

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. _____

ELLEN HUBBELL, Individually and as Personal Representative of the Estate of
Jesse Hubbell,

Plaintiffs/Appellants,

v.

GULL SCUBA CENTER, LLC d/b/a GULL
DIVE CENTER,

Defendant/Appellee.

NOTICE OF APPEAL

On Appeal from the Montana Fourth Judicial District Court
Missoula County, Cause No. DV-2020-810
Honorable Jason Marks

Molly K. Howard
J.R. Casillas
DATSOPOULOS, MacDONALD &
LIND, P.C.
201 West Main Street, Suite 201
Missoula, Montana 59802
Telephone: (406) 728-0810
Email: mhoward@dmllaw.com
jrcasillas@dmllaw.com

Susan Moriarity Miltko
WILLIAMS LAW FIRM, P.C.
235 E. Pine Street
P.O. Box 9440
Missoula, Montana 59807-9440
Telephone: (406) 721-4350
Email: susan@wmslaw.com

Attorneys for Plaintiffs/Appellants

Attorneys for Defendant/Appellee

NOTICE IS HEREBY GIVEN that Ellen Hubbell, Individually and as Personal Representative of the Estate of Jesse Hubbell, the Appellants above-named and who are the Plaintiffs in that cause of action filed in the Fourth Judicial District, in and for the County of Missoula as Cause No. DV-2020-810, hereby appeal to the Supreme Court of the State of Montana from the final judgment entered in such action on the 18th day of December, 2023.

THE APPELLANTS FURTHER CERTIFY:

1. That this appeal is subject to the mediation process required by Mont. R. App. P. 7. The money judgment being sought is not less than \$5,000.
2. That this appeal is not an appeal from an order certified as final under Mont. R. Civ. P. 54(b). A true and correct copy of the District Court's Order and Final Judgment is attached hereto as **Exhibit "A"**.
3. That all available transcripts of the proceedings in this cause involving the issue have been ordered from the court reporter contemporaneously with the filing of this Notice of Appeal.
4. That a copy of the Notice of Appeal has been contemporaneously filed in the Office of the Clerk of District Court and served on all attorneys of record.
5. That included herewith is the filing fee prescribed by statute.

DATED this 9th day of January, 2024.

DATSOPOULOS, MacDONALD & LIND, P.C.
Attorneys for Plaintiffs/Appellants

By: /s/ J.R. Casillas
Molly K. Howard
J.R. Casillas

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana Supreme Court and that I have served true and accurate copies of the foregoing NOTICE OF APPEAL upon the Clerk of District Court, each attorney of record, and each party not represented by an attorney in the above-referenced District Court action, as follows:

Susan Moriarity Miltko
Williams Law Firm, P.C.
235 E. Pine Street
P.O. Box 9440
Missoula, Montana 59807-9440
susan@wmslaw.com

Shirley E. Faust
Clerk of District Court
Montana Fourth Judicial District Court
200 W. Broadway Street
Missoula, Montana 59802

DATED this 9th day of January, 2024.

By: /s/ Amanda Reiber
Amanda Reiber
Paralegal, DM&L, P.C.

Hon. Jason Marks, District Court Judge
Fourth Judicial District, Dept. No. 4
Missoula County Courthouse
200 West Broadway
Missoula, Montana 59802
(406) 258-4774

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

ELLEN HUBBELL, Individually and
as Personal Representative of the Estate
of Jesse Hubbell,

Plaintiffs,

v.

PUTNAM PARTNERS, LLC; GULL
SCUBA CENTER, LLC d/b/a GULL
DIVE CENTER; JOHN MUES; and
JOHN DOES 1-10,

Defendants.

Dept. No. 4
Cause No. DV-20-810

**ORDER GRANTING
DEFENDANT GULL'S MOTION
FOR SUMMARY JUDGMENT**

This matter comes before the Court on the *Motion for Summary Judgment* (“*Motion*”) filed by Defendant Gull Scuba Center, LLC d/b/a Gull Dive Center (“Gull”). The Court has considered the *Motion* (Doc. 62), the corresponding Brief in Support (Doc. 63), Plaintiffs’ Brief in Opposition (Doc. 70), and Gull’s Reply

1 thereto (Doc. 80). The Court also considered Gull’s Supplemental Brief in Support
2 (Doc. 98), Plaintiffs’ Supplemental Brief in Opposition (Doc. 99), and Gull’s
3 Supplemental Reply (Doc. 101). Additionally, the Court heard oral argument in this
4 matter on September 13, 2023. The Court is fully informed and prepared to rule.

5 **ORDER**

6 (1) The Court hereby GRANTS Gull’s *Motion*.

7 **MEMORANDUM**

8 **I. BACKGROUND**

9 This case is a result of the unfortunate death of Jesse Hubbell on June 17,
10 2019. On that day, Mr. Hubbell drowned in a scuba diving accident in the Canyon
11 Ferry Reservoir while filming a campaign advertisement for Defendant John Mues,
12 a Montana resident who was running for U.S. Senate. At the time of his death Mr.
13 Hubbell was working with Mr. Mues and two companies hired by Mr. Mues to film
14 the advertisement: Defendant Putnam Partners and Defendant SOS commercial
15 Productions, Inc. When Mr. Mues and Mr. Hubbell discussed the idea of filming a
16 scuba diving video for Mr. Mues’ campaign, Mr. Hubbell never expressed any doubt
17 about his certifications to dive, and he told Mr. Mues he was open water certified
18 and that his certification was good for life. Def.’s Br. in Supp. Ex. A, at 111:21–
19 112:9 (Doc. 63) (Mues Dep.).

On June 14, 2019, Mr. Mues and Mr. Hubbell traveled to Missoula to rent scuba gear from Gull. Gull’s employee, Chris Hanson, asked Mr. Mues for his diving certification card in conformity with PADI regulations; Mr. Mues complied by providing his certification card from the National Association of Underwater Instructors (“NAUI”), which demonstrated he was an “Advanced Diver” and qualified to rent scuba gear. Def.’s Br. in Supp. Ex. B, at 19:7–19 (Doc. 63) (Hanson Dep.). Mr. Hubbell informed Mr. Hanson that he did not have his card on him, but that he was PADI certified and stated his certification could be verified online. *Id.*, at 10:20–25; *see also* Def.’s Br. in Supp. Ex. A, at 149:19–22 (Doc. 63) (Mues Dep.).

Although Mr. Hanson cannot recall if he verified Mr. Hubbell’s certification online, it is undisputed that Mr. Hubbell maintained a “Junior Open Water” certification which was verifiable through PADI’s online system:

*First Name: Jesse
Middle Initial: T
*Last Name: Hubbell
*Date of Birth: 5 ▼ Apr ▼ 1979 ▼

Student Number	Certification Name	Certification Date [dd-mm-yy]	Process Date [dd-mm-yy]	Instructor	Store Number
9307522797	Junior Open Water	16-Jul-1993	30-Jul-1993	63902	2091

Id., at 78:1–25. A “Junior Open Water” certification automatically becomes an “Open Water Diver” certification when a person turns 15-years-old:

During the Open Water Diver course, your instructor will ask you to:

- Float or tread water without aids for 10 minutes
- Swim 200 metres/yards with no aids or 300 metres/yards with mask, fins and snorkel

Minimum age: 10

Divers certified between the ages of 10-14 earn a Junior Diver certification

Junior Open Water Divers automatically become Open Water Divers at age 15. Any replacement certification card or eCard (<https://www.padi.com/certification-cards-padi-ecards>) purchased the day after the diver's 15th birthday will automatically show an Open Water Diver (not Jr. Open Water Diver) certification.

Def.'s Br. in Supp. Ex. K, at 5 (Doc. 63) (PADI Website). Additionally, once a person obtains a "Junior Open Water" diving certification, that person can rent diving equipment after they turn 15-years-old. Def.'s Br. in Supp. Ex. B, at 74:1–75:4 (Doc. 63) (Hanson Dep.).

Regardless of Mr. Hubbell's PADI certification, it is undisputed that Gull rented the equipment to Mr. Mues, a certified "Advanced Diver":

**LIABILITY RELEASE AND ASSUMPTION OF RISK
EQUIPMENT RENTAL AGREEMENT**

THIS AGREEMENT is entered into between GULL SCUBA CENTER
(Dive Center/Resort)
and JOHN MUES, for the rental of scuba and/or skin diving equipment.
(Renter)
This AGREEMENT is a release of my rights to sue for injuries or death resulting from the rental and/or use of this equipment. I expressly assume all risks of skin and/or scuba diving related in any way to the rental and/or use of this equipment.

...

representations to the Released Parties.

I, JOHN MUES (Renter), HAVE CAREFULLY READ AND UNDERSTAND THE ABOVE AGREEMENT. BY SIGNING THIS AGREEMENT, I EXEMPT AND RELEASE THE RELEASED PARTIES AND ALL RELATED ENTITIES AS DEFINED ABOVE, FROM ALL LIABILITY OR RESPONSIBILITY WHATSOEVER FOR PERSONAL INJURY, PROPERTY DAMAGE, OR WRONGFUL DEATH AS A RESULT OF RENTING AND/OR USING THE EQUIPMENT, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO PRODUCT LIABILITY OR THE NEGLIGENCE OF THE RELEASED PARTIES, WHETHER PASSIVE OR ACTIVE.

I have fully informed myself and my heirs of the contents of this Liability Release and Assumption of Risk Agreement by reading it before I signed it on behalf of myself and my heirs.

Participant's Signature Date (day/month/year)

Def.'s Br. in Supp. Ex. F, at 1 (Doc. 63) (Rental Agreement); *see also* Def.'s Br. in Supp. Ex. A, at 150:12–22 (Doc. 63) (Mues Dep.). Mr. Hanson provided Mr. Mues with the equipment and then discussed some safety information regarding use of the equipment. *Id.*, at 154:4–14. Ultimately, Mr. Hubbell drowned while using this equipment shortly after entering the water to begin filming.

Plaintiffs, Mr. Hubbell's wife both individually and as the personal representative of Mr. Hubbell's estate, filed a Complaint on July 23, 2020 (Doc. 1) naming several defendants: both companies hired by Mr. Mues, Mr. Mues himself, Gull, and John Does 1-10. Since the Complaint was filed, all counts with respect to Mr. Mues and the companies he hired were dismissed via stipulation (Docs. 81, 82, 91). Gull, the only remaining Defendant in this matter, faces the following counts:

- (1) Negligence (Survival) for failing to comply with the applicable standard of care in renting scuba equipment from the average PADI authorized retailer;
- (2) Negligence (Wrongful Death) for the same;
- (3) Negligent Infliction of Emotional Distress; and

- (4) Intentional Infliction of Emotional Distress.

Gull filed the *Motion* at issue on June 30, 2022. Subsequently, Plaintiffs moved for an amended scheduling order based on the exclusion of their first expert, Brett Gilliam (Docs. 84, 88). The Court amended the scheduling order and allowed Plaintiffs to retain a new expert, Tom Maddox (Doc. 93). However, the Court cautioned that Plaintiffs could not raise new theories of any claim, and that any opinion or testimony from Mr. Maddox that substantively differed from Mr. Gilliam’s report would not be considered. The Court also allowed both parties to file supplemental briefing.

Gull asserts summary judgment is appropriate because Mr. Hanson rented the equipment to Mr. Mues, a certified “Advanced Diver,” which was within the standard of care for a PADI retailer. Alternatively, Gull argues that Plaintiffs’ claims still fail if Gull was required to verify Mr. Hubbell’s certification because Mr. Hubbell was “Junior Open Water” certified. Finally, Gull argues that Plaintiffs’ claims against it are barred by the Montana Recreation Responsibility Act, Mont. Code Ann. § 27-1-751, et. seq.¹ In response, Plaintiffs argue that genuine issues of material fact preclude summary judgment. Specifically, Plaintiffs argue that their expert has identified an applicable standard of care that Gull failed to meet by renting

¹ The Court will not address this argument because it finds Gull’s first arguments dispositive.

1 the equipment to Mr. Hubbell—irrespective of the fact that Mr. Mues actually signed
2 for the equipment.

3 **II. LEGAL STANDARD**

4 Rule 56 of the Montana Rules of Civil Procedure governs summary judgment
5 motions. A Rule 56(c) analysis requires that judgment “shall be rendered forthwith
6 if the pleadings, depositions, answer to interrogatories, and admissions on file,
7 together with the affidavits, if any, show that there is no genuine issue as to any
8 material fact and that the moving party is entitled to a judgment as a matter of law.”
9 *Roe v. City of Missoula*, 2009 MT 417, ¶ 14, 354 Mont. 1, 221 P.3d 1200. “A material
10 fact is a fact that involves the elements of the cause of action or defenses at issue to
11 an extent that necessitates resolution of the issue by a trier of fact.” *Id.*

12 “The party moving for summary judgment has the initial burden of
13 establishing both the absence of genuine issues of material fact and entitlement to
14 judgment as a matter of law.” *Id.* If the moving party meets this burden, then the
15 “burden . . . shifts to the nonmoving party to establish that a genuine issue of material
16 fact does exist.” *Id.* (citation omitted). The party opposing a motion for summary
17 judgment has an obligation to respond with specific facts showing that a genuine
18 issue for a factfinder exists and “[u]nsupported conclusory or speculative statements
19 do not raise a genuine issue of material fact.” *Gentry v. Douglas Hereford Ranch,*
20 *Inc.*, 1998 MT 182, ¶ 31, 290 Mont. 126, 962 P.2d 1205; M. R. Civ. P. 56(e). If no

genuine issues of material fact exist, the Court “then determines whether the moving party is entitled to judgment as a matter of law.” *Roe*, ¶ 14.

Because summary judgment is an extreme remedy which should not be a substitute for a trial on the merits if a controversy exists over a material fact, “the evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences therefrom will be drawn in favor of the party opposing summary judgment.” *Nelson v. Nelson*, 2005 MT 263, 329 Mont. 85, 122 P.3d 1196.

III. ANALYSIS

A. Negligence

Plaintiffs assert two negligence claims against Gull: Negligence (Survival); and Negligence (Wrongful Death). To prove negligence, Plaintiffs “must establish: (1) the defendant owed a duty to the plaintiff; (2) the defendant breached the duty; (3) the breach was the actual and proximate cause of plaintiff’s injury; and (4) that damages resulted.” *Bonilla v. Univ. of Montana*, 2005 MT 183, ¶ 14, 328 Mont. 41, 116 P.3d 823 (citations omitted).

i. Breach of Duty

Gull argues that Plaintiffs cannot prove breach of any duty because the undisputed evidence establishes that it complied with the PADI Retailer standards since Mr. Mues was qualified to rent scuba equipment. Alternatively, Gull argues that even if Mr. Hubbell had to be certified under the applicable standards, his

1 “Junior Open Water” certification was sufficient to rent scuba equipment as he was
2 no longer a junior and because he was diving with Mr. Mues, a certified “Advanced
3 Diver.” In response, Plaintiffs argue that whether Gull breached its duty depends on
4 the standard of care, and that which standard applies—PADI, SCUBA diving
5 industry standards, global standards, etc.—is to be determined through expert
6 testimony. Moreover, Plaintiffs argue that their expert, Mr. Maddox, and Gull’s
7 expert, Mr. Pehl, disagree on the applicable standard, resulting in a genuine dispute
8 of material fact.

9 To determine whether Gull breached a duty, the standard of care must be
10 identified. Plaintiffs’ expert opines that Gull had a duty to “discern[] the diver’s level
11 of experience, knowledge, and capabilities before renting equipment to them.” Pls.’
12 Ex. C, at 16 (Doc. 89) (Maddox Expert Rep.). In his report, Mr. Maddox referenced
13 both the PADI Retailer Association (“PRA”) membership standards and “industry
14 standards, worldwide.” *Id.*, at 11, 3.1. Specifically, he wrote:

15 Gull [] failed to meet the standards of the *PADI Retail Association*,
16 *which they were an active member of*, which requires all members to
17 rent SCUBA equipment only to *certified divers* or to students under the
18 supervision of an instructor. Jesse Hubbell never provided proof of
19 certification to Gull Dive Center; therefore, he should not have been
20 rented or provided with the equipment. Gull [] also failed to meet the
worldwide SCUBA diving industry standards of discerning the diver’s
level of experience, knowledge, and capabilities before renting
equipment to them. Jesse Hubbell should not have been rented the
equipment by Gull [] since he was inexperienced, had not completed
any review course, did not hold the appropriate certification, and was

1 incapable of assembling and using the equipment properly and safely.
2 The rental of the equipment to Jesse Hubbell led directly to his death.

3 *Id.*, at 16 (emphasis added). In response, Gull argues this is an inadmissible personal
4 belief and does not create a genuine dispute of material fact because it is not based
5 on proven industry standards, because it contradicts the written PADI standards, and
6 because it is not specific to a commercial dive operation.

7 Although the parties dispute the applicable standard of care, they agree that
8 Gull is a member of and subject to PRA Membership Standards. The evidence before
9 the Court establishes that these standards are internationally recognized. Therefore,
10 the PRA Membership Standards—not amorphous industry standards worldwide—
11 are controlling. Accordingly, the remaining issue to be determined is whether Gull
12 complied with PRA Membership Standards when it rented equipment to Mr. Mues.

13 The PRA Membership Standards require retailers like Gull to do the
14 following:

15 Agree to sell, rent or provide compressed air for scuba purposes only to
16 certified divers and student divers in training under a professional scuba
17 instructor, unless prohibited by local law.

18 Def.’s Br. in Supp. Ex. E, ¶ 16 (Doc. 63) (PRA Membership Standards). Here, Mr.
19 Mues—not Mr. Hubbell—rented the equipment. Any dispute on this point is not
20 genuine because this fact is evidenced by the rental agreement. Mr. Mues was a
certified “Advanced Diver.” This was verified by Mr. Hanson via Mr. Mues’ NAUI

1 certification card before the equipment was rented. Thus, Gull’s action of renting the
2 equipment to Mr. Mues was in accordance with PRA Membership Standards.

3 However, there exists a material dispute as to whether Gull breached PRA
4 Membership Standards when it rented equipment to Mr. Mues for both himself and
5 Mr. Hubbell without verifying Mr. Hubbell’s certification. Plaintiffs, citing the same
6 paragraph of the PRA Membership Standards quoted in the preceding paragraph,
7 contend that Gull was required to verify any person’s certification before they could
8 rent *or obtain* scuba tanks.² *See* Pls.’ Ex. C, at 4, 1.6 (Doc. 89) (Maddox Expert
9 Rep.). Gull contends that it is acceptable under the standards for one diver to rent
10 gear for more than one person, and that the person who picks up the gear
11 subsequently becomes responsible for its use. Gull relies on Mr. Hanson’s
12 statements, including his assertion that he confirmed this protocol with PADI prior
13 to the rental in question. *See* Def.’s Br. in Supp. Ex. B, 80:15–82:9 (Doc. 63)
14 (Hanson Dep.). The Court believes this presents a genuine dispute of material fact.
15 However, this matter can nonetheless be resolved on the element of causation.

16
17 ² Plaintiffs also point to paragraph 17 of the PRA Membership Standards, which states that PADI
18 retailers must: “[r]equire proof of *recreational* scuba certification by all divers participating in
19 noninstructional recreational scuba dives.” Importantly, this was a commercial dive, rendering this
20 section of the PRA Membership Standards inapplicable. Mr. Hubbell and Mr. Mues were diving
for the purpose of filming a campaign ad, and the dive was controlled by the underwater video
production companies that have been dismissed. *See* Defs.’ Br. in Supp. Ex. J, at 1 (Doc. 63) (Pehl
Expert Rep.). Categorizing the dive as “recreational” as opposed to “commercial” is a departure
from Plaintiffs’ first expert’s report. *See* Def.’s Supp. Reply Br. Ex. A, at 4 (Doc. 101) (Gilliam
Expert Rep.). Thus, this argument is disregarded because it is a substantive departure from Mr.
Gilliam’s expert report and because the nature of the dive cannot be genuinely disputed given the
evidence before the Court.

1 *ii. Causation*

2 The Montana Supreme Court has held that “[w]hile causation is ordinarily a
3 question of fact for the trier of fact, it may be determined as a matter of law where
4 reasonable minds can reach but one conclusion regarding causation.” *Riley v. Am.*
5 *Honda Motor Co.*, 259 Mont. 128, 132, 856 P.2d 196, 198 (1993) (citing *Brohman*
6 *v. State*, 230 Mont. 198, 202–03, 749 P.2d 67, 70 (1988)). And where “the causation
7 element is dispositive in the case[,]” it is not necessary to address the sufficiency of
8 the evidence on the other elements of the claim. *Id.*, 259 Mont. at 132, 856 P.2d at
9 198.

10 Plaintiffs argue that liability attaches to Gull because Plaintiffs can prove
11 Gull’s acts and omissions were a cause in fact of injury, and that the injury is the
12 direct or indirect result proximately caused by Gull’s negligent acts. *See Bickler v.*
13 *Racquet Club Heights Assocs.*, 258 Mont. 19, 23, 850 P.2d 967, 970 (1993).
14 Specifically, Plaintiffs argue that Mr. Hanson confirmed he was aware of the PADI
15 online verification system, that he failed to use it to verify Mr. Hubbell’s
16 certification, and that had he known Mr. Hubbell had not been diving for over 20
17 years he would have suggested a refresher course, “implying that he would have
18 denied Hubbell the rental equipment” Pls.’ Supp. Br. in Supp., at 8–9 (Doc. 99).
19 In response, Gull argues that Mr. Hanson’s testimony did not imply that he would
20 have refused to rent the equipment. Instead, Gull argues Mr. Hanson’s testimony

1 only stands for the assertion that he would have offered or suggested that Mr.
2 Hubbell take a refresher course before diving again. Regardless, Gull also argues
3 that it renting Mr. Mues the equipment cannot be the proximate cause of Mr.
4 Hubbell's death because, even if Mr. Hanson had verified Mr. Hubbell's certification
5 online, he would have seen that Mr. Hubbell had a "Junior Open Water"
6 certification, making him eligible to rent equipment.

7 To prove negligence, Plaintiffs must prove Gull's breach was the actual and
8 proximate cause of Mr. Hubbell's injury. *See Bonilla*, ¶ 14. Here, although Plaintiffs
9 argue the question of causation should be left to a jury, "reasonable minds can reach
10 but one conclusion" in this matter. *Riley*, 259 Mont. at 132, 856 P.2d at 198.
11 Dissimilar to Plaintiffs' contention, the Court does not infer that Mr. Hanson would
12 have refused to rent Mr. Hubbell equipment had he verified his certification. Had
13 Mr. Hanson preformed the online check, he would have seen that Mr. Hubbell had
14 a "Junior Open Water" certification. That certification automatically converts into
15 an "Open Water Diver" when a person turns 15-years-old. Def.'s Br. in Supp. Ex.
16 K, at 5 (Doc. 63) (PADI Website). Additionally, once a person obtains a junior diver
17 card, equipment can be rented to them after they turn 15-years-old. Def.'s Br. in
18 Supp. Ex. B, at 74:1–75:4 (Doc. 63) (Hanson Dep.). Accordingly, the evidence
19 before the Court establishes that Mr. Hubbell was eligible to rent equipment.
20 Therefore, the rental of the equipment—regardless of whom it was rented to or

1 whether a person could rent more than one set of equipment under PRA Membership
2 Standards—did not cause Mr. Hubbell’s death. Plaintiffs fail on the element of
3 causation, and Gull is entitled to judgment as a matter of law.

4 **IV. CONCLUSION**

5 The evidence before the Court establishes that the written PADI standards
6 lack specificity with regard to renting multiple sets of diving equipment to a single
7 certified individual for a commercial dive and there is a dispute about interpretation.
8 However, Gull’s rental of scuba equipment certainly was not the cause of Mr.
9 Hubbell’s unfortunate death. Mr. Mues, a U.S. Navy Veteran and a NAUI certified
10 diver, rented the equipment. Additionally, Mr. Hubbell was a certified diver. Though
11 tragic, Mr. Hubbell’s death was the result of his own actions and perhaps the
12 negligence of others—not Gull’s action of renting scuba equipment. Therefore, Gull
13 is entitled to judgment as a matter of law. The Court hereby GRANTS Gull’s *Motion*.

14 **ELECTRONICALLY SIGNED AND DATED BELOW**

15 cc: Susan Moriarity Miltko, Esq.
16 Joseph Ray Casillas, Esq.
17 Molly K. Howard, Esq.
18 Ryan James Gustafson, Esq.
19 Katherine S. Huso, Esq.
20 Randall J. Colbert, Esq.
Paul Robert Hafferman, Esq.

Jason Marks, District Judge
Fourth Judicial District, Dept. 4
Missoula County Courthouse
200 West Broadway
Missoula, Montana 59802
(406) 258-4774

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

ELLEN HUBBELL, Individually and as
Personal Representative of the Estate of Jesse
Hubbell,

Plaintiffs,

-vs-

GULL SCUBA CENTER, LLC d/b/a GULL
DIVE CENTER, JOHN MUES, and JOHN
DOES 1-10,

Defendants.

Hon. Jason T. Marks, Dept. 4
CAUSE NO. DV-32-2020-810

FINAL JUDGMENT

The Court having granted summary judgment to Defendant Gull Scuba Center, LLC d/b/a Gull Dive Center by Order dated December 12, 2023, it is hereby,

ORDERED, ADJUDGED AND DECREED that that Plaintiffs' claims against Gull Scuba Center, LLC d/b/a Gull Dive Center are dismissed with prejudice. The Order operates as an adjudication on the merits of all claims against Gull Scuba Center, LLC d/b/a Gull Dive Center.

IT IS FURTHER ORDERED that Judgment be entered in favor of Gull and against Plaintiff for Gull's costs herein incurred in the amount of \$5,972.65. Gull having filed a

memorandum of costs in this matter, Plaintiffs shall have five (5) days from entry of this Judgment to object to the memorandum of costs.

Electronically dated and signed below.

CERTIFICATE OF SERVICE

I, Joseph Ray Casillas, hereby certify that I have served true and accurate copies of the foregoing Notice - Notice of Appeal to the following on 01-09-2024:

Molly K. Howard (Attorney)
201 W Main, Ste 201
Missoula MT 59802
Representing: ELLEN HUBBELL, Ellen Hubbell, Personal Representative
Service Method: eService

Susan Moriarity Miltko (Attorney)
235 East Pine
PO BOX 9440
Missoula MT 59807
Representing: Gull Scuba Center, LLC
Service Method: eService

Electronically signed by Amanda C. Reiber on behalf of Joseph Ray Casillas
Dated: 01-09-2024