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ANGIE SPARKS, Clerk of District Court  
By  Deputy Clerk

*Attorneys for Plaintiffs*

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

RIKKI HELD, et al.,  Plaintiffs,  v.  STATE OF MONTANA, et al.,  Defendants.	Cause No. CDV-2020-307  Hon. Kathy Seeley  <b>PLAINTIFFS' MOTION <i>IN LIMINE</i> NO. 7 RE: DECLARATION OF ROGER SULLIVAN IN SUPPORT OF MOTION RE: SELECT DOCUMENT AUTHENTICITY, FOUNDATION, AND ADMISSIBILITY</b>
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Pursuant to MCA § 1-6-105, Roger Sullivan, hereby declares as follows:

1. I am an attorney admitted in the State of Montana and am 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.
2. On **November 22, 2022**, Defendants' counsel served counsel for Plaintiffs with the amended 30(b)(6) designees and objections of Defendant Department of Environmental Quality ("DEQ"). In serving DEQ's amended 30(b)(6) designees and objections, counsel for Defendants agreed via email (attached as **Exhibit 1**) to stipulate to the foundation for all DEQ-related documents listed on the "Attachment A" to Plaintiffs' Amended and Second Amended Notice of 30(b)(6) deposition to DEQ dated Nov. 3, 2022, and Nov. 30, 2022, respectively. The documents in "Attachment A" to Plaintiffs' Amended and Second Amended Notice of 30(b)(6) Deposition to Defendant DEQ previously stipulated to by Defendants are denoted with an "X" in the "Stipulate to Authenticity" and "Stipulate to Foundation" tabs in Appendix A to Plaintiffs' Brief in support of motion *in limine* re: select document authenticity, foundation, and admissibility. Via email on November 22, 2022, counsel for Defendants represented to Plaintiffs' counsel that they "will stipulate to the foundation of all Attachment A documents."
3. On **December 1, 2022**, counsel for Defendants informed counsel for Plaintiffs that Defendant DEQ has been "working on narrowing trial exhibits and identifying specific documents to be used at trial" and that Defendants' counsel "anticipate stipulating to foundation on most, if not all, of these documents." **Exhibit 2**.
4. On **December 9, 2022**, counsel for Plaintiffs sent a letter to counsel for Defendants acknowledging and appreciating Defendants' November 22, 2022 agreement to "stipulate

to the foundation for each of the documents listed in Attachment A to the DEQ Rule 30(b)(6) deposition notice.” **Exhibit 3.** Plaintiffs’ December 9, 2022 letter stated Plaintiffs’ intention that the parties could “come to an agreement . . . as to the authenticity and foundation of those additional documents prepared by Defendants that are relevant to the issues in the case.” Exhibit 3. Plaintiffs’ December 9, 2022 letter proposed three options in order to authenticate and foundation those additional government documents: (1) stipulation by the parties; (2) certification pursuant to Montana Rule of Evidence 902; and (3) 30(b)(6) records custodian depositions. Exhibit 3. With respect to the first option, Plaintiffs’ December 9, 2022 letter included an Appendix A (referenced above in Paragraph 2) which contained “a list of documents . . . that Plaintiffs would ask Defendants to authenticate and stipulate to their admissibility.” Exhibit 3.

5. On **December 13, 2022**, counsel for Defendants responded to Plaintiffs’ December 9, 2022 letter via email, stating Defendants “believe we can stipulate to many, if not most, of these documents.” **Exhibit 4.** Defendants’ counsel further represented that they would review Plaintiffs’ Appendix A list, but would not be able to respond to Plaintiffs’ request for an answer regarding a stipulation to the Appendix A documents “until after January 2, 2023” given “current caseload and preparations for the upcoming legislative session.” Ex. 4.
6. Plaintiffs’ counsel did not hear back from Defendants’ counsel regarding the proposed document stipulation during the week of January 2, 2023.
7. On **January 9, 2023**, Plaintiffs’ counsel emailed Defendants’ counsel, requesting that Defendants inform Plaintiffs when they plan to substantively respond to Plaintiffs’ proposed stipulation. **Exhibit 5.** Defendants’ counsel responded via email on January 10, 2023, stating they would “touch base” with Plaintiffs concerning Defendants’ document

stipulation progress “next week” [the week of January 16] and they “continue to believe we will be able to stipulate to foundation and authenticity on most if not all of the documents generated by the State.” Ex. 5.

8. On **January 17, 2023**, having not heard from counsel Defendants concerning the document stipulation, Plaintiffs’ counsel emailed Defendants’ counsel, suggesting the parties “touch base about progress, as well as any matters that need problem-solving regarding Defendants’ stipulation to the foundation and authenticity of documents on the list provided.” **Exhibit 6.**
9. On **January 20, 2023**, Defendants’ counsel responded via email, stating there is not “anything more to report at this time” and Defendants’ counsel is still working through Plaintiffs’ proposed document stipulation list with the defendant agencies. **Exhibit 7.**
10. On **January 20, 2023**, Plaintiffs’ counsel wrote: “It appears increasingly unlikely that Defendants will be ready to resolve the documents issue before the pre-trial motions deadline of February 1. That said, in the interest of still hoping to obviate the need for the Court to become involved, if you let us know where Defendants are on the list of documents we are asking for stipulations, then we would know where to start on the list to consider cutting.” **Exhibit 8.**
11. On **January 25, 2023**, Defendants’ counsel responded via email, stating “I agree we need to confer on these matters before the final pretrial conference. I’ll circle up with you after February 1, as we are focusing on meeting the motions deadline.” **Exhibit 9.**
12. The undersigned is hopeful the Parties will continue to attempt to reach agreement for the pre-admission into evidence of certain categories of state-produced public records, subject to any substantive objections, in order to ensure a fair and efficient trial. However, as of

the February 1, 2023 deadline for pre-trial motions, the Parties have not yet been able to reach agreement on regarding the authenticity, foundation, and admissibility of the referenced documents in Appendix A.

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

Executed this this 1st day of February, 2023.

/s/ Roger Sullivan  
Roger Sullivan

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered by email to the following on February 1, 2023:

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