

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 23-0109

KARIS NEWBARY and BRANDIE HOY,

Plaintiffs and Appellees,

v.

ENTERPRISE RAC COMPANY OF MONTANA/WYOMING, LLC; DEVIN
HUTTON; JORDAN COBB; and DOE DEFENDANTS 1-3,

Defendants and Appellants.

RULE 16(5) MOTION TO DISMISS BY JOINT STIPULATION

*Appeal from Cause No. No. DV 21–12,
Montana Fourth Judicial District, Missoula County,
Hon. Robert L. Deschamps, III Presiding*

APPEARANCES:

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| Christopher K. Oliveira John M. Semmens Kristen Meredith CROWLEY FLECK PLLP 900 N. Last Chance Gulch, Suite 200 P.O. Box 797 Helena, MT 59624-0797 <i>Attorneys for Defendants and Appellants</i> | David C. Berkoff Carey B. Schmidt SCHMIDT BERKOFF, PLLC 1917 S. Higgins Avenue Missoula, MT 59801 <i>Attorneys for Plaintiffs and Appellees</i> |
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Pursuant to Mont. R. App. P. 16(5), the Parties, by and through their respective counsel, file this joint motion stipulating to dismissal of the above-entitled action with prejudice. The Parties further jointly stipulate and agree to pay their own attorneys' fees and costs. The Parties have submitted a proposed order granting this joint motion for the Court's consideration.

Finally, Defendants and Appellants Enterprise RAC Company of Montana/Wyoming, LLC; Devin Hutton; and Jordan Cobb (collectively "Enterprise") wish to briefly address the Court's Order dated May 2, 2023, and filed in this docket ("Order"). In the Order, the Court concluded Enterprise's opening brief was overdue because the district court record was filed with the Court on March 22, 2023. Order, at 1. Enterprise agrees that, typically, the "appellant shall serve and file a brief within 30 days after the date on which the record is filed" pursuant to Mont. R. App. P. 13(1).

On February 24, 2023, however, the Parties filed a Joint Stipulation in this docket pursuant to Mont. R. App. P. 7(3)(b) to "'hold the time requirements of [the Montana Rules of Appellate Procedure] in abeyance pending completion' of the appellation mediation process generally required by Montana Rule of Appellate Procedure 7." Joint Stipulation, at 2. Consistent with Mont. R. App. P. 7(3)(b), the Parties also stipulated that the briefing deadlines set by Mont. R. App. P. 13 "shall run from the earlier of the date of the filing of the mediator's report or the expiration

of the 75-day time limit” from Enterprise’s filing of its Notice of Appeal on February 10, 2023. *Id.* That 75-day period ended on April 26, 2023, and the mediator filed his report with the Court on May 5, 2023, which stated the Parties had settled all claims.

The Parties agree that Enterprise’s opening brief was not overdue on May 2, 2023. Rather, if Enterprise’s 30-day deadline set by Mont. R. App. P. 13(1) began to run on April 26, 2023, then the earliest Enterprise’s opening appellate brief due could have been due was on May 26, 2023. Enterprise has conferred with the Office of the Clerk of the Montana Supreme Court regarding the Order. The Clerk’s Office advised Enterprise that it inadvertently had overlooked the Parties’ Mont. R. App. P. 7(3)(b) Joint Stipulation prior to entry of the Order.

Both Enterprise and its undersigned counsel want to communicate that they respect the Court’s time, and adhere to the deadlines set by the Montana Rules of Appellate Procedure. For that reason, and although the Parties have resolved the appeal and their underlying claims, Enterprise wishes to respectfully clarify that it would not, and did not, disregard briefing deadlines in this docket.

CROWLEY FLECK PLLP

Dated this 19th day of May, 2023.

By /s/ Christopher K. Oliveira
Christopher K. Oliveira
Attorneys for Defendants and Appellants

SCHMIDT BERKOFF PLLC

Dated this 19th day of May, 2023.

By /s/ Carey Schmidt
Carey Schmidt
Attorneys for Plaintiffs and Appellees

CERTIFICATE OF SERVICE

I, Christopher K. Oliveira, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 05-19-2023:

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Electronically Signed By: Christopher K. Oliveira
Dated: 05-19-2023