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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

<p>RIKKI HELD, et al.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>STATE OF MONTANA, et al.,</p> <p>Defendants.</p>	<p>Cause No. CDV-2020-307</p> <p>Hon. Kathy Seeley</p> <p>DECLARATION OF PHILIP L. GREGORY IN SUPPORT OF UNOPPOSED MOTION</p>
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Pursuant to MCA §1-6-105, I declare as follows:

1. As of August 22, 2023, pursuant to this Court's Findings of Fact, Conclusions of Law, and Order (Doc. 405), counsel for Plaintiffs were preparing their Motion for Attorneys' Fees and Costs, including the documentation in support thereof. Pursuant to the Court's August 14, 2023 Order, Plaintiffs' Motion for Attorneys' Fees and Costs was due to be filed on or before August 28, 2023.
2. On August 22, 2023, Roger Sullivan and I spoke with Mark Stermitz, counsel for Defendants. Mr. Stermitz presented a proposal by the State for the Parties to jointly move for certification of the Court's August 14, 2023 Order as final for purposes of interlocutory appeal pursuant to Rule 54(b), Mont. R. Civ. P., and Rule 6(6), Mont. R. App. P., and stipulating to a stay of the issue of Plaintiffs' request for attorneys' fees and costs pending the Montana Supreme Court's ruling on the merits of the interlocutory appeal.
3. After discussion, the Parties reached agreement on the State's proposal whereby Plaintiffs would file an unopposed Motion for an extension of time to file their Motion for Attorneys' Fees and Costs to allow the Parties later to file their joint motion for certification. Essentially, the Parties agreed to seek to resolve the issue of whether the pressing fundamental constitutional issues of statewide concern presented in this case can be immediately heard and adjudicated on interlocutory appeal by the Montana Supreme Court without the further time and resources that could attend the determination of Plaintiffs' request for attorneys' fees and costs. The Parties also reached agreement that, if the Court declined to certify its August 14, 2023 Order as final for purposes of interlocutory appeal under Rule 54(b), Mont. R. Civ. P., and Rule 6(6), Mont. R. App. P., or if the Montana Supreme Court declined to enter an order allowing the appeal to proceed pursuant to Rule

4(b), Mont. R. App. P., then a fourteen-day extension, from the date of this Court's denial of certification or the Montana Supreme Court's order declining to allow the appeal to proceed, whichever is later, be allowed for the filing of Plaintiffs' Motion for Attorneys' Fees and Costs and supporting documentation.

4. On August 25, 2023, this Court issued its Order Granting Plaintiffs' Unopposed Motion for Extension of Time to File Attorneys' Fees and Costs Motion (the "Extension Order"). (Doc. 408.) Pursuant to the Extension Order, the Parties' Joint Motion for Certification is due to be filed on September 7, 2023.
5. At the request of counsel for the State, counsel for Plaintiffs agreed to prepare the initial draft of the Joint Motion for Certification and the [Proposed] Order.
6. On September 1, 2023, on behalf of Plaintiffs, I emailed the initial draft of the Joint Motion for Certification and the [Proposed] Order to counsel for Defendants.
7. On Tuesday, September 5, I reached out to counsel for Defendants via phone and email to check on the status of the State's edits and additions to the Joint Motion for Certification and the [Proposed] Order to ensure the Parties were on track to file both documents on September 7 in accordance with the Court's Extension Order.
8. While I did not receive a response on September 5, counsel for Defendants did email on September 6 that the State would not be able to complete its edits and additions to the Joint Motion for Certification and the [Proposed] Order by September 7. Counsel for Defendants enquired whether Plaintiffs would agree to the State obtaining an additional seven days to submit the State's portion of the Motion for Certification.
9. On September 6, I replied that Plaintiffs do not oppose the State seeking to obtain an additional seven days to submit Defendants' portion of the Motion for Certification as long

as Defendants request that Plaintiffs also receive an additional seven-day extension to file their motion for attorneys' fees and costs, if necessary. I also stated that, should Judge Seeley not sign the State's proposed Order by close of business on September 7, Plaintiffs would file an unopposed Motion for Certification, revising the September 1 draft.

10. On September 7, counsel for Defendants stated they understood Plaintiffs' position as set forth in my September 6 email.

11. Also on September 7, Defendants filed a joint request for a seven (7) day extension of time, up to and including September 14, 2023, to file the Parties' Joint 54(b) Certification.

12. As of the filing of this Declaration, the Court had yet to rule on the Parties' joint request for a seven (7) day extension of time. As a result, and in order to comply with the Extension Order, Plaintiffs are filing their unopposed Motion for Certification and [Proposed] Order.

Pursuant to MCA §1-6-105, I declare under penalty of perjury and under the laws of the State of Montana that the foregoing is true and correct.

DATED this 7th day of September, 2023, in Redwood City, CA.

s/ Philip L. Gregory
Philip L. Gregory

CERTIFICATE OF SERVICE

I, Barbara L Chillcott, hereby certify that I have served true and accurate copies of the foregoing Affidavit - Affidavit to the following on 09-07-2023:

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Electronically Signed By: Barbara L Chillcott
Dated: 09-07-2023