

Leslie Halligan, District Court Judge
Fourth Judicial District
Missoula County Courthouse
200 West Broadway Street
Missoula, MT 59802-4292
(406) 258-4771

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

L. SCOTT MILLS, Individually and as
Personal Representative of the Estate
of LINNEA MILLS; ROBERT
GENTRY; SHANNON GENTRY; E.G.,
a Minor, by her Mother and Next
Friend, Shannon Gentry, and JOEL
WILSON,

Plaintiffs,

v.

DEBBIE SNOW; DAVID OLSON;
JEANNINE OLSON; GULL SCUBA
CENTER, LLC d/b/a GULL DIVE
CENTER; HEIDI HOUCK; PADI
WORLDWIDE CORPORATION; PADI
AMERICAS, INC., AND JOHN DOES
1-10,

Defendants.

Dept. No. 1
Cause No. DV-21-544

**ORDER DENYING PADI
DEFENDANTS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

This matter comes before the Court on the *Motion for Partial Summary Judgment re: Vicarious Liability* ("Motion") filed by Defendants PADI Worldwide Corporation and PADI Americas, Inc. (collectively "PADI"). With the exception of some material due to evidentiary rulings explained below,

1 the Court has considered the Motion, its supporting brief, and its supporting
2 evidence. The Court has also considered the brief in Opposition to the
3 Motion filed by the several Plaintiffs, its supporting evidence, PADI's brief in
4 Reply, and its supporting evidence. The Court received no briefs from the
5 other defendants nor did the Court receive a request for a hearing on the
6 Motion. The Court finds the briefing adequate for the issues presented.
7 Having reviewed the record before it, the Court rules as follows:

8 **ORDER**

9
10 The Court DENIES PADI's Motion for Partial Summary Judgment.

11 **MEMORANDUM**

12 **I. FACTUAL AND PROCEDURAL BACKGROUND**

13 This case arises from a tragic scuba diving incident on November 1,
14 2020 that left a young woman dead and others potentially traumatized. The
15 Defendants include the dive shop, Gull Scuba Center d/b/a/ Gull Dive Center
16 (Gull Dive Center) which organized the fateful training dive, the shop's
17 owners (David and Jeannine Olson), the diving instructor who led the event
18 (Debbie Snow), and an entity, PADI, that the dive shop uses to certify divers
19 and its employee instructors.
20

21 The several Plaintiffs commenced this lawsuit in early May 2021. The
22 current operative pleading is the Second Amended Complaint ("SAC"), filed
23

1 by Plaintiffs in January 2022. The SAC is lengthy and detailed, and for each
2 of the 11 causes of action it asserts,¹ the SAC identifies both the specific
3 plaintiff(s) who is claiming it, the defendant(s) who must defend against it,
4 and the supporting factual allegations and respective theories of liability.

5 In the present Motion, PADI urges the Court to find, as a matter of law,
6 that it cannot be liable for tortious acts or omissions by Defendants Gull Dive
7 Center, David and Jeannine Olson, and Debbie Snow. It wants to preclude
8 Plaintiffs from holding PADI liable under a theory of vicarious liability. A
9 careful look at the SAC reveals three causes of action asserted by different
10 plaintiffs against PADI. Of these, only “Count III” expressly relies on the
11 vicarious liability theory that PADI urges the Court to eliminate (see SAC, ¶
12 357). It is unclear from the SAC whether vicarious liability is a necessary
13 component of the other two, “Count VII” and “Count X.” So, in addition to
14 preclusion of the theory of vicarious liability, the tangible effect of granting
15 the Motion would be to eliminate at least one of the 11 causes of action.
16
17

18 Plaintiffs do not deny that they rely in part on a theory of vicarious
19 liability to hold PADI accountable for their alleged injuries. They argue that
20 whether certain defendants can be considered the agents of PADI is a fact-
21

22 ¹ The SAC alleges 13 separate “Counts,” but two are not causes of action. The twelfth
23 “count” is a request for punitive damages and the thirteenth is a request that liability be
found against the owners of Defendant Gull Scuba Center, LLC in a piercing the corporate
veil analysis.

1 intensive question – for which the many disputed facts preclude judgment as
2 a matter of law.

3 With this understanding, the Court shall examine the relevant
4 allegations and admissible facts introduced by the parties. Both parties have
5 contested the admissibility of some of the evidence submitted by their
6 opponent, so the Court first must make some determinations of what it may
7 and may not consider.

8
9 First, in their Response, Plaintiffs challenge whether the Court can
10 consider the Declaration of Charles Algy Hornsby and its many exhibits, as
11 submitted by PADI, because: (a) he fails to authenticate the exhibits; (b) his
12 testimony is inadmissible hearsay and speculation; (c) his testimony is not
13 based on his personal knowledge; and (d) he offers conclusory legal
14 conclusions rather than factual observations. With its Reply brief, PADI filed
15 a Second Declaration by Hornsby in which he addresses these arguments,
16 explaining that his factual assertions are based on his knowledge as gained
17 in his decades of employment with PADI and his current position as Senior
18 Vice President, Legal Affairs, and explaining that the documents are true and
19 correct copies of those kept in the course of PADI's regular business activity.
20 This new testimony resolves some of the issues, and the Court shall take
21 care to rely on only the testimony and documents it considers admissible.
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23

1 Second, in their Response, Plaintiffs challenge whether the Court can
2 consider the document attached to the Declaration of Cherche Prezeau
3 because (a) its only authentication is that “it was provided by Plaintiffs” in
4 discovery and (b) its content is hearsay. In PADI’s Reply, it argues that (a)
5 the document’s authenticity cannot reasonably be challenged, and Plaintiffs
6 in fact do not dispute it; and (b) PADI is not introducing it for the truth of its
7 content or to enforce the liability waiver, but is instead using it to show what
8 PADI had represented to Ms. Mills when she was 15 years old. On
9 consideration of these arguments, the Court shall admit the document for
10 this purpose.
11

12 Third, in their Reply, PADI challenges the admissibility of testimony
13 from the Affidavits of Brett Gilliam and Peter Meyer, as submitted by
14 Plaintiffs, regarding the structure and practices of PADI because they are not
15 based on their personal knowledge. Further, PADI argues that neither affiant
16 can authenticate the insurance documents attached to their declarations,
17 and thus the Court should not consider them. On the insurance documents,
18 the Court is persuaded on their inadmissibility; and on the challenged
19 testimony, the Court shall take care to only rely on statements it considers
20 admissible.
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1 With these evidentiary rulings, the Court shall recite what it sees as the
2 admissible and relevant evidence regarding the relationship between PADI,
3 on one hand, and Gull Dive Center, David and Jeannine Olson, and Debbie
4 Snow, on the other, both in general and regarding the events leading to this
5 lawsuit. First, Gull Scuba Center, LLC (Gull Dive Center) is a Missoula,
6 Montana based limited liability company owned by David and Jeannine
7 Olson. Employees of Gull Dive Center sell diving merchandise and
8 equipment, organize and run diving events, and train divers and diving
9 instructors. On November 1, 2020, Debbie Snow was an employee of Gull
10 Dive Center. Snow was also a PADI-certified dive instructor, and she led
11 Gull Dive Center's fateful diving event that day in Lake MacDonald.
12

13 As described in the affidavit of Mr. Hornsby, who serves as the Senior
14 Vice President, Legal Affairs, PADI Worldwide Corporation, parent of PADI
15 Americas, Inc. (collectively PADI), "PADI is a dive training organization and
16 an association for diving instructors and dive centers that develops and
17 designs training courses and related educational materials for recreational
18 scuba diving." PADI is a membership-based organization, and to "become
19 a PADI member dive center or member instructor, the prospective member
20 must agree to abide by PADI training standards, agree to be subjected to
21 PADI's quality assurance review if there is any issue regarding the member's
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23

1 adherence to PADI training standards, sign the PADI Membership
2 Agreement, and pay PADI an annual membership fee.” Further, PADI
3 members, who can be both individual instructors and diving businesses, may
4 purchase PADI course materials for resale to their customers and students
5 and may use PADI logos and trademarks in their marketing.

6 Plaintiffs argue that this description of PADI by Mr. Hornsby is
7 misleadingly narrow, and they present their own evidence describing PADI
8 by people with long experience in the diving industry, by quotes from PADI’s
9 own promotional and training literature, and descriptions in judicial opinions.
10 The Court shall examine these competing descriptions in more detail below
11 as applied to the legal questions presented. The Court considers Mr.
12 Hornsby’s explanation as a summary of PADI’s main functions, and
13 understands that the details will matter in, *inter alia*, how PADI develops and
14 designs courses, how it subjects members to quality assurance review, and
15 how it manages certifications, retail sales, and marketing through its
16 members.
17

18
19 Both Gull Dive Center and Snow were members of PADI. To become
20 members, they needed to and did consent to the terms of PADI’s
21 membership agreement. For Gull Dive Center, that membership agreement
22 includes a provision “to ensure that training for PADI-related Programs
23

1 received at my facility is in accordance with current PADI . . . Standards and
2 Procedures” as promulgated in PADI’s published manuals and bulletins. The
3 agreement includes detailed training and communication requirements. But
4 it also provides:

5 I understand and agree that this Agreement does not create an
6 agency relationship between my facility and PADI. Except as
7 otherwise provided in this Membership Agreement, PADI has
8 no control over or involvement with my facility’s day-to-day
operations and activities and bears no responsibility for the
same.

9 Snow’s membership agreement includes similar terms that appear designed
10 to ensure she “will not deviate from the applicable standards when
11 representing [herself] as a PADI Member.” Her agreement prohibits her from
12 acting in an instructional or supervisory capacity if her physical condition
13 precludes it. And, it includes a nearly-identical disclaimer of an agency
14 relationship with PADI.
15

16 From the record, PADI takes at least three other tangible steps to
17 communicate that PADI members and PADI-certified instructors are not
18 agents of PADI. First, PADI requires participants in PADI diver training
19 courses to sign a non-agency disclosure, to be kept in the student’s record.
20 Second, PADI includes non-agency notices in their PADI student diver
21 manuals. Third, PADI requires that PADI members’ business cards contain
22 a non-agency disclaimer.
23

1 On the other hand, Plaintiffs argue that these non-agency notices are
2 not facts, but legal conclusions – and incorrect conclusions at that. They
3 point to evidence of PADI’s extensive reach into how its members do
4 business. For example, the PADI Advanced Open Water Training Manual
5 sold to Linnea Mills states:

6 PADI is the Professional Association of Diving Instructors®, the
7 world's largest diver training organization. PADI Worldwide®
8 establishes training programs, materials and standards,
9 **monitors** quality, **certifies** instructors and **provides support**
10 **services** for PADI Instructors, Dive Centers and Resorts (PADI
11 Members).

12 Emphasis added. Further, under the terms of the PADI International Retail
13 and Resort Association (“IRRA”) Membership Agreement, which may cover
14 at least Gull Dive Center, PADI IRRA Standards dictate, *inter alia*, the
15 location of the member’s retail store, its minimum hours of operation, and its
16 image, to include the store’s interior and exterior appearance, the grooming
17 and dressing of its employees, and their interaction with customers.² Finally,
18 PADI’s own website touts the extensive business support that PADI provides
19 to its member dive centers.

20 ² The recitation of the IRRA Standards here comes from a document attached to the
21 Declaration of Bret Gilliam. While PADI made a general objection to the admissibility of
22 all documents attached to Gilliam’s declaration, the Court cannot find a specific reason to
23 exclude this one. PADI’s Reply brief does not mention the IRRA Standards or dispute
Plaintiffs’ allegation that they applied to Gull Dive Center. Because Exhibit 3 to Mr.
Hornsby’s Declaration is pages 2 and 3 of an PADI Retail and Resort Association
Membership Agreement, which appears closely related, the Court shall consider Mr.
Gilliam’s document.

1 This is the basic evidence before the Court, but Rule 56(c)(3) also
2 compels the Court to consider the pleadings on the record. This is especially
3 important here, since Gull Dive Center, the Olsons, and Snow are not active
4 litigants on the present Motion and their most substantial filings are their
5 pleadings. On the pleadings, it is notable that in their respective Answers,
6 the Olsons and Gull Dive Center deny Plaintiffs' allegation that they were
7 joint venturers with and/or agents of PADI. Similarly, in her Answer, Snow
8 denies Plaintiffs' allegation that she was a joint venturer with PADI (Plaintiffs'
9 SAC does not expressly allege Snow was an agent of PADI. *Compare* SAC
10 ¶¶ 34-35).

12 Finally, the Court notes that Plaintiffs have requested a continuance to
13 obtain more discovery on the issues presented in the Motion in accordance
14 with Rule 56(f) if the Court is inclined to grant the Motion. As the Court
15 analyzed the briefs and the admissible evidence, the Court found that while
16 additional evidence may be helpful, it is not necessary for adjudication of the
17 Motion. Thus, the Court declines to grant the requested continuance.

19 **II. SUMMARY JUDGMENT STANDARD**

20 Rule 56 of the Montana Rules of Civil Procedure governs motions for
21 summary judgment. A Rule 56(c) analysis requires that judgment "shall be
22 rendered forthwith if the pleadings, depositions, answers to interrogatories,
23

1 and admissions on file, together with the affidavits, if any, show that there is
2 no genuine issue as to any material fact and that the moving party is entitled
3 to a judgment as a matter of law." *Roe v. City of Missoula*, 2009 MT 417, ¶
4 14, 354 Mont. 1, 221 P.3d 1200. "A material fact is a fact that involves the
5 elements of the cause of action or defenses at issue to an extent that
6 necessitates resolution of the issue by a trier of fact." *Roe*, ¶ 14. "The party
7 moving for summary judgment has the initial burden of establishing both the
8 absence of genuine issues of material fact and entitlement to judgment as a
9 matter of law." *Id.* If the moving party meets this burden, then the "burden .
10 . . . shifts to the nonmoving party to establish that a genuine issue of material
11 fact does exist." *Id.* (citation omitted). If no genuine issues of material fact
12 exist, the district court "then determines whether the moving party is entitled
13 to judgment as a matter of law." *Id.*

14 15 16 **III. LEGAL ANALYSIS**

17 **A. Agency as Defined by Montana Law.**

18 A threshold element of vicarious liability is a determination that the
19 alleged wrongdoer is an agent of the liable party. Thus, if PADI can
20 demonstrate that Gull Dive Center, its owners, and Snow were not agents of
21 PADI during the events relevant to this case, then PADI cannot be held
22 vicariously liable for their actions or omissions.
23

1 Montana Code Annotated § 28-10-101 provides: “An agent is one who
2 represents another, called the principal, in dealings with third persons. Such
3 representation is called agency.” Any person may be an agent, and
4 consideration is not necessary to create the relationship. Mont. Code Ann.
5 § 28-10-104, § 28-10-202. The agency relationship takes two forms:

6 An agency is either actual or ostensible. An agency is actual
7 when the agent is really employed by the principal. An agency
8 is ostensible when the principal intentionally or by want of
9 ordinary care causes a third person to believe another to be the
principal’s agent when that person is not really employed by the
principal.

10 Mont. Code Ann. § 28-10-103(1). For ostensible, or apparent, agency, the
11 belief that a person is an agent of another must be reasonable, and the belief
12 must be caused by the principal, not the agent. *Sunset Point P’ship v. Stuc-*
13 *O-Flex Int’l*, 1998 MT 42, ¶ 22, 287 Mont. 388, 954 P.2d 1156.

15 The existence of an agency relationship “may be implied from conduct
16 and from all the facts and circumstances in the case..., and may be shown
17 by circumstantial evidence.” *Butler Mfg. Co. v. J&L Implement Co.*, 167 Mont
18 519, 524, 540 P.2d 962 (1975). “[N]ormally, allegations of agency are
19 questions of fact and should not be decided on motion for summary
20 judgment.” *Stillman v. Fergus County*, 220 Mont. 315, 317, 715 P.2d 43
21 (1986) (citing with approval a “long line of California cases” that stand for this
22 proposition); see also *Semenza v. Kniss*, 2008 MT 238, ¶ 19, 344 Mont. 427,
23

1 189 P.3d 1188. But if a party fails to present sufficient evidence to
2 demonstrate a genuine issue of material fact giving rise to an agency
3 relationship or when the undisputed evidence “is reasonably susceptible of
4 but a single inference” a court may rule on the relationship as a matter of
5 law. *Id.*

6 Here, PADI argues that the only conclusion from the indisputable facts
7 is that Defendants Gull Dive Center, the Olsons, and Snow cannot be
8 considered “agents” of PADI. Further, PADI argues that Plaintiffs’ evidence
9 in support of their agency claim fails to create a genuine issue of material
10 fact that would preclude summary judgment in PADI’s favor. Plaintiffs argue
11 that facts relevant to the relationship between PADI and Gull Dive Center,
12 the Olsons, and Snow are highly disputed, and this dispute precludes the
13 Court from concluding as a matter of law that an agency relationship does
14 not exist. The Court shall analyze these arguments in the context of the two
15 statutory forms of agency.
16
17

18 **B. Evidence of Actual Agency.**

19 Actual agency arises “when the agent is really employed by the
20 principal.” Mont. Code Ann. § 28-10-103(1). To interpret this, the Montana
21 Supreme Court has applied decisions analyzing the employer-employee
22 relationship and explained that: “An individual is an employee of another
23

1 when that other has the right to control the details, methods, or means of
2 accomplishing the individual's work.” *Brookins v. Mote*, 2012 MT 283, ¶ 32,
3 367 Mont. 193, 292 P.3d 347 (quoting *Butler v. Domin*, 2000 MT 312, ¶ 29,
4 302 Mont. 452, 15 P.3d 1189). Four factors guide the inquiry on whether a
5 right of control exists sufficient to give rise to an employer-employee
6 relationship: “(1) direct evidence of right or exercise of control; (2) method of
7 payment; (3) furnishing of equipment; and (4) right to fire.” *Butler*, ¶ 29.
8

9 Here, because there is no comprehensive and conclusive evidence,
10 like an employment contract, that PADI considered Gull Dive Center, the
11 Olsons, and Snow to be “really employed” by PADI and there is no direct
12 evidence that they considered themselves to be “really employed” by PADI,
13 the Court must examine the evidence presented regarding PADI’s control of
14 the “details, methods, or means of accomplishing the individual's work” vis-
15 à-vis Gull Dive Center, the Olsons, and Snow.
16

17 PADI argues that the non-agency disclaimers in practically all of
18 PADI’s written materials, and especially in the membership agreements,
19 should end the inquiry about actual agency. The Court agrees that these are
20 very strong evidence, but the Court is not aware of controlling legal authority
21 that would compel the Court to consider them dispositive, especially under
22 the present circumstances. The statement in the agency disclaimers that
23

1 “PADI has no control over or involvement with my facility’s day-to-day
2 operations and activities” is notably preceded by: “Except as otherwise
3 provided in this Membership Agreement...” Through this express exception,
4 PADI clearly exerts strong influence, if not outright control, over some
5 aspects of how Gull Dive Center operated and how Snow conducted herself
6 as an instructor.

7
8 When Gull Dive Center facilitated diving training courses aimed at
9 PADI certification for the participants, Gull Dive Center and its instructors,
10 like Snow, were contractually obligated to PADI to instruct the students in
11 accordance with PADI’s manuals, bulletins, and standards. Gull Dive Center
12 was required to follow PADI’s instructions regarding certification and
13 processing certification paperwork. Gull Dive Center and Snow were
14 contractually obligated to PADI to subject themselves to PADI’s quality
15 assurance review and supervision and ensure compliance with PADI
16 standards. Further, Snow would have been contractually obligated to PADI
17 to cease all instruction and supervision activities had her physical health
18 deteriorated. Finally, the level of detail in the IRRA Standards about how its
19 member dive shops are to operate and present themselves demonstrates an
20 undeniable measure of control by PADI.
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23

1 Viewing the evidence presented in a light favorable to Plaintiffs, the
2 Court finds that Plaintiffs have presented sufficient evidence to create a
3 genuine issue of material fact regarding the agency relationship between
4 PADI, Gull Dive Center, the Olsons, and Snow that cannot be resolved on
5 summary judgment. Whether the level of control results in an agency
6 relationship is a question that needs to be resolved by a jury and not the
7 Court.

8
9 **C. Evidence of Ostensible Agency.**

10 Ostensible agency arises “when the principal intentionally or by want
11 of ordinary care causes a third person to believe another to be the principal’s
12 agent.” Mont. Code Ann. § 28-10-103(1). Like its argument on actual
13 agency, PADI argues that the non-agency disclaimers in practically all of its
14 written materials should end the inquiry about ostensible agency. PADI
15 argues that given these non-agency disclaimers, it would be unreasonable
16 for Linnea Mills or any participant at the November 1, 2020 diving event to
17 conclude that Gull Dive Center, the Olsons, or Snow were agents of PADI.

18
19 The Montana Supreme Court addressed the controlling nature of non-
20 agency disclaimers in *Burkland v. Elec. Realty Assocs.*, 228 Mont. 113, 740
21 P.2d 1142 (1987). In *Burkland*, a Montana realty business named ERA
22 Hannah Real Estate was a member of a national entity called Electronic
23

1 Realty Associates, Inc., or ERA, Inc. *Id.* at 114. As a member, ERA Inc.
2 required ERA Hannah to prominently display its ERA, Inc. logo on all its
3 materials, including marketing listings of properties. *Id.* After the Burklands
4 purchased a home through ERA Hannah, they filed suit against ERA Hannah
5 and ERA, Inc. for defects to the property. *Id.* Before the district court, ERA,
6 Inc. successfully moved for summary judgment on the issue of agency,
7 arguing that the written materials include a clear non-agency disclaimer and
8 ERA, Inc. has no control over the management and operations of ERA
9 Hannah. The Montana Supreme Court reversed, reasoning that “[a] key
10 material fact is whether the disclaimer was sufficient to make the plaintiffs’
11 reliance on ERA, Inc., unreasonable. It is an issue to be determined by a trier
12 of fact and, under these circumstances, is not appropriate for determination
13 by the District Court.” *Id.* at 117.
14

15 The circumstances here are similar to *Burkland*. Like in *Burkland*, the
16 PADI logo and trademark are prominently displayed on Gull Dive Center’s
17 materials and the materials used in training for the instructional dive on
18 November 1, 2020. Snow was not just a dive instructor, she was a *PADI*-
19 certified dive instructor. The successful completion of the diving training
20 would result in not just certifications, but *PADI* certifications. PADI
21 encouraged Gull Dive Center and Snow’s promotion of these valuable
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1 qualifications. While the Court has no evidence to support a conclusion that
2 any of the plaintiffs in fact believed that Gull Dive Center, the Olsons, or
3 Snow were agents of PADI, it also does not have any testimony from them
4 conceding that they did not believe this to be the case.³ On PADI's non-
5 agency disclaimer, the Court, like in *Burkland*, concludes that given the other
6 circumstances whether the disclaimer was sufficient to make Plaintiffs'
7 understanding unreasonable is an issue to be determined by a trier of fact.
8

9 One major difference from *Burkland* that bolsters the Court's
10 conclusion here is that in *Burkland*, ERA, Inc. presented uncontradicted
11 evidence that ERA, Inc. had no control over ERA Hannah. *Id.* at 116. In this
12 case, as analyzed above, the facts demonstrate that PADI had some
13 measure of control over how Gull Dive Center operated and Snow instructed.
14 But again, whether that measure of control asserted by PADI is sufficient to
15 create ostensible agency on the part of Gull Dive Center, the Olsons, and
16 Snow is genuine issue of material fact on which the Court cannot rule.
17

18 PADI misplaces its reliance on *Hambrook v. Smith*, 2015 U.S. Dist.
19 LEXIS 70968 (D. Haw., June 2, 2015). In *Hambrook*, a husband and wife
20

21
22 ³ PADI's Motion points out that in Plaintiffs' SAC they do not allege that *they believed* Gull
23 Dive Center, the Olsons, or Snow were PADI's agents. The Court rejects PADI's
conclusion that this means the SAC fails to meet the elements of ostensible agency –
because the SAC alleges that they *were* the agents. The Court knows of no authority
that would require Plaintiffs to additionally assert a *belief* that they were the agents.

1 participated in a recreational scuba dive hosted by a PADI-certified dive shop
2 that ended with the husband's downing. The surviving spouse sued the
3 diving guide and the dive shop for negligence and argued that PADI is
4 likewise vicariously liable. Analyzing the situation under Hawaii's law of
5 agency, the *Hambrook* court concluded that the diving guide and dive shop
6 were not PADI's agents as a matter of law. Critical to the court's analysis
7 was its finding that "there is simply no evidence to suggest that PADI had
8 actual or even apparent authority over the actions of [the diving guide or dive
9 shop] in this case." *Id.* at *32. Further, the court found the surviving spouse's
10 testimony on her understanding of PADI's online marketing insufficient to
11 establish the element of reliance. *Id.* at *34-35. Finally, the court cited a
12 Hawaiian case that obliges a person dealing with a supposed agent to
13 confirm the fact and scope of agency before the person can claim agency,
14 and it found that this requirement was not met. *Id.* at *35-36.

17 *Hambrook* is distinguishable from this case because, first, Plaintiffs
18 have presented the Court with some evidence that suggests PADI has some
19 measure of control over Gull Dive Center, the Olsons, and Snow – evidence
20 sufficient to create a genuine issue of disputed material fact. Second,
21 evidence of Linnea Mills' understanding of PADI's relationship to Gull Dive
22 Center, the Olsons, and Snow is sparse and inconclusive, but it is undisputed
23

1 that her dive was not a recreational one, but one purposely undertaken to
2 obtain a PADI certification from PADI members authorized by PADI to issue
3 such certifications. Third, the Court knows of no Montana authority similar
4 to the Hawaiian law cited in *Hambrook* that obliges a person dealing with a
5 supposed agent to confirm the fact and scope of agency. While *Hambrook*
6 may be informative, the Court is not persuaded that it compels the Court to
7 grant summary judgment to PADI.
8

9 The Court has tried to reconstruct, from the record before it, the
10 mechanics of the students completing a diving instruction course through
11 Gull Dive Center. It appears they need to first sign up by completing PADI-
12 specific application documents provided by and processed through Gull Dive
13 Center, presumably with the assistance of Gull Dive Center's employees and
14 PADI-certified instructors. PADI asserts that it requires PADI diving course
15 participants to sign a non-agency agreement in the course application, but
16 the Court questions the completeness of that statement. From the facts, it
17 appears that it is not only PADI that requires the course participants to sign
18 this, but rather it is the dive shops that do this, on behalf of and by direction
19 of PADI. Similar to the processing of course participation applications, the
20 dive shops are also the middlemen in processing certificates of diving
21 qualifications. PADI is in the background of a significant amount of how and
22
23

1 why a PADI dive center operates. Whether that creates an ostensible
2 agency relationship is a disputed question of fact to be determined here by
3 the trier of fact.

4 **IV. CONCLUSION**

5 Taking the evidence in a light most favorable to Plaintiffs in this case,
6 the Court concludes that genuine issues of material fact preclude judgment
7 as a matter of law and thus the Court must deny the Motion.
8

9 DATED this 5th day of July, 2022.

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11 
12 Leslie Halligan
13 District Court Judge
14
15
16

17 cc: Terence P. Perry, Esq.
18 David G. Concannon, Esq.
19 Susan Moriarity, Esq.
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