IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. OP _____

ANNETTE M. TRUJILLO,

Petitioner,

v.

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY, THE HONORABLE MOLLY OWEN, PRESIDING JUDGE,

Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL

Original proceeding from Annette M. Trujillo v. Ho's, Inc., a Montana business corporation doing business as South Shore Lounge, and Toyota Motor Sales, U.S.A., Inc., Cause No. DV-19-36, Montana Twentieth Judicial District Court, Lake County, Hon. Molly Owen, District Court Judge

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Attorneys for Petitioner/Plaintiff
Dennis P. Conner/J.R. Conner
Conner, Marr & Pinski, PC
P. O. Box 3028
Great Falls, MT 59403-3028
Tel: 406-727-3550
dennis@mttrials.com
jr@mttrials.com

C. Tab Turner
Turner & Associates, PA
4705 Somers Avenue, Suite 100
North Little Rock, AR 72116
Tel: 501-791-2277
tab@tturner.com

Attorneys for Defendants Toyota Motor Sales
Stephen D. Bell
Dorsey & Whitney, LLP
125 Bank Street, Suite 600
Missoula, MT 59802-4407
Tel: 406-721-6025
bell.steve@dorsey.com

David Stone
Nelson Mullins
5830 Granite Parkway, Suite 1000
Plano, TX 75024
Tel: 469-484-6100
david.stone@nelsonmullins.com

James P. O'Brien
O'Brien Law Office, PC
P. O. Box 7936
Missoula, MT 59802-7936
Tel: 406-721-0660
info@obrienlegalservices.com

Attorneys for Defendants Ho's, Inc.
Todd A. Hammer/Marcel A. Quinn
Hammer, Quinn & Shaw, PLLC
P. O. Box 7310
Kalispell, MT 59904
Tel: 406-755-2225
toddhammer@attorneysmontana.com
marcelquinn@attorneysmontana.com

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I. APPLICATION FOR WRIT OF SUPERVISORY CONTROL

On April 8, 2024, the District Court entered its Amended Order limiting Plaintiff Annette Trujillo ("Annette") other similar incidents ("OSI") discovery to claims alleging the ***driver*** of a ***1998-2003MY U.S. bound Toyota vehicle*** was ***injured by a common seat design defect when rear-ended***. Appendix 1. The Amended Order ignores the mandate of *Preston v. Montana 18th Jud. Dist. Ct. Gallatin Cnty*., 282 Mont. 200, 936 P.2d 814, 820 (1997), ensuring broad similar incident discovery in strict product liability design cases.

Annette is disadvantaged by disallowing other incident discovery crucial to proving her case against Defendant Toyota Motor Sales, USA, Inc. ("TMS"). Because of this prejudice, Annette petitions the Court under Montana Rule of Appellate Procedure 14 to issue a Writ of Supervisory Control and reverse the April 8, 2024, Amended Order of the Honorable Molly Owen, Twelfth Judicial District Court, Lake County.

II. ISSUES

1. Is a Writ of Supervisory Control appropriate?

2. Did the District Court err in limiting Annette's other similar incident discovery?

3. Did the District Court err in compelling only the production of documents requested by TMS's counsel from Toyota Motor Corporation?

III. STATEMENT OF THE CASE

On March 31, 2017, Annette was driving her 2001 Toyota Sienna on US Highway 93 when a 2001 Volkswagen Jetta recklessly rear-ended her. The collision caused the Sienna's front driver's seat to collapse rearward. Appendix 2, photo of collapsed seat. Despite being seat belted, the seat collapse allowed Annette to be ejected and she suffered catastrophic lifetime injuries. Appendix 3, Crash Report.

During a rear-end collision, the target vehicle is propelled forward, while the occupants are propelled backwards due to physics. If the seat lacks safe strength and support, the forces deform the seatback rearward exposing consumers to a risk of severe injury. The farther the seatback bends and deflects, the more exposed the consumer is to sliding up the seatback rather than the seat catching the occupant. When the seatback deforms catastrophically as Annette's did, it exposes the consumer to sliding out of the safety belt. This process is referred to as "ramping." *Toyota Motor Sales, U.S.A., Inc. v. Reavis*, 627 S.W.3d 713, 730–31 (Tex. App. 2021). An image from a video of a sled test replicating the forces of the *Reavis* collision illustrates ramping. *Id.*, 731. Appendix 4.

Annette sued TMS, the "seller" and U.S. distributor of the Sienna, alleging the design of the seat and occupant protection system were dangerously defective and caused her injuries which a safer alternative design would have prevented.

Appendix 5, Second Amended Complaint. The Sienna was designed and manufactured in Japan by TMS's parent, Toyota Motor Corporation ("TMC").

TMS and TMC are not by happen-chance connected; their association is so deep-rooted that the U.S. has charged them jointly with serious criminal offenses over the years. These include conspiring in criminal wire fraud related to automobile safety recalls, *USA v. Toyota Motor Corp*., Case 1:14-CR-00186-WHP, S.D.N.Y. [$1.2 billion penalty imposed]; systematic violations of Clean Air Act reporting requirements, *United States of America v. Toyota Motor Corporation, et al.*, Case 1:21-cv-00323-DLC, S.D.N.Y., [$180 million civil penalty and injunctive relief imposed]; and colluding in tax evasion, *United States v. Toyota Motor Corp*., 561 F. Supp. 354 (C.D. Cal. 1983).

TMC is a company organized under the laws of Japan. *Id*., 356. It is primarily engaged in manufacturing and selling motor vehicles. *Id.* TMS is the ***exclusive*** importer of Toyota passenger cars and light-duty trucks in the U.S. and has served as TMC's U.S. representative for decades, including selling vehicles, marketing the vehicles, servicing the vehicles, conducting recalls, repairing vehicles, and even testing the vehicles. "***There is a significant overlap***" between the senior management and board of directors of TMC and TMS. *Id*. Isao Makino, President of TMS, served as Senior Managing Director of TMC, and both the President and

Chairman of TMC served as directors of TMS. *Id*. TMC formerly employed about a dozen employees of TMS who rotate to and from Japan routinely. *Id.*

In the tax evasion case, TMC moved to dismiss the charges, arguing the court lacked jurisdiction because it was a Japanese company that could not be "found" in the U.S. *Id*, 357. The court disagreed, finding jurisdiction based on TMC's contribution "directly to the wrongful conduct by deploying its subsidiary "TMS" as the Japanese's 'alter ego' or 'agent' in the U.S., [and] the two business organizations were 'owned or controlled directly or indirectly by the same interests.'" *Id.*, 358.

TMC operates a worldwide automotive market. During fiscal 2023, over a quarter (27.3%) of TMC's automobile unit worldwide sales were in North America through TMS. Appendix 6, TMC's 20-F Annual 2023 Report, p. 13. Thanks to TMS, North American sales revenues were reported at 13,843,901 (Yen in millions) which translates to $92,554,920,000 US dollars. *Id.*, 77. Except when sued, TMC does not distinguish between itself and any of its subsidiaries, specifically TMS. "Toyota," "we," "us," "our," and similar terms refer to TMC and its consolidated subsidiaries as a group, including TMS. *Id*., 4, 8 and 77.

TMS is located in Texas and employs a national claims manager whose department is responsible for handling claims and litigation for TMC's Japanese products. Appendix 7, John Mazer deposition, 1-7. The claims manager's job includes receiving, reviewing, and maintaining documents relating to personal injury

claims and accidents filed against TMC. *Id*., 10. TMC relies heavily on TMS to conduct litigation-related activities in the United States, manage the risks, service the claims of U.S. consumers, and manage defect allegations. *Id.*, 11.

TMS has a dedicated liaison who serves as TMC's representative in dealing with the National Highway Traffic Safety Administration (NHTSA). This role is important as the U.S. government requires all foreign companies to have a U.S.-based person to communicate with for product defect inquiries, letters, questions, and responses, and also for technical information about the products. The TMS liaison's responsibilities extend to handling product technical issues, quality problems, and issues that involve vehicle safety, making TMS the exclusive service department for TMC in the U.S. Appendix 8, Christopher Tinto deposition, 12 and 176.

Annette sued TMS in the U.S. because of these very reasons. On November 10, 2021, and June 17, 2022, Annette served her First and Second Discovery Requests on TMS, seeking information about the design and performance of the Sienna's front seats and restraint system – precisely the same type of product information TMS provides the government when it inquires about technical product issues. TMS responded to these requests on December 22, 2021 (Appendix 9), and August 19, 2022 (Appendix 10). Following Montana law, Annette made:

> **REQUEST FOR PRODUCTION NO. 50**: Please identify and produce all customer complaints, lawsuits, and claims for the any

> Toyota vehicle produced, all model years, that include a claim that the seatback failed ***so long as the seat design is the same fundamental design as in the driver's position of the 2001 Sienna or substantially similar in the design.*** [Emphasis added].

TMS objected on these grounds:

> …the Request is vague, ambiguous, argumentative, and overly broad and… goes well beyond Plaintiffs' defect allegations pertaining to the driver's seat in the 1998-2003MYU.S.…The Request is also not limited in scope to a reasonable and relevant time frame, geographic area, vehicle scope, or a crash configuration similar to this case. …Even if such a task were possible, which it is not, the undue burden to a party to even attempt to search for all documents that may potentially be responsive to the grossly over broad scope of this Request, greatly outweighs the marginal relevance, if any, of such information to the subject matter of this lawsuit. As such, the Request exceeds the scope of permissible discovery. … TMS also objects that the Request asks for information protected by the attorney-client privilege, the consulting expert privilege or the work-product doctrine.

Comparable requests and interrogatories were propounded to learn if other Toyota drivers or passengers were injured because of alleged defective seat or belt buckle design similar to that used in the Sienna.[1] TMS repeated its objections to Request for Production No. 52 when objecting to this other discovery.

TMS also objected to all of Annette's discovery, feigning ignorance and claiming it lacked the information needed to provide complete responses because TMC designed, developed, and tested the Sienna and that TMS – contrary to reality – simply imported and sold the cars and had no duty or ability to respond because it

[1] See Interrogatories 21-24, 29-32 and Requests for Production 22, 33-34 (Appendix 9) and Requests for Production 47, 49-58 (Appendix 10).

lacked “legal control” over the information and documents needed to respond about product quality, a fact which was simply untrue.

Because the parties' various meet and confers could not resolve TMS’s objections, on September 18, 2023, Annette moved to compel discovery. Appendix 11. On September 22, 2023, TMS moved to enter its proposed PTO. Appendix 12. Annette objected, arguing TMS waived all objections to her Discovery Requests by waiting almost two years before moving for a protective order, by never filing a privilege log, and by filing boilerplate objections devoid of any individualized factual analysis. Appendix 13.

At the November 27, 2023, hearing on the parties’ motions, TMS’s counsel, David Stone, judicially admitted:

> …we have already requested TMC – "we" being the legal staff within TMS has requested documents of the type that Mr. Turner (counsel for Plaintiff) has asked for. And TMC has responded that as long as an appropriate protective order is entered, those documents will be sent. I don't have the documents yet. Now that the Court's going to enter a protective order, Plaintiff's counsel and their experts will get what they need because we have already made that ask.

Appendix 14, hearing transcript, 48-23:49-6.

During the hearing, the District Court adopted TMS’s protective order and held:

> And for the other incident issue, I'm granting the plaintiff's motion to compel … TMS will disclose the 1998 to 2003 other similar incidents, and it will also disclose any other incidents in Toyota vehicles with the

> same or substantially similar seat…if those seats or seatbelts were used in any other Toyota vehicles. And I'll issue that order.

Appendix 14, 58: 7-17.

On January 24, 2024, the District Court entered its order granting Annette's Motion to Compel Discovery, (Appendix 15), noting:

> TMS's agreement to produce the documents, with the assistance of TMC, moots the issue of whether TMS has legal control over the documents. In *Preston v. Montana 18th Jud. Dist. Ct., Gallatin County*, 282 Mont. 200, 210-11, 936 P.2d 814, 820 (1997), the Montana Supreme Court held that the plaintiff should not be impermissibly limited to same model OSI discovery but is entitled to discovery of "injuries caused by similar products with the same design defect."

Id., 2.

On March 5, 2024, TMS moved for reconsideration, claiming the District Court erred in failing to limit OSI discovery to injured rear-ended drivers of 1998-2003MY U.S.-bound Toyota vehicles. Appendix 16. In other words, rather than focus on the seat design, which was the very issue at bar and which is common in many other vehicles, TMS sought to limit discovery to just 1998-2003 Toyota vehicles. TMC also argued production should be limited to only documents requested by TMS's counsel from TMC (cherry-picked documents), and mistakenly claimed that is what Annette agreed to on the record. On the contrary, Annette's counsel argued that TMS must commit to producing "all responsive documents" and not "cherrypick what they give us." Appendix 14, 51:1-9; 52:13-18. The District Court accepted TMS's arguments and entered the Amended Order.

IV. STATEMENT OF FACTS

To help prove her claims, Annette seeks to discover cases where a seatback failed and caused injury to the occupant[s] of any Toyota vehicle that used the same or similar seat design. Ramping is a significant public safety risk known to Toyota for over 30 years. *See* Amicus Curiae Brief of The Center for Auto Safety ("CAS") in Support of The Respondents in *Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation v. Reavis*, No. 21-0241, Supreme Court of Texas ("*Reavis* II"). Appendix 17. The CAS included a timeline documenting the history of collapsing seat backs and resulting injuries and deaths. *Id*, Tabs B and 4.

In *Reavis*, the Reavis family was stopped in traffic when an SUV recklessly rear-ended their 2002 Lexus ES300 causing the seats to fail in a way similar to Annette's. The family sued, alleging the Lexus's front seats and occupant restraint system were defectively designed because Ben and Kristi ramped backward, intruding into the rear passenger compartment and colliding with and injuring their children. *Reavis* I, 627 S.W.3d at 725. Toyota's experts admitted the ramping risk was well-documented in automotive literature and the Japanese were aware of the danger years before designing the subject seats. *Id*., 726.

In 2016, U.S. Senators Markey and Blumenthal sent a letter to the company about front seatback failures and their concern that federal minimum safety guideline (Federal Motor Vehicle Safety Standard 207) was inadequate to mitigate injury

because it only requires a seatback strength of 3,300 inch-pounds, which even a common backyard lawn chair could pass. *Id.,* 728. Rather than put safety first, TMC and TMS replied that the minimum rules were fine and Toyota had a "long and robust safety culture." The companies proclaimed their internal efforts to design, develop, and apply new technology to benefit customers. *Id*., 729. Contrary to this response, company internal documents characterized the delay of new and more stringent safety regulations as a "win" for the companies' safety and regulatory group. *Id*.

Not unsurprisingly, when faced with the truth, the *Reavis* jury found Toyota's seat and restraint system defective in design and awarded over $200 million in compensatory and punitive damages. The judgment was upheld in *Reavis* I. Toyota appealed to the Supreme Court of Texas. Under a confidential settlement, the appeal was dismissed, the documents hidden in archives, and the judgment was vacated.

V. LEGAL ARGUMENT

A. Issuing a Writ of Supervisory Control is appropriate.

The District Court limited discovery to 1) driver injuries, 2) stemming from a rear-end impact, and 3) to 1998-2003MY U.S. Bound Toyotas. That is a clear error. One authority in the field stated, "Information about other incidents is the single most important category of information in a defective product case – particularly in defective design litigation." Hare, Independent Counsel Resources; The Discovery

of Information Concerning Other Similar Incidents, (1996) at 9. Other incidents are relevant to virtually every topic in a defective product case, including the defendant's liability, causation, misuse, intervening acts of a third party, and punitive damages. *Id*. Because it is necessary for the fair litigation of such issues, Montana allows the discovery of injuries caused by other models if the models and circumstances are similar. This Court has granted writs of supervisory control in product liability cases to ensure plaintiffs can discover relevant evidence crucial to their defective design claims. See *Kuiper v. Dist. Ct. of Eighth Jud. Dist. of State of Mont. (Kuiper* I)*,* 193 Mont. 452, 467, 632 P.2d 694, 702 (1981), and *Preston.*

In *Kuiper* I, this Court reversed an order preventing OSI discovery related to an investigation by NHTSA to determine why Goodyear's K-type rims were causing many accidents. In *Preston*, this Court held the district court erred in denying discovery of evidence of substantially similar injuries caused by the same design defect in other product models besides the specific N12 model nailer that injured Preston and in limiting discovery to the period starting with the manufacturer N12 model nailer and ending with Preston's injuries. The erroneous discovery restrictions were vacated because letting them stand would unfairly disadvantage Preston, and "require Preston to endure the time and expense of trial and an appeal before obtaining discoverable material essential to his case." *Preston*, 936 P.2d at 820-21.

The District Court erred by disregarding *Kuiper* I and *Preston*. A gross injustice has been done, and Annette does not have an adequate remedy by appeal. A writ of supervisory control is appropriate to remedy the injustice and prevent extended and needless litigation.

B. The District Court Erred in Limiting Annette's other similar incident discovery.

1. Discovery of other model evidence.

This Court has recognized a strong public policy permitting broad discovery about defective and dangerous products to promote public safety. *Preston*, 936 P.2d at 818. The District Court, in its initial order, upheld this "strong public policy" by compelling TMS to "fully and fairly answer and respond to Plaintiffs First and Second Sets of Discovery Requests." Appendix 15, 3. The original Order should be reinstated because TMS had waived objections to Annette's discovery, Montana does not recognize a motion for reconsideration, and it followed controlling Montana precedent.

When responding to discovery, the responding party must make reasonable inquiry and either answer and produce the information requested, state an objection, including the particular reasons for the objection, or timely move for a protective order and file a privilege log. *See* M. R. Civ. P. 26(b)(2) and (g)(1), 33(a) and 34(b)(2)(A) and (B); *Biomet Mfg. Corp. v. Montana Thirteenth Jud. Dist. Ct.,* No. OP 18-0529, 2018 WL 5262953, at *1 (Mont. Oct. 23, 2018) [by untimely waiting

eight months after discovery requests before producing a privilege log, Biomet waived attorney-client privilege]; *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Ct. for Dist. of Mont.,* 408 F.3d 1142, 1149–50 (9th Cir. 2005) [waiting five months after discovery requests without moving for a protective order put waiver of privilege "well outside the realm of clear error."]; and *Assoc. Mgmt. Servs., Inc. v. Ruff*, 2018 MT 182, ¶ 72, 392 Mont. 139, 424 P.3d 571. [Conclusory, pattern, or boilerplate objections information are insufficient and unresponsive].

TMS's Motion for Reconsideration presented nothing new. TMS was given a "second bite of the apple" that is not recognized by the Montana Rules of Civil Procedure. *Nelson v. Driscoll,* 285 Mont. 355, 948 P.2d 256 (1997).

Annette has the right to discover OSI evidence needed to prove her case. Limiting Annette's discovery to 1998-2002 model vehicles significantly disadvantages Annette's ability to litigate her claim. A product liability plaintiff must prove that the product was sold in a "defective condition unreasonably dangerous to a user..." Section 27–1–719(2), MCA. Evidence of injuries caused by similar models is not just relevant, but crucial to both the "defect" and the "danger." *Preston*, 936 P.2d at 819. Denying this broad discovery could potentially compromise public safety by allowing dangerous products to go unchecked.

Outside formal discovery, Annette has uncovered 82 accidents (including *Reavis*) where a claim has been made alleging a defectively designed Toyota

seatback failed and caused injury to the vehicle's occupant(s). Appendix 18. These involve 19 model year 1998-2002 vehicles, 21 vehicles manufactured before model year 1998, 29 vehicles manufactured after model year 2002, and 14 accidents where the model year is not identified. Annette does not know if these cases involve similar seat and seat belt buckle designs, but TMS has that information and is uniquely positioned to identify and produce the OSI evidence Annette seeks. Appendix 14, 52:21-57:22.

Information about similar injuries caused by other models of vehicles manufactured by Toyota before 1998 and after 2002 is crucial to the issues of whether the design was unreasonably dangerous, whether Toyota was aware of the danger, and whether Toyota was aware of a possible, alternative design. See, *Preston* and *Krueger v. General Motors Corp*., 240 Mont. 266, 783 P.2d 1340 (1989). *In Krueger*, this Court approved the admission of evidence of other accidents, including one involving a Chrysler model and one in which the rear drive line was removed instead of the front driveline. The Court concluded that both incidents demonstrated the same roll-away characteristic that distinguished defective product designs from alternative safe designs. *Id*, 1346.

In *Tacke v Vermeer Mfg, Co.*, 220 Mont. 1, 713 P.2d 527 (1986), a defense verdict was reversed because the district court excluded evidence of seventy-two other injuries caused by compression rollers like those that injured the plaintiff.

Limiting discovery to 1998-2002 model Toyotas significantly disadvantages Annette's ability to litigate her claim and constitutes error. *Preston*, 936 P.2d at 819.

2. Discovery of occupant injury evidence.

Annette's discovery requests are reasonably calculated to lead to the discovery of admissible evidence, including instances where ramping caused injury to a vehicle's occupant[s]. Take, for example, the *Reavis* case when on impact, both the front driver's seat and the front passenger's seat failed and collapsed into the back seat, where two children were seated. The parents' bodies struck the children's heads, causing skull fractures and traumatic brain injuries to the children. Like this case, the *Reavis* action alleged the vehicle was defectively designed because the front seats could fail in a rear-impact collision. However, under the Amended Order, Toyota does not need to disclose any information about *Reavis* because it involves passenger injuries arising from the design defect instead of injury to a "driver." Here, the distinguishing feature of defective front seat design is susceptibility to ramping. Similarity is defined by the defect. Despite whether a driver or passenger was injured, ramping demonstrates the design defect Annette claims. Discovery should not be limited to instances where a "driver" was injured.

3. **Discovery of evidence where rear-end impact never occurred.**

During the crash sequence the Sienna rolled over. Appendix 3. Discoverable are instances where an occupant using a similar restraint system design was ejected

during a rollover, regardless of whether the rollover was caused by a rear-end impact. How a similarly designed seat performs when outside forces are applied other than by rear-end impact tends to prove safety, sturdiness, and the viability of alternative safer designs. While such evidence is discoverable, it is for the district court to later determine if it is admissible.

4. **Punitive Damages**.

Annette is also suing for punitive damages. To prevail on her claim for punitive damages, she must prove the defendant acted with indifference to the "high probability of injury to the plaintiff." *See* § 27–1–221(2), MCA. Evidence of the number of similar incidents caused by the alleged defect, before the manufacture of the Sienna, is relevant to demonstrate the manufacturer's knowledge of the "high probability of injury." *Preston,* 936 P.2d at 819.

C. The District Court erred in compelling only the production of documents requested by TMS's counsel from TMC.

The arguments over whether TMS had "control" over the documents became moot with TMS's judicial admission that "Plaintiff's counsel and their experts will get what they need because we have already made that ask." As explained in *Greater Missoula Area Fed'n of Early Childhood Educators v. Child Start, Inc.,* 2009 MT 362, 219 P.3d 881:

> …if the issue presented at the outset of the action has ceased to exist or is no longer "live," …then the issue before the court is moot. And …,

> courts lack jurisdiction to decide moot issues insofar as an actual "case or controversy" no longer exists. (internal citations omitted).

Id., ¶ 23.

Cherry-picking documents to produce in discovery is not authorized by the Rules and creates the potential for abuse. Whether OSI evidence is discoverable or admissible is for the court to decide and not for TMS to determine unilaterally. *Preston,* 936 P.2d at 819. Annette does not know all the Toyota model vehicles sold with similar seat and seat belt buckle designs. TMS has that information and is uniquely positioned to identify and produce the evidence. Appendix 14, 52:21-57:22. If unilaterally selective production were allowed, it would improperly incentivize parties to hide as much as they dare. That conflicts with the liberal discovery policies, the adversary process, and the Court's obligation to read the Rules "to secure the just, speedy, and inexpensive determination of every action and proceeding." M. R. Civ. P. 1.

VI. CONCLUSION

This Court should issue a Writ of Supervisory Control, vacate the Amended Order, and TMS must be made to "fully and fairly answer and respond to Plaintiff's First and Second Sets of Discovery Requests," as originally ordered.

DATED this 7th day of May, 2024.

CONNER, MARR & PINSKI, PC

/s/ Dennis P. Conner
DENNIS P. CONNER
P. O. Box 3028
Great Falls, MT 59403-3028
Attorneys for Plaintiff

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced, except for the quoted and indented material; and the word count calculated by Word is not more than 4,000 words.

DATED this 7th day of May, 2024.

CONNER, MARR & PINSKI, PC

/s/ Dennis P. Conner
DENNIS P. CONNER
P. O. Box 3028
Great Falls, MT 59403-3028
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I, Dennis P. Conner, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 05-07-2024:

James P. O'Brien (Attorney)
P.O. Box 7936
Missoula MT 59807
Representing: Annette M. Trujillo
Service Method: eService

James Robert Conner (Attorney)
520 Third Ave N
Great Falls MT 59401
Representing: Annette M. Trujillo
Service Method: eService

Stephen Dolan Bell (Attorney)
Dorsey & Whitney LLP
125 Bank Street
Suite 600
Missoula MT 59802
Representing: Toyota Motor Sales, U.S.A., Inc.
Service Method: eService

Marcel A. Quinn (Attorney)
Hammer, Quinn & Shaw PLLC
PO Box 7310
100 Financial Drive
Suite 100
Kalispell MT 59904-0370
Representing: Ho's, Inc., d/b/a South Shore Lounge
Service Method: eService

Todd A. Hammer (Attorney)
PO Box 7310
Kalispell MT 59901
Representing: Ho's, Inc., d/b/a South Shore Lounge
Service Method: eService

Montana Twentieth Judicial District Court, Lake Co (Respondent)

106 Fourth Avenue East
Lake County Courthouse
Polson MT 59860
Representing: Self-Represented
Service Method: E-mail Delivery

Electronically Signed By: Dennis P. Conner
Dated: 05-07-2024