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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' RESPONSE BRIEF IN OPPOSITION TO DEFENDANTS' MOTION <i>IN LIMINE</i> NO. 3 (PRECLUDING EVIDENCE OR LEGAL THEORIES NOT PLED IN COMPLAINT)</b>
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The Court should deny without prejudice Defendants' vague and unsupported Motion *in Limine* No. 3. Without identifying any specific evidence it seeks to exclude, Defendants' Motion *in Limine* No. 3 inappropriately seeks to preclude Plaintiffs "from introducing evidence, allegations, or testimony not directly related" to the Complaint. Whether evidence, allegations, or testimony is "directly related" to the Complaint is not the appropriate standard for excluding evidence at trial.

Instead, M. R. Evid. 401 provides: "Relevant evidence means evidence having 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." Rule 401's plain language does not require relevant evidence be absolutely determinative of a fact, claim, or defense in an action, as Defendants seem to suggest. Rather, Rule 401 states relevant evidence is that which has "any tendency" to increase or decrease the probability of a fact "of consequence to the determination of the action." M. R. Evid. 401.

Furthermore, to exclude evidence on a motion *in limine*, "the evidence must be inadmissible on all potential grounds." *BNSF Ry. Co. v. Quad City Testing Lab'y, Inc.*, No. CV-07-170-BLG-RFC, 2010 WL 4337827, at \*1 (D. Mont. Oct. 26, 2010) (citations and internal quotation marks omitted). "Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be resolved in proper context." *Id.* (citations and internal quotation marks omitted). The authorities cited by Defendants fail to illuminate Defendants' argument as they are inapposite, both going to the standard for ruling on a Motion to Dismiss or Motion for Summary Judgment.

Given the extremely vague request presented by Defendants' Motion *in Limine* No. 3, and considering the potential issues raised by the Complaint to which "evidence, allegations, or

testimony” may be relevant, Defendants have failed to show at this time what “evidence, allegations, or testimony” would “be inadmissible on all potential grounds.” *Id.* Defendants can raise motions or objections to exclude this presently unidentified “evidence, allegations, or testimony” at trial. “In order to preserve an objection to the admission of evidence for appeal, the objecting party must make a timely and specific objection on the record.” *State v. Clausell*, 2001 MT 62, ¶ 25, 305 Mont. 1, 22 P.3d 1111 (citing M. R. Evid. 103(a)(1)). At the point such motion or objection is made during trial—when specific evidence can be considered by the Court in its appropriate context—Plaintiffs will be in a better position to respond and the Court will be in a better position to rule on the admissibility of specific “evidence, allegations, or testimony.”

Therefore, Defendants’ Motion *in Limine* No. 3 should be denied without prejudice.

DATED this 16th day of February, 2023.

/s/ Barbara Chillcott

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered by email to the following on February 16, 2023:

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