to incur the costs and time of taking depositions of all the original guardians. They will not be witnesses at trial and we have offered to revisit this issue after Defendants have deposed Plaintiffs. This issue is an example of why we need a Rule 26(f) discovery conference.
5. **Plaintiffs' Medical Records:** We anticipate serving the relevant Plaintiff medical records on or before July 27.
6. **Supplemental Responses from Plaintiffs:** You requested supplemental responses from Plaintiffs, yet did not tell us why Plaintiffs' current responses are deficient. As you wrote on July 19: "We are working on a letter that more comprehensively addresses the deficiencies of your responses." You promised you would tell us, but have not done so. Months have passed since Plaintiffs served responses. We are not going to try to figure out where Defendants allegedly see issues and do not believe that your tardiness in requesting that we supplement our discovery responses should be used as an excuse to delay Plaintiff depositions.
7. **Supplemental Responses from Defendants:** On June 3, Plaintiffs identified specific deficiencies with Defendants' supplemental responses to Plaintiffs' discovery requests. We also discussed this matter on our telephonic meet and confer on June 23, and you said you intended to serve supplemental responses by July 7. Two weeks have passed since your self-imposed deadline. Plaintiffs have still not received any supplemental responses. This issue is an example of why we need a Rule 26(f) discovery conference.



Our Children's Trust Youth v. Gov

8. **Changing the June 15 Scheduling Order:** On June 28, you wrote you are considering Plaintiffs' proposal to move up the deadline for expert disclosures by 30 days, with an exception for Defendants' medical expert. Can you please let us know if a decision has been made about a new deadline and, if not, when you anticipate being able to let us know your position? This issue is an example of why we need a Rule 26(f) discovery conference.
9. **Rule 26(f) Discovery Motion:** Plaintiffs believe it would benefit all parties and the Court for discovery issues to be promptly decided so we can move this case forward. We intend to file a Rule 26(f) discovery motion next week. What discovery issues do you wish for the Court (or a potential discovery master) to address at the conference?

Please respond by Monday, July 25, especially as to the August schedule for Plaintiffs' depositions.

Sincerely,



Nathan Bellinger

cc: Roger Sullivan, Melissa Hornbein, Barbara Chillcott, Andrea Rodgers, Mathew dos Santos, Phil Gregory

ATTACHMENT 10

AUSTIN KNUDSEN



STATE OF MONTANA

July 25, 2022

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Nathan Bellinger
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RE: Held, et al. v. State of Montana, et al., Case No. CDV-2020-307

Dear Counsel,

This exchange of “dueling letters” has started to produce diminishing returns. The State agrees that a Rule 26(f) conference should assist all parties. As a good-faith effort to reduce the number of issues that we present to the Court during that 26(f) conference, the State will make every effort to clear up, via this letter, as many lingering issues as possible. We appear, however, to have reached an impasse on other issues, as I describe below.

Before I do that, a brief point of order: the State unequivocally rejects Plaintiffs’ effort to impose an arbitrary response deadline that expires on Monday after sending a letter on Friday evening. It is precisely this kind of gamesmanship that has caused, and continues to cause, the delay of which you complain. While the substance of your lawsuit suggests you may think otherwise, Plaintiffs and their attorneys do not run Montana’s government. We manage a very active litigation docket and represent the State’s interest in many matters. These arbitrary deadlines fall well short of the mark of “professional courtesy” that your letter identifies and asks for.

Now, onto the substance.

Response to Issues Raised in Mr. Bellinger’s July 22, 2022 Letter

1. **“Delay.”** Your unsupported assertions of delay merit no response. As we’ve

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told you many times, we will not be pressed into agreeing to deposition dates before we receive full and complete responses to our discovery requests. The first issue obstructing the scheduling of Plaintiffs' depositions is your deficient responses to the State's first discovery requests. You complain that, since July 12, 2022, we haven't specifically identified the manifold issues with your discovery responses. There were many to sort through. Here's a list.

A. Plaintiffs' Deficient Responses to Requests for Production Nos. 1 and 17

On July 12, 2022, we requested supplementation of Request for Production Nos. 1 and 17 by July 19. You stated you would supplement by that date, but as of this letter, we have not received any supplementation from you.

Please supplement your Response to Request for Production No. 1 by producing all documents that support the specific and individualized damages or injuries you claim for each Plaintiff. Additionally, please supplement your Response to Request for Production No. 17 by producing all documents specifically responding to the allegations of each Plaintiff identified in your Complaint to the effect that climate change has or will negatively impact their health or well-being. A complete response will include, at minimum, the following:

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Rikki Held**, described in Paragraphs 14, 15, 16, 17, 18, 19, and 20 of Plaintiffs' Complaint, regarding or resulting from the increased variability in the water on her ranch, including the rivers, because of the climate crisis in Montana, as well as from the hail storm of 2019 that destroyed part of her ranch, which she alleges is symptomatic of the climate crisis in Montana. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Rikki Held**, described in Paragraphs 14, 15, 16, 17, 18, 19, and 20 of Plaintiffs' Complaint, regarding or resulting from the freezing of her family's fields, which you allege is symptomatic of the climate crisis in Montana, and the resulting economic hardship on her family from this event. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Rikki Held**, described in Paragraphs 14, 15, 16, 17, 18, 19, and 20 of Plaintiffs' Complaint, regarding or resulting from the injuries to her family's cattle because of climate change in Montana. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- Please produce all documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Rikki Held**, described in Paragraphs 18, 19, and 20 of Plaintiffs' Complaint, regarding or resulting from the recent increased deaths of pine trees due to white pine weevils on Rikki's ranch. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Rikki Held**, described in Paragraphs 18, 19, and 20 of Plaintiffs' Complaint, regarding or resulting from the recent increased deaths of white-tailed deer due to Bluetongue Virus on Rikki's ranch. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Rikki Held**, described in Paragraphs 16 and 19 of Plaintiffs' Complaint, regarding Rikki's increased stress and despair caused by climate change in Montana. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Lander B.** and his immediate family, described in Paragraphs 21, 22, and 23 of Plaintiffs' Complaint, regarding or resulting from his inhibited access to food, ability to fish, and ability to hunt. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Badge B.** and his immediate family, described in Paragraphs 21, 22, and 23 of Plaintiffs' Complaint, regarding or resulting from his inhibited access to food, ability to fish, and ability to hunt. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Lander B.** and his immediate family, described in Paragraph 22 of Plaintiffs' Complaint, regarding or resulting from his inhibited ability to raft on the Flathead and Blackfoot rivers. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Badge B.** and his immediate family, described in Paragraph 22 of Plaintiffs' Complaint, regarding or resulting from his inhibited ability to raft on the Flathead and Blackfoot rivers. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Lander B.**, described in Paragraph 24 of Plaintiffs' Complaint, resulting from the wildfire which threatened his home in the summer of 2018. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Badge B.**, described in Paragraph 24 of Plaintiffs' Complaint, resulting from the wildfire which threatened his home in the summer of 2018. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Badge B.**,

described in Paragraph 25 of Plaintiffs' Complaint, resulting from the destruction of ancient White Pines and the degradation of areas significant to Badge where he likes to visit and recreate, including Badger-Two Medicine, his namesake. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Badge B.**, described in Paragraph 25 of Plaintiffs' Complaint, resulting from Badge's diminished ability to enjoy and recreate in and around Montana's forests caused by the decimation of forests by pine beetles, and from seeing pine beetles on trees while hiking in Montana's forests.
- All documents in your possession, custody, or control which support **Lander B.**'s seasonal pollen allergies, described in Paragraph 24 of Plaintiffs' Complaint, and the way this malady is or will be worsened because of the changing climate, including all medical records related to these harms.
- All documents in your possession, custody, or control which support **Badge B.**'s difficulty breathing and eye irritation, described in Paragraphs 23 and 24 of Plaintiffs' Complaint, and the way this malady is or will be worsened because of the changing climate, including all medical records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Sariel Sandoval**, described in Paragraphs 27, 28, 29, 30, 31, and 32 of Plaintiffs' Complaint, regarding or resulting from the harm to Confederated Salish and Kootenai Tribal practices and cultural beliefs, and Sariel's diminished ability to learn and partake in cultural and spiritual activities. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Sariel Sandoval**, described in Paragraph 29 of Plaintiffs' Complaint, regarding or resulting from the lack of winter snowpack causing harm to Sariel and her community and the harm to Sariel's aesthetic and recreational opportunities. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Sariel Sandoval**, described in Paragraph 29 of Plaintiffs' Complaint, regarding or resulting from the lack of winter snowpack impacting her community's ability to fish for bull trout and rainbow trout. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Sariel Sandoval**, described in Paragraphs 31 and 32 of Plaintiffs' Complaint, regarding or resulting from her family's declining access to bison and berries due to fluctuating and extreme temperatures in Montana. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Sariel Sandoval**, described in Paragraphs 28, 31, and 32 of Plaintiffs' Complaint, regarding or resulting from Sariel's distress, anxiety or increased worries about the future due to the climate crisis in Montana; her fears about the loss of her community's cultural heritage, and her fears about the loss of food sources. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Sariel Sandoval**, described in Paragraph 30 of Plaintiffs' Complaint, regarding or resulting from her being required to remain indoors to preserve her health and safety when smoke is concentrated on the Flathead Reservation due to increased wildfires in the area. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Kian T.** and/or his family, described in Paragraph 33 of Plaintiffs' Complaint, as a

result of trees dying with increased frequency on his family's property due to increased insect activity stemming from the climate crisis. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Kian T.** and/or his family and their property, described in Paragraphs 33, 34, 35, 36 and 37 of Plaintiffs' Complaint, as a result of earlier snowmelt and decreased snowpack caused by the climate crisis. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Kian T.**, described in Paragraphs 34, 35 and 36 of Plaintiffs' Complaint, as a result of his inhibited ability to fish, play soccer, hike, camp, and otherwise recreate. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Kian T.**, described in Paragraph 35 of Plaintiffs' Complaint, as a result of his fears of never being able to see the natural glaciers as they have historically existed. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical and/or other alleged medical harms suffered by **Kian T.**, described in Paragraph 36 of Plaintiffs' Complaint, regarding or resulting from the increased smoke conditions in the summer due to the climate crisis. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Georgianna Fischer**, described in Paragraphs 39, 40, and 41 of Plaintiffs' Complaint, regarding or resulting from her inhibited ability to compete in and train for

skiing competitions and to otherwise recreate. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Georgianna Fischer**, described in Paragraph 41 of Plaintiffs' Complaint, regarding or resulting from the diminished flow of water on the local rivers mentioned in Plaintiffs' Complaint (Smith, Flathead and Missouri Rivers). This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Georgianna Fischer**, described in Paragraph 40 of Plaintiffs' Complaint, regarding or resulting from the effects of the climate crisis on Georgi's respiratory and lung health. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Georgianna Fischer**, described in Paragraph 42 of Plaintiffs' Complaint, regarding or resulting from Georgi's feelings of despair and hopelessness stemming from the climate crisis, as well as understanding that snow and Nordic skiing may not exist in the future. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Kathryn Grace Gibson-Snyder**, described in Paragraphs 43, 44, and 45 of Plaintiffs' Complaint, regarding or resulting from her inhibited ability to recreate due to the climate crisis. This includes but is not limited to counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Kathryn Grace Gibson-Snyder**, described in Paragraphs 43, 44, and 45 of Plaintiffs'

Complaint, regarding or resulting from wildfire smoke and the consequent threats to her health and wellbeing including her coughing and throat irritation. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Eva L.**, as stated in Paragraphs 47 and 48 of Plaintiffs' Complaint, regarding or resulting from Eva's illness, eye and nose irritation, sore throat, and headaches from the smoke in Livingston and Glacier National Park. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Eva L.**, as stated in Paragraph 49 of Plaintiffs' Complaint, regarding or resulting from the impact of "the Tsunami of 2018" of the Shields River on Eva and her family, and the devastation of the public resources and infrastructure in Eva's community. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Eva L.**, described in Paragraphs 47, 48, 49, 50, and 51 of Plaintiffs' Complaint, regarding or resulting from Eva's increased hardship and stress from climate change in Montana, the impacts on Eva's identity, well-being, family foundations, and the harm to her security and safety. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Mica K.**, described in Paragraphs 52, 53, 54, 55, 56, and 57 of Plaintiffs' Complaint, regarding or resulting from his inhibited ability to recreate and/or exercise, increased wildfires and smoke, and the decreasing number of Pikas. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Mica K.**, described in Paragraphs 52, 53, 54, 55, 56, and 57 of Plaintiffs' Complaint, regarding or resulting from witnessing the current impacts of the climate crisis in Montana and in other parts of the world, and knowing his government is not taking adequate actions to prevent these impacts. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the behavioral issues from which **Mica K.** suffers, alleged in Paragraph 53 of Plaintiffs' Complaint, because of the climate crisis in Montana.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, emotional, or other alleged harms suffered by **Olivia Vesovich**, described in Paragraphs 59, 60, and 61 of Plaintiffs' Complaint, regarding or resulting from Olivia's increased asthma attacks and respiratory health issues, increased pollen allergies and eye injuries, including her eyes swelling shut and frequent eye pain. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Olivia Vesovich**, described in Paragraph 61 of Plaintiffs' Complaint, regarding or resulting from the harm to Olivia's family values, her increased stress and anxiety about the future, depression, and heartbrokenness from climate change in Montana. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Jeffrey K.**, described in Paragraphs 62 and 63 of Plaintiffs' Complaint, regarding or resulting from the climate crisis in Montana, including Jeffrey's pulmonary sequestration, proneness to respiratory complications, and vulnerability to poor air quality. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Nathaniel K. ("Nate")**, described in Paragraphs 62 and 63 of Plaintiffs' Complaint, regarding or resulting from the climate crisis in Montana including Nate's frequent sickness, vulnerability to poor air quality, and his inhibited ability to recreate. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Claire Vlases**, described in Paragraphs 65, 66, 67, 68, and 69 of Plaintiffs' Complaint, regarding or resulting from Claire's diminished ability to earn money because of climate change in Montana. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Claire Vlases**, described in Paragraphs 65, 66, 67, 68, and 69 of Plaintiffs' Complaint, regarding or resulting from the effects of climate change on the Bozeman Creek that Claire's family has water rights to. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Claire Vlases**, described in Paragraph 69 of Plaintiffs' Complaint, regarding or resulting from Claire's diminished educational opportunities because of climate change in Montana. This includes but is not limited to insurance, medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Ruby D.**, described in Paragraphs 70, 71, 72, 73, 74, 75, and 76 of Plaintiffs' Complaint, regarding or resulting from her inability to participate in cultural activities important to her because of climate change in Montana. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Ruby D.**, described in Paragraphs 70, 71, 72, 73, 74, 75, and 76 of Plaintiffs' Complaint, regarding or resulting from her inhibited ability to recreate. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Ruby D.**, described in Paragraphs 70, 71, 72, 73, 74, 75, and 76 of Plaintiffs' Complaint, regarding or resulting from witnessing the impacts of climate change in Montana and other parts of the world, and knowing that her government is not taking adequate action to prevent these impacts. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, or other alleged harms suffered by **Ruby D.**, described in Paragraphs 70, 71, 72, 73, 74, 75, and 76 of Plaintiffs' Complaint, because of increased wildfire smoke in Montana and the aggravating effect this has on her asthma, including but not limited to all insurance or medical records related to these harms.
- All documents in your possession, custody, or control which support the economic or other harms to **Ruby D.**, alleged in Paragraph 72 of Plaintiffs' Complaint, regarding, or resulting from her impeded ability to pick ripe wild chokecherries, huckleberries, and raspberries. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Lilian D.**, described in Paragraphs 70, 71, 72, 73, 74, 75, and 76 of Plaintiffs' Complaint, regarding or resulting from her inability participate in cultural activities important to her because of climate change in Montana. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Lilian D.**, described in Paragraphs 70, 71, 72, 73, 74, 75, and 76 of Plaintiffs' Complaint, regarding or resulting from her inhibited ability to recreate. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Lilian D.**, described in Paragraphs 70, 71, 72, 73, 74, 75, and 76 of Plaintiffs' Complaint, regarding or resulting from witnessing the impacts of climate change in Montana and other parts of the world, and knowing that her government is not taking adequate action to prevent these impacts. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, or other alleged harms suffered by **Lilian D.**, described in Paragraphs 70, 71, 72, 73, 74, 75, and 76 of Plaintiffs' Complaint, because of increased wildfire smoke in Montana, including but not limited to all insurance or medical records related to these harms.
- All documents in your possession, custody, or control which support the economic or other harms to **Lilian D.**, alleged in Paragraph 72 of Plaintiffs' Complaint, regarding, or resulting from her impeded ability to pick ripe wild chokecherries, huckleberries, and raspberries. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Taleah Hernández**, as stated in Paragraphs 77, 78, 79, and 80 of Plaintiffs' Complaint, regarding or resulting from the harm to Taleah's recreation, aesthetic, and family interests. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Taleah**

Hernández, as stated in Paragraphs 77, 78, 79, and 80 of Plaintiffs' Complaint, regarding or resulting from the increase of diseases in the wildlife, deer, elk and bison on the Flathead Reservation, and the consequent harm to Taleah and her family's food source. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.

- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Taleah Hernández**, described in Paragraphs 79, 80 and 81 of Plaintiffs' Complaint, regarding or resulting from Taleah's increased stress and anxiety from climate change. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.
- All documents in your possession, custody, or control which support the physical, medical, psychological, mental, economic, emotional, aesthetic, cultural, existential, familial, or other alleged harms suffered by **Taleah Hernández**, described in Paragraph 80 of Plaintiffs' Complaint, regarding or resulting from the harms caused by Hurricane Maria to Taleah's cultural and familial traditions because of climate change in Montana. This includes but is not limited to medical, counseling, therapy, or mental health records related to these harms.

In addition to deficient responses to Request for Production Nos. 1 and 17, the following responses to our discovery requests are likewise deficient and require immediate supplementation under Mont. R. Civ. P. 26(e):

Interrogatory No. 1: You did not state which specific persons participated in responding to discovery. Please supplement.

Interrogatory No. 12/Request for Production No. 10: You provided no documents or information regarding your allegations in the Complaint about the air quality in Broadus. Please supplement with a full and complete response to these requests.

Interrogatory No. 14/Request for Production No. 12: You provided no documents or information regarding the allegations of the Complaint that access to food sources and cultural and familial traditions are inhibited. Please supplement.

Interrogatory No. 17/Request for Production No. 15: You provided no specific documents related to increasing heat and dry air in Montana. Please supplement these responses with the requested information.

Interrogatory No. 18/Request for Production No. 16: Please complete Plaintiffs' responses to these Requests by producing all documents specifically responding to the allegations of each Plaintiff identified in Paragraph 24 of your Complaint, that climate destabilization caused or contributed to the particular wildfire referenced in that Paragraph.

Interrogatory No. 20/Request for Production No. 18: Please complete Plaintiffs' responses to these Requests by producing all documents specifically responding to the allegations of Paragraph 29, that climate change is impacting Plaintiff Sariel's ability to partake in cultural and spiritual activities, central to her individual dignity.

Interrogatory No. 21/Request for Production No. 19: Please complete Plaintiffs' responses to these Requests by producing all documents specifically responding to the allegations of each Plaintiff identified in Paragraphs 31 and 72 of your Complaint, that climate change has caused or contributed to lower berry yields.

Interrogatory No. 24: You provided no information regarding Georgianna's transportation modes as requested. Please supplement.

Interrogatory No. 25/Request for Production No. 22: You provided no information regarding Eva's tsunami flood event referred to in your Complaint. Please supplement by providing a full and complete response.

Interrogatory No. 28/Request for Production No. 26: You have not provided any information related to the specific Plaintiffs in this case and about the allegations they have made in their Complaint. Please provide full and complete responses. A complete response will contain the documents referenced above. Please complete Plaintiffs' responses to this Request by producing all documents specifically responding to the allegations of each Plaintiff identified in Paragraphs 20, 26, 32, 42, 45, 51, 61, and 80 of your Complaint, that climate change has or will negatively impact their mental and/or emotional health and well-being.

Interrogatory No. 29/Request for Production No. 27: You provided no documents specific to Claire. Please supplement.

Request for Production No. 32: Plaintiffs stated they would provide responsive documents as they are obtained by counsel, but to date none have been provided. Please complete Plaintiffs' responses to this Request by producing medical, counseling, therapy, or mental health records for all treatment of Plaintiffs related to the harm, damages, or injuries alleged.

B. Deficient Responses to the State's Interrogatories

Your April 20, 2022, Responses also neglected to adequately reply to the following interrogatories from the State's First Discovery Requests:

Interrogatory No. 32: Please identify all forms of transportation Plaintiffs use, including how that transportation is powered.

Interrogatory No. 33: Please identify how often Plaintiffs use transportation to leave their home for any purpose.

Interrogatory No. 34: Please identify all products Plaintiffs use made wholly or partially from plastic.

Interrogatory No. 35: Please identify the source of electricity to each Plaintiffs' home and any outbuildings on Plaintiffs' home property.

Interrogatory No. 36: Please identify the source of temperature control, including but not limited to heat and air conditioning, for each Plaintiffs' home and any outbuildings on Plaintiffs' home property.

In response to these Interrogatories, you offered boilerplate objections that the requests were "unduly burdensome, overbroad in time and scope, irrelevant, abusive and propounded with the intent to harass, not proportionate to the needs of the case, and unlikely to lead to the discovery of admissible evidence. Plaintiffs also object to this Interrogatory as it exceeds the scope of permissible discovery." These objections are improper as these interrogatories directly relate to the allegations in your Complaint. Your Complaint alleges that "Defendants' aggregate acts in perpetuation of the State Energy Policy and the Climate Change Exception to MEPA reflect a short-term policy to favor the present generation's interests to the long-term detriment to Youth Plaintiffs." *Complaint*, ¶236.

Also, in your Complaint, multiple Youth Plaintiffs allege psychological harms as a result of contemplating the current and future effects of climate change in Montana. (See Doc. 1 at ¶¶ 16, 20, 25, 28, 32, 35, 42, 49, 51, 52, 54, 56, 74, 80, 178). As a result of their concern for the environment, the Complaint alleges several youth plaintiffs have taken actions to protect the environment through minimizing their energy consumption and encouraging others to do so as well. (See Doc. 1 at ¶¶ 37, 45, 58). Pursuant to Mont. R. Civ. P. 26(b)(1), however, "[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense." Relevant evidence is that which "ha[s] any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Relevant evidence may include evidence bearing upon the credibility of a witness or hearsay declarant." Mont. R.

Evid. 401. Plaintiffs rely, in part, on their psychological harms to establish standing in this case. (See Doc. 15 at 4-14). As such, the existence of said harms is a fact that is of consequence to the determination of this action, since Case-or-Controversy Standing is a threshold requirement that must be met in every case. *Heffernan v. Missoula City Council*, 2011 MT 91, ¶¶ 29, 34, 360 Mont. 207, 255 P.3d 80. Discoverable information need not be admissible so long as it “appears reasonably calculated to lead to the discovery of admissible evidence.” Mont. R. Civ. P. 26(b)(1).

As we have repeatedly stated, we cannot begin depositions until we receive full and complete responses to our discovery requests. Your allegations of “delay” are spurious given that you have failed to meet your discovery obligations in this case. With a discovery deadline in January, waiting to begin depositions until we receive the information we have requested is entirely reasonable. Any delay is attributable solely to your failure to respond to discovery as required by ample Montana law.

C. Plaintiffs’ Improper Objections to the State’s Requests

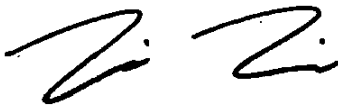
There’s another issue: many of your objections are improper under Montana law. Your objections to Requests 12, 16, 18, 19, 26, and 29 assert that “Plaintiffs object to [these] request as unduly burdensome, overbroad in time and scope, and requesting public information equally available to Defendants.” Pursuant to Mont. R. Civ. P. 26(b)(1), however, “[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense.” “In response to a formal request for production, the responding party must make reasonable inquiry and then either produce the information requested, state an objection including the particular reasons for the objection, or file a motion for a protective order.” *Assoc. Mgmt. Serv. Inc. v. Ruff*, 2018 MT 182, ¶72, 392 Mont. 139, 424 P.3d. 571 (Hereafter “AMSI”). Moreover, “[c]onclusory, pattern or boilerplate objections that merely assert a discovery request is privileged, overly broad, unduly burdensome, irrelevant, or not reasonably likely to lead to relevant information are insufficient and unresponsive.” *Id.* “If a request seeks production of information that is only partially objectionable, the responding party must produce all non-objectionable information requested.” *Id.* (citing M.R. Civ. P. 26(g)). “Failure or refusal to fully and fairly answer proper discovery requests ‘essentially prevents the case from progressing’ and warrants appropriate sanction as applicable under M. R. Civ. P. 26(g) and 37. *Id.* (quoting *Linn v. Whitaker*, 2007 MT 46, ¶15, 336 Mont. 131, 152 P.3d 1282).

We don’t want to file a motion to compel, but we cannot continue to countenance Plaintiffs’ attempts to obfuscate essential facts in this litigation.

I now turn to the remaining issues you raised in your July 20, 2022 letter.

2. **Depositions of Plaintiffs.** See supra pp 2–17.
3. **Depositions of Nathaniel and Jeffrey.** We maintain that Nathaniel and Jeffrey shouldn't be in this lawsuit. Why are you keeping them as Plaintiffs?
4. **Depositions of Former Guardians.** We have made our position clear on this matter. We are unwilling to rely on your representation that you will “revisit the issue” of these former guardians’ depositions “after [the State] has deposed Plaintiffs.” For one thing, you haven't guaranteed that these guardians will be available for depositions at a later date. Given your gamesmanship on scheduling thus far, we're not comfortable hoping that they will be.
5. **Plaintiffs' Medical Records.** Thank you for confirming that you intend to serve all relevant medical records from Plaintiffs by July 27, 2022. We will look for this production.
6. **Supplemental Responses from Plaintiffs.** See supra pp. 2–15.
7. **Supplemental Responses from the State.** We have served you with these today (July 25, 2022). Please let us know if you have any trouble accessing the documents.
8. **Changing the June 15 Scheduling Order.** After consulting with our experts, we do not agree to move up the expert disclosure deadlines. We remain open to deposing experts, if necessary, after the close of discovery to accommodate holiday schedules.
9. **Rule 26(f) Discovery Motion.** We continue to believe that this is a good idea, especially considering your grossly deficient discovery responses (outlined in detail above), and as we are nearing the point of filing a Motion to Compel. Please provide us with your draft motion and we will gladly craft the sections related to our discovery issues. If you're not willing to do this, we can file our own Rule 26(f) Motion.

Sincerely,



Timothy Longfield

ATTACHMENT 11



Our Children's Trust Youth v. Gov

July 27, 2022

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Via Email Only

Re: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307 – Plaintiffs' Fourth
Discovery Production

Dear Counsel,

This letter responds to your July 12, 2022 letter stating your belief that Defendants' Request for Production of Documents ("RFP") No. 1 and No. 17 required supplementation.

RFP No. 1 and No. 17 seek documents related to Plaintiffs' damages or injuries, including documents related to how climate change is negatively impacting Plaintiffs' health. As Plaintiffs noted in their April 20, 2022 response to Interrogatory No. 4, "Plaintiffs are not seeking monetary 'damages' in this case and Plaintiffs interpret this Interrogatory as seeking information about Plaintiffs' injuries alleged in this case." Likewise, Plaintiffs interpret RFP No. 1 and No. 17 as seeking information about Plaintiffs' injuries in this case.

Plaintiffs have already produced thousands of pages of documents in response to Defendants' RFP No. 1 and No. 17. Plaintiffs responded to Defendants' RFP No. 1 on April 20, 2022, stating:

Plaintiffs object to this request as unduly burdensome, overbroad in time and scope, and requesting public information equally available to Defendants. Subject to those objections and without waiving them, Plaintiffs respond as follows:
Documents responsive to this request are provided in Plaintiffs' First Production dated April 20, 2022, Bates Nos. P-0000001-P-0002815.

Plaintiffs responded to Defendants' RFP No. 17 on April 20, 2022, stating:



Our Children's Trust Youth v. Gov

Plaintiffs object to this request as unduly burdensome, overbroad in time and scope, and requesting public information equally available to Defendants. Subject to those objections and without waiving them, Plaintiffs respond as follows:

Documents responsive to this request are provided in Plaintiffs' First Production dated April 20, 2022, Bates Nos. P-0000845-P-0000932; P-0001858-P-0001902; P-0002743-P-0002745; P-0002785-P-0002788; P-0003105-P-0003222; P-0003520-P-0003537; P-0008087-P-0008101; P-0008188-P-0008403; P-0012536-P-0012549; P-0012676-P-0013911.

On May 18, 2022 Plaintiffs served their expert disclosures on Defendants (though Plaintiffs reserve the right to modify those expert disclosures consistent with the new deadline for Plaintiffs' expert disclosures in the June 15, 2022 Scheduling Order). On May 27, 2022, Plaintiffs served on Defendants the documents cited in Plaintiffs' expert disclosures. Both the expert reports and the sources cited in the expert reports also relate to Plaintiffs' injuries.

Additionally, on June 10, 2022, Plaintiffs served Defendants with their third production of documents: P-0042549-P-0042638. These documents are also responsive to Defendants' RFP No. 1 and No. 17.

Notwithstanding Plaintiffs' reservation of rights and general objections, which Plaintiffs incorporate herein from Plaintiffs' April 20, 2022 response to Defendants' discovery requests (see pages 2-3), Plaintiffs supplement their responses to RFP No. 1 and No. 17 with the documents served along with this letter via Sharefile at bates range: P-0042745-P-0042982. These documents are also responsive to Defendants' RFP No. 32. **Please note that the documents at bates range P-0042757-P-0042956 are confidential documents subject to the protective order in this case and are only being made available to those attorneys that have signed the affidavit of confidentiality.**

At this point, Plaintiffs' responses to RFP No. 1, No. 17, and No. 32 are complete. Defendants have the requisite materials to complete the Plaintiff depositions in August, as both parties have agreed to.

Plaintiffs are also supplementing their response to RFP No. 2 and 3 with the documents at bates range P-0042639-P-0042744, which are additional documents cited in Peter Erickson's expert report.

As with all discovery responses, Plaintiffs reserve the right to supplement, amend, or modify their objections and responses to Defendants' discovery requests in light of additional discovery, investigation, research, or analysis, to the extent permitted or required by law. The responses and objections provided herein reflect factual information and documents presently known to Plaintiffs. Plaintiffs' investigation and evaluation of this matter is not yet complete and is ongoing. Each of these discovery requests shall be deemed continuing in nature and supplemental answers shall be submitted if Plaintiffs, directly or indirectly, obtain further information responsive to Defendants' discovery requests between now and the time of trial.



We are reviewing your July 25 letter on supplementing discovery and will respond in due course. That said, given that you are raising these concerns **three months** after Plaintiffs first served their discovery responses, and only **two weeks** before Plaintiffs' depositions are scheduled to begin, we do not believe any alleged deficiencies you point out are grounds to delay Plaintiffs' depositions in August.

Once again, we ask that you confirm that you will take the depositions for the 13 Plaintiffs and two guardians on the dates and in the locations that we provided three weeks ago. We have been clear with you for months: summer is the time Plaintiffs are available for their depositions. **Unless by Friday, July 29, at 5:00 p.m. MST you have responded by agreeing to take these depositions on the dates and in the locations we provided, the offered dates for Plaintiffs' depositions will be withdrawn, and once the school year starts, we cannot guarantee Plaintiffs will be available at alternate dates.**

Sincerely,



Nathan Bellinger

cc: Roger Sullivan, Melissa Hornbein, Barbara Chillcott, Andrea Rodgers, Mathew dos Santos, Phil Gregory

ATTACHMENT 12



Our Children's Trust Youth v. Gov

July 28, 2022

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Via Email Only

Re: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307 – Plaintiff Deposition
Calendar and Discovery

Dear Counsel,

This letter responds to your correspondence dated July 25, 2022. As an initial point, it is worth recalling that when we had our telephonic meet and confer on June 23, 2022, it was Defendants' counsel that proposed taking Plaintiff depositions in July and August. In your June 23, 2022 correspondence, you wrote, "The State will make good faith efforts to complete Plaintiffs' depositions and potential IMEs before the start of the school year." You have had the dates Plaintiffs are available for depositions in August since July 6, 2022. Yet you have still not confirmed that you intend to take the Plaintiff depositions on the dates we have indicated they are available.

Your July 25 letter raised, for the first time, additional interrogatories and requests for production of documents that you believe require supplementation. However, as noted in this letter, you have all the necessary discovery responses to take Plaintiffs' depositions in August, as the parties agreed to over a month ago. Additionally, your three month delay in requesting that we supplement our discovery responses should not be used as grounds to delay taking the Plaintiffs' depositions in August. The remainder of this letter addresses in more detail the issues raised in your July 25 letter.

Rule 26(f) Conference

We are pleased that you agree that a Rule 26(f) conference is appropriate under the circumstances. We will draft a motion seeking the conference for your review.



Our Children's Trust Youth v. Gov

Plaintiffs' Discovery Responses

We note that you are requesting supplementation of Plaintiffs' discovery responses that were submitted to you on April 20, 2022. This is yet another example of your delay in this case. Had you requested supplementation in a timely manner, these issues could have been cleared up months ago. Furthermore, Montana Rules of Civil Procedure clearly state: "Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 50 written interrogatories, *including all discrete subparts*. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(2)." You have propounded well over 50 interrogatories since most of your interrogatories have 3-4 discrete subparts. Nevertheless, we have produced a large number of responsive documents. Notwithstanding your continued practice of causing lengthy delays and your abuse of the requirements of Rule 33, Plaintiffs respond to your requests for supplementation as set forth below.

Defendants' RFPs No. 1 & 17

On July 12, 2022, you requested supplementation of your RFP Nos. 1 and 17. Plaintiffs promptly did so. *See* July 27, 2022 Letter.

Defendants' Interrogatory No. 1

Plaintiffs answered this Interrogatory. Subject to the objections we have already asserted in our written response which are incorporated by reference herein, in addition to Plaintiffs' counsel, the Plaintiffs themselves, and their guardians, the following members of Plaintiffs' counsels' staff also prepared or assisted in preparation of answers to these discovery requests: Susan Carey and Amira Mikhail.

Defendants' Interrogatory Nos. 12, 14, 17, 18, 20, 21, 25, 28, 29 and RFP Nos. 10, 12, 15, 16, 18, 19, 22, 26, 27

Notwithstanding Plaintiffs' objections to these interrogatories and request for production of documents, as described in Plaintiffs' April 20, 2022 response, Plaintiffs provided answers to these interrogatories and produced a total of 8,538 pages. We will not repeat our objections, answers, or list the documents produced again here. *See* April 20, 2022 discovery production.

On May 18, 2022, pursuant to the old scheduling order in this case, Plaintiffs served their expert disclosures on Defendants (though Plaintiffs reserve the right to modify those expert disclosures consistent with the new deadline for Plaintiff expert disclosures in the June 15, 2022 Scheduling Order). On May 27, 2022, Plaintiffs served on Defendants the documents referenced in Plaintiffs' expert disclosures. Both the expert reports and sources cited in the expert reports also relate to the topics covered in these interrogatories and request for production of documents.

On June 10, 2022, Plaintiffs served Defendants with their third production of documents: P-0042549-P-0042638. Some of these documents are also responsive to these RFPs.



At this point, Plaintiffs' responses to Defendants' Interrogatory Nos. 12, 14, 17, 18, 20, 21, 25, 28, 29 and RFP Nos. 10, 12, 15, 16, 18, 19, 22, 26, 27 are complete and there are no further documents to produce. Defendants have the requisite materials to complete the Plaintiff depositions in August, as both parties have agreed to. Additional information may be provided later consistent with the new deadlines in the June 15, 2022 Scheduling Order.

Defendants' Interrogatory No. 24

Plaintiffs continue to object to this Interrogatory as unduly burdensome, overbroad in time and scope, and requesting public information equally available to Defendants. Notwithstanding those objections, Plaintiffs respond that Georgianna took either a team van or team bus to her cross-country ski races.

Defendants' RFP No. 32

Plaintiffs have already produced and supplemented that production with responsive documents to RFP No. 32. *See* Letter dated July 27, 2022. Additional information may be provided later consistent with the new deadlines in the June 15, 2022 Scheduling Order.

Defendants' Interrogatory Nos. 32, 33, 34, 35, 36

Plaintiffs continue to object to these interrogatories as compound, unduly burdensome, overbroad in time and scope, irrelevant, abusive and propounded with the intent to harass, not proportionate to the needs of the case, and unlikely to lead to the discovery of admissible evidence. Plaintiffs also object to this request as it exceeds the scope of permissible discovery. If you wish to continue to seek this information, you can take the matter up with the Court.

As with all discovery responses, Plaintiffs reserve the right to supplement, amend, or modify their objections and responses to Defendants' discovery requests in light of additional discovery, investigation, research, or analysis, to the extent permitted or required by law. The responses and objections provided herein reflect factual information and documents presently known to Plaintiffs. Plaintiffs' investigation and evaluation of this matter is not yet complete and is ongoing. Each of these discovery requests shall be deemed continuing in nature and supplemental answers shall be submitted if Plaintiffs, directly or indirectly, obtain further information responsive to Defendants' discovery requests between now and the time of trial.

Plaintiffs' Depositions

On July 6, 2022, we provided you with dates and locations for Plaintiff depositions. You have not confirmed *any* of the August dates. You have received full and complete responses in a timely manner. Plaintiffs have continued to supplement their responses in a timely manner. Defendants chose to wait *three months* before seeking supplementation.



Our Children's Trust Youth v. Gov

Unless by Friday, July 29, at 5:00 p.m. MST you have responded by agreeing to take these depositions on the dates and in the locations we provided, the offered dates for Plaintiffs' depositions will be withdrawn and, once the school year starts, we cannot guarantee Plaintiffs will be available at alternate dates.

Depositions of Nathaniel (age 4), Jeffrey (age 8), Lilian (age 11), and Ruby (age 14):

Plaintiffs continue to object to these depositions as unnecessary and unlikely to yield relevant information that Defendants could not get by deposing their guardians, Laura King (Nathaniel and Jeffrey) and Shane Doyle (Lilian and Ruby). We have agreed to make Shane Doyle available for a deposition on August 16, and then, if necessary, Lilian and Ruby can be available the same day for a deposition.

For Nathaniel (4) and Jeffrey (8), we continue to object to you taking their depositions given their age. We have agreed to make Laura King, their mother and legal guardian, available for a deposition. If you continue to press to depose these young children, we will file for a protective order and have the matter resolved by the Court.

Deposition of Former Guardians

You have not provided us with any justification to depose former guardians in this case. Without such justifications, and in light of the fact that these individuals are not parties to the case and were not named by either party as witnesses, we will not provide any dates for their depositions. We may be willing to revisit this issue once you confirm dates for Plaintiffs' depositions and provide justification for these depositions.

Sincerely,


Nathan Bellinger

cc: Roger Sullivan, Melissa Hornbein, Barbara Chillcott, Andrea Rodgers, Mathew dos Santos, Phil Gregory

ATTACHMENT 13



Our Children's Trust Youth v. Gov

August 03, 2022

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Via Email Only

Re: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307 – Deposition Scheduling

Dear Counsel,

This letter serves as another attempt to make progress on the scheduling of depositions.

1. Defendants' 30(b)(6) and Fact Witness Deposition

As you know, when we met telephonically on June 23, 2022 to discuss discovery matters, the parties agreed that September would be the target month for depositions of Defendants' fact witnesses and for 30(b)(6) depositions of Defendants Montana Department of Environmental Quality and Montana Department of Natural Resources and Conservation. Accordingly, at your earliest convenience, can you please give us dates in September for the 30(b)(6) depositions of Defendants DEQ and DNRC. Additionally, at your earliest convenience, can you please give us dates in September for depositions of the following fact witnesses, identified in your April 18, 2022 fact witness disclosure:

- James Brown
- Bradley Johnson
- Jim Halverson
- Ben Brouwer
- Doug Kuenzli

Plaintiffs reserve the right to depose additional fact witnesses listed in Defendants' April 18, 2022 fact witness disclosure.



Our Children's Trust Youth v. Gov

2. Plaintiff Depositions

Additionally, can you please let us know when you will be prepared to take Plaintiffs' depositions and we will work with them to come up with an alternate calendar that works with their school schedule? We have been clear with you since June 2022, that August was the preferred time for their depositions and scheduling their depositions during the school year will be harder. Nevertheless, we will work with the Plaintiffs to propose an alternate deposition calendar once you let us know you are ready to proceed with taking their depositions.

Sincerely,

Nathan Bellinger

cc: Roger Sullivan, Melissa Hornbein, Barbara Chillcott, Andrea Rodgers, Mathew dos Santos, Phil Gregory

ATTACHMENT 14

AUSTIN KNUDSEN



STATE OF MONTANA

August 8, 2022
Via E-mail Only

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Nathan Bellinger
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RE: Held, et al. v. State of Montana, et al., Case No. CDV-2020-307

Counsel:

This letter constitutes our final attempt to obtain full and complete discovery responses to our requests served on you over four months ago on March 18, 2022. The following discovery issues require immediate attention so that we may begin depositions.

I. Plaintiffs' Refusal to Answer Key Interrogatories

Plaintiffs have refused to answer several interrogatories that seek information necessary for Plaintiffs' depositions. These interrogatories are:

- Interrogatory Nos. 32 and 33 (Plaintiffs' methods and frequency of transportation);
- Interrogatory No. 34 (Plaintiffs' use of plastics);
- Interrogatories Nos. 35 and 36 (Plaintiffs' methods for powering and cooling their homes);
- Interrogatory No. 14 (seeking information supporting Plaintiffs' allegations that climate change disrupts access to food sources, and cultural and familial traditions);
- Interrogatory No. 20 (impacts of climate change on Sariel's participation in her cultural heritage);
- Interrogatory No. 24 (Georgianna's transportation to ski competitions);

DEPARTMENT OF JUSTICE

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Plaintiffs have raised boilerplate objections to these interrogatories. *See, e.g.*, Pls.' Resps. To State's First Disc. Requests at 44–45, Answer to State's Interrogatory No. 32 ("Plaintiffs object to this Interrogatory as compound, unduly burdensome, overbroad in time and scope, irrelevant, abusive and propounded with the intent to harass, not proportionate to the needs of the case, and unlikely to lead to the discovery of admissible evidence. Plaintiffs also object to this Interrogatory as it exceeds the scope of permissible discovery. Subject to those objections and without waiving them, Plaintiffs respond as follows: On the basis of these objections, Plaintiffs respond no further.")

As you know, Montana courts liberally construe discovery rules "to make *all relevant facts* available to parties in advance of trial and to reduce the possibilities of surprise and unfair advantage." *Cox v. Magers*, 2018 MT 21, ¶ 15, 390 Mont. 224, 411 P.3d 1271 (quoting *Richardson v. State*, 2006 MT 43, ¶ 24, 331 Mont. 231, 130 P.3d 634 (emphasis in original)). And they disfavor stock objections like the ones you've raised. *Associated Mgmt. Servs. v. Ruff*, 2018 MT 182, ¶ 72, 392 Mont. 139, 424 P.3d 571 ("Conclusory, pattern, or boilerplate objections that merely assert that a discovery request is privileged, overly broad, unduly burdensome, irrelevant, or not reasonably likely to lead to relevant information are insufficient and unresponsive.") As I wrote on July 25, 2022, these interrogatories seek information that is undeniably relevant to Plaintiffs' alleged injuries. Plaintiffs have asserted that they seek to expedite the discovery process. It's time to act on that assertion.

Please respond fully to these interrogatories by **5:00 p.m. MST on Wednesday, August 17**. Failure to do so will force the State to file a Motion to Compel to be discussed with the Court at the Rule 26(f) conference.

II. Other Deficiencies

We have identified the following, additional, deficiencies in Plaintiffs' production:

Interrogatory No. 28/RFP No. 26

Together, this Interrogatory and Request seek information related to Plaintiffs' allegations that climate change negatively affects their mental health. *See* State's First Disc. Reqs. at 14–15. Plaintiffs' response to this request raised several boilerplate objections—again, highly disfavored—but identified responsive documents at Bates Nos. P-0001858–1902; P-0014017–14084. P-0001858–1902 is Dr. Van Susteren's expert report from *Juliana*. P0014017–14084 is a short journal article entitled "The Psychological Effects of Climate Change on Children."

To this point, you have repeatedly affirmed your belief that several Plaintiffs suffer from *unique* mental health injuries that affect them in particular ways. Given your insistence on this point, producing only two documents that only tangentially related to these Plaintiffs' specific mental health harms seems radically deficient. **Please**

supplement your response to Interrogatory No. 28 and RFP No. 26 by 5:00 P.M. MST on Wednesday, August 17.

Unaddressed Deficiencies Identified in the State's July 25, 2022, Letter

On July 25, 2022, I identified deficient responses to the following:

- Interrogatory No. 1;
- Interrogatory No. 12/RFP No. 10;
- Interrogatory No. 14/RFP No. 12;
- Interrogatory No. 17/RFP No. 15;
- Interrogatory No. 18/RFP No. 16;
- Interrogatory No. 20/RFP No. 18;
- Interrogatory No. 28/RFP No. 26;
- Interrogatory No. 29/RFP No. 27;
- RFP No. 32.

See July 25, 2022, Letter at 14–15. To date, you have not addressed these deficiencies, except for confirming that Plaintiffs' responses to RFP Nos. 1, 17, and 32 are complete. Please do so by **5:00 PM MST on Wednesday, August 17.**

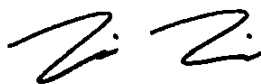
III. RFPs Nos. 1, 17, and 32

Finally, thank you for confirming in your July 27, 2022, letter that Plaintiffs' responses to **RFP Nos. 1, 17, and 32** are now complete. The State will proceed on the understanding that Plaintiffs have no additional documents in their possession, custody, or control that are responsive to these requests.

Conclusion

We maintain our position that Plaintiffs' unjustified refusal to provide full and complete discovery responses for over four months has delayed the scheduling of depositions in this matter. We look forward to receiving Plaintiffs' responses by **5:00 PM MST on Wednesday, August 17** so that discovery can progress.

Sincerely,



Timothy Longfield

ATTACHMENT 15



Our Children's Trust Youth v. Gov

August 12, 2022

Via E-mail Only

Re: *Held, et al. v. State of Montana, et al.*, Case No. CDV-2020-307, Discovery

Dear Counsel,

This letter represents another good faith attempt to resolve outstanding deficiencies in your responses to Plaintiffs' First Discovery Requests that we originally identified on June 3, 2022. Given the upcoming depositions that are being scheduled, we ask that Defendants promptly respond to the issues raised in this letter. We are happy to discuss all of these matters with you over the telephone at your convenience, if you desire to do so.

1. Continued Failure to Produce Responsive Documents

In your answer to Interrogatory No. 4, you state: "The EPA state-federal cooperative agreement provides federal resources to DEQ but also directs much of the agency activity," but the agreement that you identified in your response was not produced in response to RFP No. 4, which explicitly asked you to "produce all documents in your possession, custody, or control in support of, *or identified in*, your Answer to Interrogatory No. 4." Please produce that document on or before **August 19**.

In your answer to RFP No. 17, you state: "Defendants are gathering further responsive documents and will supplement this Response if required by the Montana Rules of Civil Procedure and the Court's scheduling order." On July 25, 2022, you produced documents D-000326 – D-000443 as responsive to this request. Please confirm whether your response to RFP No. 17 is complete, or if you intend to produce additional responsive documents. If you have additional responsive documents, they need to be produced on or before **August 19**.

In your answer to Interrogatory No. 21, you state: "There are currently 419,199 mineral interest acres managed by the Trust Land Management Division being leased" for oil and gas exploration, extraction or development as well as 364,945 acres managed by the Trust Land Management Division overlying the mineral leases. Yet, in response to RFP 25, no responsive documents are produced, even though we asked you to "produce all documents in your possession, custody, or control *in support of*, or identified in, your Answer to Interrogatory No. 21." The 419,199 and 364,945 numbers must have come from some source, so please identify the source and produce any documents related to this source on or before **August 19**.

In your original responses, you indicated that you are gathering information that is responsive to Interrogatory No. 24, but you have still not responded to this Interrogatory. Please do so on or before **August 19**.

In your original responses, you indicated that you are gathering information responsive to RFP No. 27, and in your supplemental responses you stated that “Defendant DEQ has no additional responsive documents,” but you failed to include responsive documents as to any other Defendants in the case. Please produce this information on or before **August 19**.

Your objections and continued failure to respond to Interrogatories No. 26 and 27, and RFP No. 32 have no basis in law. You have identified these individuals as potential witnesses in this case, they are employees of Defendants, and if you are in possession of the information requested, you are obligated to produce it for all witnesses identified, not just two individuals. It does not matter whether they are identified as lay or expert witnesses. We ask that you produce all responsive documents on or before **August 19**.

2. Privilege Log

In your answer to RFP Nos. 28 and 29, you object to each request to the extent it seeks documents subject to the attorney-client privilege, the work product privilege or that are otherwise confidential or protected under the law. In your supplemental responses served on July 25, you state as to RFP No. 28 that “regarding Defendant DEQ, the time period of this Request is outside of its records retention schedule” and as to RFP No. 29, “MDT has conducted a reasonable search for responsive documents and no such documents were found. Regarding Defendant DEQ, the time period of this Request is outside its records retention schedule.” You say nothing as to the other Defendants in this case and it is unclear whether you still assert that there are responsive documents subject to the attorney-client privilege, the work product privilege or otherwise confidential or protected under the law. Please produce responsive documents as to the remaining Defendants, as well as a privilege log if you are withholding responsive documents, no later than **August 19, 2022**.

We are happy to discuss all of these matters with you over the telephone at your convenience. We hope Defendants promptly will comply with the issues raised in this letter and not require us to involve the Court.

Sincerely,

/s/ Nathan Bellinger
Nathan Bellinger

CC: Roger Sullivan, Melissa Hornbein, Barbara Chillcott