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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,	**CAUSE NO. DV-21-544-NE** **HON. LESLIE HALLIGAN** **SECOND AMENDED COMPLAINT and DEMAND FOR JURY TRIAL**

Defendants.	

I. FACTS COMMON TO ALL COUNTS

A. The Parties and Interested Non-Parties

1. This case involves the wrongful death of 18-year-old Linnea Mills ("Linnea"), on November 1, 2020, while Linnea was engaged in a scuba diving training course in Lake McDonald, Glacier National Park, Montana.

2. Plaintiff, L. Scott Mills ("Scott"), is the father of Linnea Mills and is the duly appointed personal representative of her Estate pursuant to an Order dated January 5, 202 entered in the Montana Fourth Judicial District Court, Missoula County, Montana, Docket Number DP-20-277.

3. At all times relevant hereto, Scott, as Personal Representative of the Estate of Linnea Mills, was a resident of Missoula County, Montana.

4. At all times relevant hereto, Scott, individually, was a resident of Missoula County, Montana.

5. At all times relevant hereto, the decedent, Linnea, was a resident of Missoula County, Montana.

6. On November 1, 2020, Linnea was a student in a Professional Association of Diving Instructors ("PADI") Advanced Open Water ("AOW") scuba diving training course offered by Defendant, Gull Scuba Center, LLC d/b/a Gull Dive Center ("Gull Dive"), of Missoula, Montana.

7. At all times relevant hereto, Plaintiff, Robert Gentry ("Bob"), was a resident of Ravalli County, Montana.

8. On November 1, 2020, Bob was a student in a PADI Dry Suit Specialty scuba diving training course offered by Gull Dive at Lake McDonald, Glacier National Park, Montana.

9. At all times relevant hereto, Plaintiff, E.G., a minor, was a resident of Ravalli County, Montana.

10. On November 1, 2020, Plaintiff, E.G., was a student in a PADI Dry Suit Specialty scuba diving training course offered by Gull Dive at Lake McDonald, Glacier National Park, Montana.

11. At all times relevant hereto, Plaintiff, Shannon Gentry ("Shannon"), was a resident of Ravalli County, Montana.

12. On November 1, 2020, Shannon was a bystander who assisted her husband and teenage daughter, Bob and E.G., participate in a PADI Dry Suit Specialty scuba diving training course offered by Gull Dive at Lake McDonald, Glacier National Park, Montana; and she directly witnessed many of the tortious acts and omissions that are the subject of this lawsuit.

13. At all times relevant hereto, Plaintiff, Joel Wilson, was a resident of Missoula County, Montana.

14. On November 1, 2020, Plaintiff, Joel Wilson, was a participant in three PADI advanced level and specialty training courses offered by Gull Dive, including the Dry Suit Specialty scuba diving training course that culminated in the dive at Lake McDonald, Glacier National Park, Montana. Plaintiff, Joel Wilson, directly witnessed many of the tortious acts and omissions that are the subject of this lawsuit.

15. Defendant, PADI Worldwide Corporation ("PADI Worldwide"), is a corporation organized and existing under the laws of the State of California, with its principal place of business in California but doing business throughout the United States, including Montana.

16. Defendant, PADI Americas, Inc., is a corporation organized and existing under the laws of the State of California, with its principal place of business in California but doing business throughout the United States, including Montana. Defendant PADI Americas, Inc., is a wholly owned subsidiary of PADI Worldwide Corporation.

17. "PADI" is an acronym for "Professional Association of Diving Instructors." Defendant, PADI Americas, Inc., owns the trade name "Professional Association of Diving Instructors."

18. Defendants, PADI Americas, Inc. and PADI Worldwide, are referred to collectively hereinafter as "PADI," as each corporation commonly refers to

itself, both internally and externally, to consumers and divers throughout the world.

19. At all times relevant hereto, Defendant, Debbie Snow ("Snow"), was a resident of Missoula County, Montana.

20. In October and November, 2020, Snow was the PADI scuba diving Instructor responsible for conducting PADI Advanced Open Water and PADI Dry Suit Specialty scuba diving training courses offered by Gull Dive.

21. On November 1, 2020, Snow was the Gull Dive and PADI scuba diving Instructor responsible for planning, conducting and supervising Linnea's PADI Advanced Open Water training dives at Lake McDonald in accordance with PADI Training Standards and Gull Dive's policies, procedures and contractual commitments.

22. At all times relevant hereto, Defendant, David Olson, was a resident of Missoula County, Montana.

23. Defendant, David Olson, is the President of First Interstate Bank in Missoula and, at all times relevant hereto, was one of the owners or managing partners of Gull Dive.

24. At all times relevant hereto, Defendant, Jeannine Olson, was a resident of Missoula County, Montana.

25. At all times relevant hereto, Defendant, Jeannine Olson, was one of the owners or managing partners of Gull Dive.

26. At all times relevant hereto, Defendant, Gull Scuba Center, LLC, d/b/a Gull Dive Center, was a Montana limited liability corporation with a principal place of business located at 2601 West Broadway, Missoula, Montana.

27. At all times relevant hereto Defendant, Gull Scuba Center, LLC, owned and operated Gull Dive Center, located at 2601 West Broadway, Missoula, Montana.

28. At all times relevant hereto, non-party, Seth Liston ("Liston"), was a resident of Missoula County, Montana.

29. In October and November, 2020, Liston, was an employee and/or agent of Gull Dive, or a volunteer, assisting Snow in conducting the PADI Advanced Open Water and PADI Dry Suit Specialty scuba diving training courses offered by Gull Dive at Lake McDonald, Glacier National Park, Montana.

30. At all times relevant hereto, non-party, Nathan Dudden ("Dudden"), was a resident of Missoula County, Montana.

31. From October 29, 2020 through March 2021, Dudden was an employee and/or agent of Gull Dive, or a volunteer, assisting Snow in conducting the PADI Advanced Open Water course taken by Linnea Mills.

32. On November 1, 2021, Dudden was acting as an employee of Gull Dive, and he was also a student in the PADI Dry Suit Specialty scuba diving training courses offered by Gull Dive at Lake McDonald, Glacier National Park, Montana.

33. At all times relevant hereto, Defendants, David Olson and Jeannine Olson, were aware of the PADI Advanced Open Water and PADI Dry Suit Specialty scuba diving training dives to be conducted at Lake McDonald, they had duty to supervise Gull Dive's employees, and they had a duty to ensure that all training dives were conducted safely and in accordance with PADI Training Standards and Gull Dive's policies, procedures and contractual commitments.

34. At all times relevant hereto, Defendants, PADI Americas, Inc., PADI Worldwide Corporation, David Olson, Jeannine Olson, Gull Dive and Debbie Snow, were joint venturers, contractors, members of a consortium, and assigns of each other.

35. Moreover, at all times material hereto, Defendants, David Olson, Jeannine Olson, Gull Dive, and Gull Dive's non-party employees, were agents of Defendants, PADI Americas, Inc. and PADI Worldwide Corporation.

36. At all times relevant hereto, Defendant, Heidi Houck ("Houck"), was a resident of Missoula County, Montana.

37. On or about October 29, 2020, Houck, sold two dry suits used for scuba diving to Linnea and Nathan Dudden, another student in a scuba diving certification course offered by the Defendants.

38. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendants John Does 1-10, are unknown to Plaintiffs who, therefore, sue said Defendants by such fictitious names. Plaintiffs are informed and believe that Defendants so designated are any one of the following:

a. A party responsible in some manner for the events or incidents herein and referred to and in some manner caused the injuries and damages proximately thereby to Plaintiffs as herein alleged;

b. A party that was the agent, servant, employee and/or contractor of the other Defendants, each of them acting within the course and scope of their agency, employment, or contract;

c. A party that has assumed the liabilities of any of the Defendants by virtue of agreement, sale, transfer or otherwise;

d. A party with an interest in the property upon which Plaintiffs were injured as described herein;

e. A party that is a sub-entity of another named Defendant; and/or

f. A party that owns or owned, leased, managed, operated, secured, inspected, repaired, maintained, and/or was responsible for the real property and/or premises of named Defendant.

39. At all times relevant hereto the Defendants, Gull Dive, David Olson, Jeannine Olson and Snow (collectively, the "Gull Dive Defendants"), and Houck,

committed a variety of acts both within and without the state of Montana that resulted in the tragic death of Linnea Mills in the state of Montana and Plaintiffs' accrual of tort claims in the state of Montana.

B. Acts and Omissions Leading to the Death of Linnea Mills

The PADI Membership System

40. PADI is the largest scuba diving certification organization in the world. To become a PADI Member, an individual must pay an annual membership fee to PADI, agree to abide by PADI Training Standards, agree to be subject to PADI's quality assurance review and supervision, and sign the PADI Membership Agreement. In return, each PADI Member is entitled to purchase PADI course materials directly from PADI for resale to the Member's customers, and to use the PADI logos and trademarks to market the Member's services to the public.

41. In addition, PADI Members are offered the opportunity to join a risk retention group with Defendant, PADI Worldwide, whereby PADI Worldwide purchases a master policy of insurance from an insurance company and then PADI Worldwide resells "certificates of insurance" to individual PADI Members, dive shops and other diving professionals. Certificate of insurance holders are then named as additional insureds under the PADI Worldwide

master policy and PADI Worldwide retains part of the premium the certificate holders pay for itself.

42. In addition to offering scuba diving training courses, PADI also offers dive shops and training centers the opportunity to affiliate with the PADI brand by becoming a member of the "PADI Retailer and Resort Association," or "PADI RRA."

43. The PADI RRA is a collection of dive shops and resorts throughout the world that are committed to selling PADI products and promoting the PADI lifestyle. The organization exists in name only – it is not a separate corporation. Instead, Defendant, PADI Worldwide, Inc., contracts directly with individual dive shops, like Gull Dive, to join the RRA, while Defendant, PADI Americas, Inc., administers the RRA in the United States, including Montana.

44. Although the RRA contract says the PADI Member is not an agent of PADI and PADI has, "no control over or involvement with [the member] facility's day-to-day operations and activities and bears no responsibility for the same," in reality, PADI takes a highly active role in the management and operations of the individual dive shops and resorts within the RRA.

45. Among other things, PADI employees, including regional and territory managers, regularly visit PADI RRA applicants and members to evaluate and

critique the minutiae of their operations, including the visibility of PADI products, appearance and qualifications of staff, signage, lighting, layout, course schedules, social activities, equipment offered for rental, and even the soap and towels in the members' washrooms, to ensure adherence to PADI standards. Failure to adhere to PADI's detailed and rigid criteria means loss of RRA membership.

46. PADI also provides business mentoring and support to PADI RRA members, including "hands on" education in web site development, use of social media and PADI eLearning. In doing so, PADI employees work "in partnership" with PADI Members to, "assist members in creating and understanding prescribed solutions."

47. PADI provides incentives and financial support to the PADI Retailer and Resort Association for selling more PADI products and promoting the PADI lifestyle and brand. Much like a multi-level marketing scheme, a member's ascendance to higher levels in the RRA hierarchy – thereby gaining greater visibility, perks and support from PADI – depends on the member selling greater numbers of PADI certifications, employing more PADI Members as instructors and dive masters, and allowing greater influence from PADI into the member's day-to-day operations.

48. PADI represents to the public that it has a rigorous Quality Management Program to ensure PADI Members' compliance with PADI RRA and Training Standards. Indeed, on a page of the PADI web site entitled "Consumer Protection," which student divers are encouraged to review, PADI represents:

> *PADI'S QUALITY MANAGEMENT PROGRAM*
> *The PADI organization's commitment to providing divers with consistent, first-rate scuba diving training has made the PADI name synonymous with quality diver education. Acknowledging, as well as preserving, the high level of customer satisfaction achieved by PADI Dive Centers, Resorts and individual PADI Members is the cornerstone of the PADI Quality Management and Recognition program.*

See https://www.padi.com/consumer-protection.

49. Indeed, in 2015, Charles Algy Hornsby, Defendant, PADI Worldwide's, Senior Vice President, Legal Affairs, represented to a federal court that: "*During my tenure, I have been directly involved in the writing and/or review of most of PADI's educational programs and standards*[.]"

50. Mr. Hornsby touted PADI's extensive use of course participant registrations and distribution of Course Evaluation Questionnaires ("CEQ") to participants to monitor PADI Members' compliance with PADI standards, stating:

> *:…[a]ll CEQ's returned to PADI are examined for answers that might indicate standards violations; and those found are followed up through PADI's normal, ongoing Quality Management process. Violations from all PADI educational programs are examined and adjudicated by PADI's standing Quality Management Committee, which meets every two weeks,*

> *ongoing, for this purpose. Confirmed violations result in a range of actions for the PADI Individual Member or Dive Center/Resort involved, depending upon severity, from counseling to mandatory re-education to expulsion from PADI Membership. As no other organization in the dive industry requires such Participant Registration, or performs such ongoing, proactive quality management activity, PADI's knowledge of standards compliance by its members providing introductory dive experiences exceeds that of any other dive organization."*

51. Mr. Hornsby's representations regarding PADI's extensive monitoring and enforcement of standards compliance by its Members providing "introductory dive experiences" is equally applicable to PADI Members providing all levels of PADI training.

52. PADI further represents to the public that it actively polices its Members' adherence to PADI standards, and those PADI Members who are suspended or expelled for standards violations are publicly identified and posted on PADI's web site via links provided on a page entitled "Consumer Alerts." *See* https://www.padi.com/consumer-alerts.

53. The PADI web site boldly proclaims:

> ***How is PADI Different?***
>
> ***Education*** *– The PADI System of diver education is the most instructionally solid system in diving. PADI courses are designed to make learning enjoyable and worthwhile. Under the guidance of your professional PADI instructor, you gain confidence while mastering important safety concepts and skills.* ***PADI***

Instructors are trained and held to diving's highest standards, backed up by a solid, proactive quality management system.

Educational Standards – All PADI programs, from entry-level through scuba instructor training, fall under strict educational standards monitored for worldwide consistency and quality.

54. PADI encourages members of the public to "*[b]e proactive and check credentials of any dive operation or instructor that offers you PADI training*." However, the search feature PADI provides to the public does not allow members of the public to search for suspended or expelled PADI Members by name or region, only by the Member's specific PADI Member Number, which is normally known only to the Member and to PADI. *See* https://apps.padi.com/scuba-diving/pro-chek/

55. If a person does know the Member's specific PADI Member Number, the only information the person searching can obtain is very limited, and does not include information about whether the Member is certified to teach specialty courses. *Id*.

56. Finally, if a PADI Dive Center is expelled from the PADI RRA, a search of the PADI Dive Center's Member number will not reveal this.

57. Oddly, in 2020, the same Mr. Hornsby – the PADI Worldwide Senior Vice President who told a federal court in 2015 that he was "*directly involved in the writing and/or review of most of PADI's educational programs and*

standards" and a member of "*PADI's standing Quality Management Committee, which meets every two weeks*" – said in sworn affidavit submitted to a different federal court:

> *PADI Worldwide has never claimed or represented to divers that PADI Worldwide has a comprehensive monitoring system to ensure all of its certified instructors comply with PADI safety standards.*

58. None of the Plaintiffs were aware of Mr. Hornsby disclaiming PADI's representations that it was committed to ensuring their safety in the hands of PADI Members and Dive Centers. Had they known the truth, they would not have trusted PADI's representations or the integrity of the PADI brand.

The PADI Training System

59. The PADI scuba training system and, indeed, PADI's business model, are carefully designed using proven behavioral science techniques to keep divers engaged in scuba diving, the pursuit of advanced level PADI scuba certifications, and the continuous flow of money into PADI coffers.

60. Indeed, the PADI training system utilizes "compulsion loops" to fulfill basic human needs, including competence, continuous improvement, autonomy and relatedness, to make divers feel like they are good at something, in control, and are connected to people within the PADI system, to maintain interest and ensure that consumers remain "PADI divers" and that they continue to

purchase PADI certification courses as they "move up the ranks" into the upper echelons of the PADI hierarchy.

61. The PADI training system utilizes cycles and compulsion loops to "upsell" divers into further PADI scuba training. Much like video games and gambling, this system typically works as follows:

a. A student diver gets a task or series of tasks to complete and the promise of a reward at the end in the form of a certification (motivation).

b. The student diver is given a clear pathway to completing the task(s) (an achievable challenge).

c. The student diver completes the task(s) and gets the reward (dopamine hit).

d. One or more of the tasks counts toward the completion of a higher level or "specialty" certification, so the student diver gets another task and the formula repeats.

62. For example, although it is styled as an "advanced" class, the PADI Advanced Open Water scuba diving training course is offered to students as young as 12 years of age, who have completed as few as four open water scuba dives in any environment (ocean, lake, river, quarry, etc.).

63. The PADI Advanced Open Water course is supposed to be designed to assist students to improve essential skills such as navigation and refinement of buoyancy control, and to introduce students to different diving activities such as wreck diving, night diving, altitude diving or underwater imaging.

64. However, the PADI Advanced Open Water course is also designed to induce students to purchase additional PADI training courses so they can achieve higher levels of certification, greater recognition in the diving community, and even a career as a PADI Instructor. In this way, the course is an integral part of PADI's marketing and sales scheme, which is designed using behavioral science to make divers feel like they are good at something, in control, and connected to people, all because they purchase more scuba courses from PADI.

65. Indeed, the PADI Advanced Open Water Course Manual inundates students (including Linnea Mills) with several sales pitches for the student to enroll in additional PADI scuba training courses, including Specialty courses, Rescue Diver and others, so the student can advance in their diver education through PADI, and PADI can reliably earn additional revenue. Indeed, the PADI Advanced Open Water Course Manual contains no less than five pitches for the student to enroll in additional PADI courses in the first 15 pages, before the manual even begins to discuss safe diving practices, and every chapter ends with a pitch for the student to continue on to a PADI Specialty course.

66. After completing a written course of study either online ("eLearning") or by book, and showing an understanding of advanced scuba diving concepts, the PADI Advanced Open Water student must successfully complete five

"Adventure Dives" in open water to earn this certification. Two of these "Adventure Dives" must be a deep dive (beyond 60 ft.) and a navigation dive, and three additional "Adventure Dives" are chosen from a menu of PADI "continuing-education" courses in a variety of specialties.

67. The "Adventure Dives" completed in the PADI Advanced Open Water course can be credited toward the completion of one or more of 25 PADI "specialty" courses, thereby encouraging the student diver to enroll in a further course of instruction in the "specialties" they are introduced to in their Advanced Open Water course.

68. One of the "Adventure Dives" an Advanced Open Water student may participate in is a Dry Suit Adventure Dive. If so, the Instructor must follow the PADI Training Standards for the PADI Dry Suit Diver Specialty course.

69. The PADI Dry Suit Diver Specialty course is supposed to be designed to teach students how to safely use a thermal protection layer known as a dry suit, which has different features and characteristics from the more common "wet suit," which divers typically use for thermal protection.

70. Both wet suits and dry suits are used for thermal insulation from cold, winter air and water temperatures while scuba diving. Both are designed to help a diver stay warm, but they are fundamentally different in design, material and functionality.

71. One of the most difficult skills for a new diver to master is buoyancy control, and the most critical difference between a wet suit and a dry suit, other than material and the way they insulate, is the increased difficulty in maintaining buoyancy while wearing a dry suit.

72. Wet suits are made of foam neoprene and are designed to keep a diver warm underwater by using numerous closed-cell bubbles trapped in the neoprene material. The bubbles trap heat and act as insulation.

73. Thicker neoprene wet suits are made for colder water, because the thicker neoprene layer provides more insulation. As a diver descends underwater, the neoprene layer becomes compressed, thereby causing the wetsuit to lose some of its thermal protection and buoyancy.

74. Dry suits are made of a completely waterproof shell material, either rubber or nylon, which keeps water out and traps air underneath. Dry suits are not designed for warmth if used alone; instead, the diver must wear layers of long underwear or clothing, which traps additional air and provides more thermal protection.

75. As the dry suit diver descends underwater, she must continuously add air to keep the suit fitting properly and functioning as designed, because the weight of the water surrounding the diver's body compresses the air inside the dry suit as the diver descends.

76. The compression of air inside enclosed spaces while a diver descends is known as "squeeze." "Squeeze" can be uncomfortable at shallow depths, increasingly painful as the diver continues to descend, and fatal as a diver approaches a depth of as little as 100 feet, where the water pressure surrounding the diver's body is three times more than the ambient pressure on the surface.

77. Conversely, as a diver wearing a dry suit ascends, the ambient pressure of the surrounding water causes the air inside the dry suit to expand, creating additional buoyancy and lift.

78. If a diver is not careful – and adequately trained to use a dry suit – the diver could lose control of their ascent due to the air expanding in a dry suit, ascend too quickly, and suffer serious or fatal injuries.

79. Consequently, before a student diver is permitted to use a dry suit instead of a wetsuit, the diver must successfully complete special training to learn the features of a dry suit, including how the dry suit functions and how to use the dry suit safely in cold conditions, with unfamiliar buoyancy characteristics, to prevent squeeze on descent and an uncontrolled, rapid ascent from depth.

80. PADI offers a Dry Suit Diver Specialty course to teach divers how to safely use a dry suit. The training course consists of an orientation to the dry suit and its operation in a controlled environment, usually a swimming pool, and

three orientation dives in open water under the supervision of a PADI Instructor.

81. The PADI Dry Suit Diver Specialty course contains more than 60 pages of Training Standards that are designed to teach divers how to safely use a dry suit. Conversely, the PADI Advanced Open Water course contains just three-quarters of one page of standards for Instructors incorporating a Dry Suit Adventure Dive into an Advanced Open Water course.

82. In addition, and beyond the dry suit requirements, the PADI training system contains an array of often overlapping and confusing requirements, some more lenient than others, that allow PADI instructors to take risks and endanger the safety of students.

83. For example, under the PADI certification system, a diver can become a certified scuba Instructor with as few as 100 dives.

84. To become a PADI Scuba Instructor, a diver must first complete their Divemaster certification and then a further course of instruction, normally taught at a PADI Instructor Development Center ("IDC"), as an Instructor candidate.

85. Once the Instructor candidate completes their IDC instruction, PADI itself will administer an Instructor Exam ("IE"). Thus, PADI directly determines

who is and who is not qualified and competent to teach student divers using the PADI Training Standards for every level of diving.

86. Upon information, PADI rarely fails an Instructor candidate when administering the IE and, if they do, PADI allows the Instructor candidate to retake the IE as many times as necessary to pass the exam. Thus, once an Instructor candidate completes their IDC instruction, they are almost guaranteed to pass the IE if they take the exam enough times.

87. After a diver successfully passes the IE and receives the initial PADI Instructor certification, known as Open Water Scuba Instructor or OWSI, the diver can take additional training to become an Instructor in 25 different PADI Specialty Diver courses, including Altitude Diver, Wreck Diver, Dry Suit Diver, Ice Diver, Night Diver and Rescue Diver. After an Instructor has earned at least five Specialty Diving Instructor certifications, he or she can become a Master Scuba Diver Trainer.

88. Under the PADI training system, an Instructor is not permitted to teach the PADI Dry Suit Diver Specialty course unless the Instructor has successfully completed the additional Specialty Diving Instructor training beyond OWSI for the PADI Dry Suit Diver Specialty course.

89. However, a PADI Instructor who has not taken this Specialty Diving Instructor training is permitted to add a Dry Suit Adventure Dive to an

Advanced Open Water course of instruction for a student, even though the student is inexperienced, as young as 14 years old, and has completed as few as four dives; and even if the Instructor has never taken the PADI Dry Suit Diver Specialty course herself.

90. Moreover, a PADI Instructor who has never taken the PADI Dry Suit Diver Specialty course may "self-certify" that they are competent to teach inexperienced divers the PADI Dry Suit Diver Specialty course if they represent to PADI that they have completed as few as 10 dives while wearing a dry suit.

91. After the Instructor submits their "self-certification" to PADI, the Instructor is permitted to teach both the PADI Dry Suit Diver Specialty course and the Dry Suit Adventure Dive to an Advanced Open Water course without ever completing the additional Specialty Diving Instructor training beyond OWSI under the tutelage and supervision of a PADI Instructor Trainer.

92. PADI's self-certification system completely dispenses with any quality assurance procedures PADI had in place to ensure that PADI Members are actually qualified to teach the scuba training courses they sell to students. Instead, PADI relies on the honor system, which allows both Instructors and PADI to earn more money by selling more training courses and certifications.

93. PADI's Training Standards also allow an Instructor to combine training classes. Consequently, a PADI Instructor may combine students in an Advanced Open Water course into a class where students are taking the PADI Dry Suit Diver Specialty course, and have up to eight students in the water with one Instructor during the combined class.

94. The PADI Advanced Open Water course can be combined into a PADI Dry Suit Diver Specialty course even though the two courses have different requirements for Instructor supervision of students.

95. The PADI Dry Suit Diver Specialty course requires "Direct Supervision," where the Instructor must "Position yourself so that you … can make immediate physical contact with and render assistance to divers" and "*Continually observe divers with only the brief, periodic interruptions needed to lead the dive and to provide assistance to individual divers*."

96. Conversely, the PADI Advanced Open Water course requires only "Indirect Supervision" for dives of less than 60 feet in depth, where the Instructor must: "*Be present and in control of the activities, but not necessarily directly supervising all activities*."

97. The Dry Suit Adventure Dive in the PADI Advanced Open Water course requires direct supervision, regardless of the depth, and the PADI Training Standards permit an Instructor to have up to eight students on the same dive

performing different skills while wearing a combination of wet suits and dry suits. Consequently, the Instructor is permitted to apply different supervision levels to different students learning on the same dive.

98. PADI's Training Standards allow Advanced Open Water and Specialty courses to be taken at altitude, which is defined as: "*An altitude dive is conducted at a dive site located from 300 to 3000 metres/1000 to 10,000 feet above sea level*."

99. As with the Dry Suit Diver Specialty course, an Instructor must be a certified PADI "Altitude Specialty Instructor" to certify students as an "Altitude Diver," but the Instructor need not hold this certification to conduct Advanced Open Water training dives at altitude.

100. Training in how to safely conduct dives at altitude is important because ascending at higher altitude increases bubble growth, which can make controlling a diver's buoyancy more difficult, and a diver must compensate for the effect of altitude to avoid suffering from decompression sickness and gas expansion injuries.

101. The PADI Training Standards make no accommodation for training dives conducted at altitude. For example, supervision standards do not change even though a training dive made to a depth of 60 feet may be the equivalent of

diving to 67 or greater feet if the dive site is at an altitude of 3,000 feet above sea level.

102. Perhaps most confusing is PADI's requirement for "Confined Water Dives." According to PADI's Training Standards:

> *Confined water is a general term that refers to either a swimming pool or confined open water. Confined open water is an open water site that offers swimming pool-like conditions with respect to clarity, calmness and depth. It has both shallow water and water sufficiently deep to allow student divers to meet all skill performance requirements.*

103. PADI's "confined open water" standard is purposefully vague, confusing and ambiguous, all to allow PADI Members to sell more certifications instead of focusing on safety.

104. PADI actively encourages its members to "get creative" in meeting this standard. In February 2021, PADI Chief Executive Officer, Drew Richardson, sent an email to PADI Members worldwide applauding the ingenuity of one PADI RRA member for continuing to train new PADI divers during the global coronavirus pandemic by using "open water" that was confined yet open to simulate a swimming pool:

> *Knowing that business as usual wasn't an option, many PADI Pros got creative. When COVID closed all the local pools, Divers Incorporated in Michigan, USA, set a platform in a local quarry so that it met pool-training requirements.*

105. PADI will periodically issues warnings and training bulletins to its Members after a serious incident or fatal incident, reminding its Members to follow particular PADI Training Standards and/or alerting PADI Members to changes made in PADI Training Standards as a result of lessons learned from serious or fatal incident(s) that occurred during PADI scuba training.

106. PADI also will periodically make changes to PADI Training Standards as a result of lessons learned from serious or fatal incident(s) that occurred during PADI scuba training.

107. In March 2020, a student engaged in a PADI Deep Specialty course in British Columbia, Canada, died after failing to connect the inflator hose on their dry suit. The condition of the diver's scuba gear was reported and discussed on social media at that time, and the death would have been immediately reported to PADI under the terms of its Membership Standards, thereby triggering a quality assurance review and investigation of the incident.

108. Despite having notice of this incident, PADI failed to alert its Members to the possibility that students using a dry suit could fail to attach the inflator hose on their dry suit, causing the student diver to rapidly lose buoyancy and drown. PADI also failed to adopt subsequent remedial measures as a result of the March 2020 incident, including, among other things, making changes to PADI Training Standards to ensure that student divers are appropriately

trained in the use of a dry suit before engaging in PADI scuba training while wearing a dry suit.

109. PADI's liberal, confusing, subjective and contradictory Training Standards create conditions that are materially unsafe for student divers, and especially inexperienced students like Linnea.

110. Given PADI's failure to alert the public about Gull Dive's unsafe deviation from RRA Member Standards and loss of PADI Member status, PADI's failure to alert its Members to the possibility that students using a dry suit could fail to attach the inflator hose on their dry suit, and PADI's failure to adopt subsequent remedial measures with the knowledge learned from the March 2020 fatality in British Columbia (and possibly others), it was inevitable that another diver would be injured or killed in the same manner as Linnea Mills.

PADI and Gull Dive

111. At all times relevant hereto, Gull Dive was a member of the PADI Retailer and Resort Association.

112. At all times relevant hereto, Gull Dive was required to comply with PADI RRA Membership Standards.

113. The PADI RRA Membership Standards required PADI facilities like Gull Dive to ensure that divers are appropriately certified for noninstructional dives

(Standard No. 17) and to, "[p]rovide modern dive equipment for instruction and for rent to students and certified divers as described in the *PADI Instructor Manual*" (Standard No. 11).

114. Prior to November 1, 2020, Gull Dive allegedly violated the PADI RRA Membership Standards by renting scuba equipment to a person not certified to scuba dive, Jesse Hubbell, who immediately drowned upon entering the water with his rental gear.

115. In accordance with PADI's training and RRA standards, PADI would have been immediately advised of Mr. Hubbell's death. Thereafter, PADI should have initiated a Quality Management review of Gull Dive and the PADI Professional involved in the incident, and Gull Dive and/or the PADI Professional should have been placed on administrative suspension pending the outcome of this review.

116. After the death of Jesse Hubbell, the Gull Dive web site (www.gulldivecenter.com) was taken down, moved to a new host, and all PADI logos, trademarks and official indications that Gull Dive is a PADI dive facility were removed.

117. The new Gull Dive web site (www.gulldive.com) implies that Gull Dive is still a PADI facility or RRA member, stating: "*In 2003, Gull became a certified PADI dive center, promoting more dive travel and specialty courses,*

making Gull Montana's premier dive shop." Meanwhile, the affiliated Gull Boats & RV web site still states: "*our Dive Center was recently listed by Underwater Journal as the oldest continually operated PADI locations in the world under the original ownership*."

See https://www.gullboatsandrv.com/about-us.

118. Gull Dive is no longer listed as a PADI facility on the PADI web site, a search of PADI facilities in Montana does not list Gull Dive, and a search of Gull Dive's PADI Member number on PADI's Pro Chek system takes a person to another Member's profile.

119. Despite the apparent change in Gull Dive's status as a PADI RRA Member, and the certainty of a PADI Quality Management review of the death of Jesse Hubbell, PADI never issued a Consumer Alert regarding Gull Dive, and Gull Dive is not listed as a suspended or expelled PADI Member on PADI's web site.

120. In late November 2019, Defendant, Debbie Snow, traveled to the Florida Keys to take her IDC at a "PADI Instructor Development Center" known as Rainbow Reef. Once she completed her IDC training, PADI directly administered its Instructor Exam to Snow. Snow failed.

121. In January 2020, Defendant, Debbie Snow, returned to Rainbow Reef for retraining and additional PADI instruction. PADI administered a second Instructor Exam to Snow and, this time, PADI allowed Snow to pass.

122. Due to the onset of the COVID-19 pandemic, Gull Dive was closed for several weeks in the spring of 2020 and Snow taught no scuba classes.

123. In July 2020, four months before its interaction with Linnea, Gull Dive was sued for violating PADI's RRA Membership Standards by renting scuba equipment to a person not certified to scuba dive, Jesse Hubbell.

124. After the death of Jesse Hubbell and the filing of the *Hubbell* case, the Gull Dive Defendants and PADI should have redoubled their efforts to ensure the Defendants' compliance with the PADI RRA Membership Standards and PADI Training Standards, and also to ensure that the public was warned about the deficiencies in the Gull Dive Defendants' business practices.

125. Instead, the Gull Dive Defendants and, in particular, Defendants, David Olson and Jeannine Olson, took the opposite course of action by cutting costs, driving away experienced staff, hiring inexperienced staff in their place, failing to test rental equipment before it was provided to students, lowering the standards of operation of Gull Dive, failing to adequately train the staff of Gull Dive, failing to adequately supervise the staff of Gull Dive, and issuing PADI certifications to student divers who were not appropriately taught the

requisite skills for the certifications they were issued under the applicable PADI Training Standards.

126. PADI knew or should have known about the deficiencies in Gull Dive's operations through its quality assurance program and monitoring of PADI RRA members, through site visits, periodic reviews and other enforcement procedures.

127. PADI should have warned the public about the deficiencies in the Gull Dive Defendants' business practices, as PADI says it does on its web site, but it failed to do so.

128. The lawsuit, *Hubbell v. Gull Dive Center, LLC, et al.*, was pending at the time Linnea first interacted with the Defendants in October 2020. Accordingly, the Gull Dive Defendants were on notice that they had to comply with the PADI RRA Membership Standards in assessing Linnea's diving experience and certifications prior to providing her with rental equipment to use during her course of instruction, and PADI was on notice that the Gull Dive Defendants had recently failed to adhere to PADI standards in their interactions with customers, with fatal results.

129. Furthermore, Defendants PADI, Gull Dive, David Olson and Jeannine Olson, were on notice that Defendant, Debbie Snow, lacked the skills and competency necessary to teach students to safely scuba dive, and non-parties

Nathan Dudden and Seth Liston lacked the skills and training to adequately ensure Gull Dive's compliance with PADI RRA Membership Standards.

Joel Wilson's Interaction with the Defendants

130. In September 2020, Plaintiff, Joel Wilson, searched Google for scuba diving training facilities in Missoula, Montana and found listings for Gull Dive Center.

131. Plaintiff, Joel Wilson, contacted Gull Dive Center and he enrolled in three PADI training classes: Advanced Open Water, Dry Suit Specialty Diver and High-Altitude Specialty Diver.

132. Plaintiff, Joel Wilson, paid approximately $750 to Gull Dive for the PADI scuba diving training courses.

133. Prior to beginning these classes, Plaintiff, Joel Wilson, purchased a used dry suit from a listing he found on Craig's List. The dry suit came with a low-pressure inflator hose that fit the connector on the inflator button of the dry suit.

134. After purchasing the dry suit, Plaintiff, Joel Wilson, met Debbie Snow and Seth Liston from Gull Dive at Coopers Lake, northeast of Missoula, in late September, 2020, for his first instructional dive as part of his PADI scuba training. Debbie Snow was acting as Wilson's scuba instructor. He was told that Seth Liston was an "Instructor in Training."

135. Even though Plaintiff, Joel Wilson, was diving in a dry suit for the first time at Coopers Lake, he never received an orientation to dry suit diving in a swimming pool or confined water environment before making this open water dive.

136. Plaintiff, Joel Wilson, Snow and Liston made five dives in Coopers Lake, at an altitude of 4,598 feet, in late September 2020. The deepest dive was to 43 feet, for a duration of 12 minutes. The longest dive lasted 18 minutes, to a depth of 27 feet.

137. One week after the dives at Coopers Lake, Plaintiff, Joel Wilson, first received a confined water dry suit orientation in a YMCA swimming pool in Missoula, Montana. During this orientation, Plaintiff, Joel Wilson, made three short and shallow dives in the pool in his dry suit, the longest being to a depth of 10 feet for a duration of 15 minutes. Once again, Debbie Snow was acting as his scuba instructor.

138. On Sunday, October 25, 2020, Plaintiff, Joel Wilson, traveled to Seeley Lake, Montana, at an altitude of 4,019 feet, to continue his training with Gull Dive. The temperature at the beginning of the day was -5 degrees Fahrenheit, with a wind chill of -15 degrees Fahrenheit, and the ground was blanketed with snow and ice. The high temperature at Seeley Lake on that day was 18 degrees Fahrenheit.

139. Plaintiff, Joel Wilson, met Linnea Mills for the first time at Seeley Lake. Debbie Snow, Seth Liston and Nathan Dudden were also present.

140. Due to the extreme cold, the divers' time in the water at Seeley Lake was very short, less than five minutes, and the dive(s) were too shallow to record on Plaintiff, Joel Wilson's dive computer.

141. Plaintiff, Joel Wilson, and Debbie Snow were wearing dry suits at Seeley Lake, while Seth Liston, Nathan Dudden and Linnea Mills were wearing wet suits. Due to the cold, Nathan Dudden did not dive, so he gave his wet suit top to Linnea to use as extra insulation.

142. As with Plaintiff, Joel Wilson's prior dives with Gull Dive, Debbie Snow was acting as his scuba instructor, while Seth Liston was acting as Snow's assistant.

143. Plaintiff, Joel Wilson, was supposed to travel to Lake McDonald on November 1, 2020 to participate in additional training dives with Gull Dive, but his car had a flat tire and he was unable to complete the trip. Consequently, Plaintiff, Joel Wilson, was not present at Lake McDonald on November 1, 2020 and I did not participate in the dives conducted there on that day.

144. Plaintiff, Joel Wilson, has not engaged in scuba diving since October 25, 2020, and he did not complete his training with Gull Dive.

145. Despite not completing his training and not being present for the deep dive at Lake MacDonald, Plaintiff, Joel Wilson, was issued two PADI scuba diving certifications in January 2021: PADI Dry Suit Specialty Diver and PADI Advanced Open Water. The Certifying Instructor on these certifications is listed as Debra Snow.

146. In accordance with PADI procedures and its instructions to Members, Plaintiff, Joel Wilson, was never given a copy of the PADI Training Standards for Advanced Open Water, Dry Suit Specialty Diver and High-Altitude Specialty Diver. Consequently, Plaintiff, Joel Wilson, was unaware of the minimum skills required to earn the PADI Advanced Open Water, Dry Suit Specialty Diver and High-Altitude Specialty Diver certifications.

147. Plaintiff, Joel Wilson, also was unaware of the minimum skills required for a diver to be able to safely dive in a dry suit, at high altitude, and to a depth of 100 feet, because of the substandard training provided to him by the Gull Dive Defendants.

148. Despite never receiving training that conformed to PADI's Training Standards, and never satisfying any of the minimum standards necessary to earn PADI certifications and to dive safely, Plaintiff, Joel Wilson, was issued two advanced level scuba certifications by PADI and Debra Snow in January 2021: PADI Advanced Open Water and Dry Suit Specialty Diver.

149. But for the filing of this lawsuit, Plaintiff, Joel Wilson, never would have known that he received substandard scuba diving training from Debra Snow, Gull Dive and PADI.

Linnea Mills' Initial Interaction with the Defendants

150. In October 2020, Linnea was recruited to participate in a course of scuba instruction to be offered by Gull Dive.

151. On or about October 18, 2020, Linnea contacted Gull Dive to inquire about the availability of an "Advanced class" in scuba instruction.

152. On that day, Snow, on behalf of Gull Dive, responded to Linnea, stating:

> *Hi Linnea.*
> *We actually are starting an advanced class next Sunday. We will have to do two weekends because we have to do four dives. The next advanced class will not be until February of next year. We are normally closed on Mondays but if you want to take the class we can meet you down there so you can get started on the eLearning or get the book, whichever you prefer. The price is $250.00 and the book or eLearning is included but must be finished before class.*
> *Let me know as soon as possible so I know wether to meet you tomorrow. Thanks*
> *Debbie*

153. Later that same evening, Linnea responded:

> *Hi Debbie, thanks for getting back to me. I am free to meet whenever is convenient for you and do the payment and get the book.*
> *Is gear included?*
> *Just let me know what time. Thanks!*
> *Linnea*

154. The following day, October 19, 2020, Liston, on behalf of Gull Dive, responded to Linnea's inquiry to Snow from the night before, using the same email address: scuba@gbrv.net. Liston stated:

> *Hi Linnea, thank you for the response! My day is open today so feel free to come into the shop before 5:30pm. Normally you need to have your own gear for the advanced open water class, but since we don't have any other classes going on next weekend we would be happy to provide you with gear. If you don't mind texting me when you're thinking about coming in, I will be in and out of the shop today. If you have any questions feel free to give us a call or email.*
> *Best Regards, Seth Liston*

155. Liston, Snow and Gull Dive failed to disclose to Linnea that the "advanced class" they were "starting" "next Sunday" was actually a PADI Dry Suit Diver course that was already in progress, and the other students in the class had previously undergone an orientation to dry suit diving in a local swimming pool.

156. On or about October 19, 2020, in reliance upon her communications with Snow and Liston, Linnea enrolled in a PADI Advanced Open Water scuba diving training course offered by Gull Dive.

157. At the time she enrolled in the Advanced Open Water scuba diving training course, Linnea had participated in only five open water scuba dives in her lifetime: four dives in North Carolina in July 2017 to obtain her PADI Open Water diver certification, and one dive on the Great Barrier Reef in Australia

in 2018. Each of these scuba dives was made in warm, shallow water (65 feet or less), at sea level, for a maximum duration of approximately 25-30 minutes. None of these dives had involved diving in a dry suit

Linnea's Participation in the "Advanced" Training Class

158. On October 19, 2020, Liston, on behalf of Gull Dive, confirmed that Linnea was a certified scuba diver. At that time, Linnea advised Liston that she had a PADI Open Water diving certification – the basic entry-level scuba diving certification requiring only four open water dives to complete – and her last dive had been "a couple of years" ago in Australia.

159. Upon information and belief, when Linnea relayed her diving experience to 22-year-old Liston, Liston failed to inform Linnea that his highest level of certification was Junior Open Water, an entry-level scuba diving certification for students aged 10-14 years, requiring only four open water dives to a maximum depth of 60 feet.

160. From the information Linnea provided to Liston on October 19, 2020, Liston and the Gull Dive Defendants knew or should have known that Linnea had very little scuba diving experience, no experience diving in cold water or cold weather, no deep diving experience, no recent diving experience, and no experience diving in a dry suit or at high altitude.

161. On October 24, 2020, Linnea visited Gull Dive to try on rental equipment for her Advanced Open Water training dives. At this time, pursuant to the PADI RRA Membership Standards, the Gull Dive Defendants had a duty to inquire about Linnea's prior scuba diving experience, measure Linnea's body proportions, determine the proper equipment and dive plans to ensure that Linnea could safely complete her training dives, and arrange for complete and properly fitting equipment to be supplied to Linnea for her PADI Advanced Open Water course.

162. On or about October 24, 2020, the Gull Dive Defendants rented a complete set of scuba diving gear to Linnea, including a regulator, buoyancy compensating device ("BCD"), tanks, weights, full body wet suit, hood, gloves and booties.

163. As of October 24, 2020, the Gull Dive Defendants knew or should have known that Linnea was an inexperienced scuba diver with very little practical experience and no experience at all with high altitude diving, night diving, fresh water diving, cold weather diving, diving equipment necessary for diving in cold water, dry suits, full body wetsuits, diving with thermal undergarments, ballast, buoyancy compensation with additional thermal protection, knowledge of additional regulator attachments needed for dry suit diving, and related scuba gear.

164. According to PADI Training Standards, the Gull Dive Defendants had a duty to provide proper pre-dive orientation, instruction, and equipment orientation to Linnea before they took her on scuba dives at high altitude in late fall in western and northern Montana, where the onset of winter conditions had already occurred.

165. On Sunday, October 25, 2020, the Gull Dive Defendants conducted the first of Linnea's training dives at Seeley Lake, Montana, at an altitude of 4,019 feet. The temperature at the beginning of the day was -5 degrees Fahrenheit, with a wind chill of -15 degrees Fahrenheit, and the ground was blanketed with snow and ice. The high temperature at Seeley Lake on that day was 18 degrees Fahrenheit.

166. PADI's Training Standards contain no prohibition against training inexperienced students in sub-zero temperatures, snow and ice.

167. The dive at Seeley Lake was Linnea's sixth dive in her lifetime, and she wore two wetsuits to stay warm.

168. Upon information and belief, the Seeley Lake dives were conducted by Snow, a newly-certified PADI Instructor. Snow was assisted by Liston, acting in the role of a "Divemaster in Training," and as an employee working for Gull Dive.

169. The Gull Dive Defendants combined at least two different training courses into one for the dives at Seeley Lake: Linnea's Advanced Open Water course and a Dry Suit Diver Specialty course for Joel Wilson.

170. Instructor supervision for these training courses was provided by Snow, with the assistance of Liston, whose highest level of certification was Junior Open Water.

171. Snow is a former hairdresser who received her initial PADI Instructor certification in Key Largo, Florida in December 2019. Snow returned to Key Largo, Florida in January 2020 to receive additional PADI Instructor credentials, which did not include certifications to teach PADI's Altitude Diver, Ice Diver or Dry Suit Diver Specialty courses.

172. At all times material hereto, Defendant, Debbie Snow, and Liston, acted within the course and scope of their agency with and/or employment by Defendants, Gull Dive, David Olson and Jeannine Olson, and in furtherance of said Defendants' interests.

173. At all times material hereto, Defendant, Debbie Snow, and Liston, acted with the knowledge, permission and under the direction of Defendants, Gull Dive, David Olson and Jeannine Olson.

174. During the dive on October 25, 2020, Snow wore a dry suit, as did student Joel Wilson. Liston wore a wetsuit, as did Linnea. Due to the extreme cold,

student Nathan Dudden elected not to dive. Instead, Dudden, whose scuba total diving experience was limited to a very small number of dives in warm water, gave his wetsuit to Linnea to wear on top of the wetsuit she rented from the Gull Dive Defendants to help Linnea stay warm.

175. After the completion of the Seeley Lake dive on October 25, 2020, the next scheduled day of training dives was to be on November 1, 2020.

176. At some point between October 25, 2020 and October 29, 2020, either Liston or Snow, or both, suggested to Nathan Dudden and Linnea that they should wear a dry suit during the training dives on November 1, 2020.

177. On the morning of October 29, 2020, Defendant, Jeannine Olson, hired Nathan Dudden as an employee of Gull Dive.

178. On the morning of October 29, 2020, Defendant, Jeannine Olson, suggested to Nathan Dudden that the group who would be diving at Lake McDonald on November 1, 2020 stay at her cabin at Lake Mary Ronan after the training dives at Glacier National Park.

179. Prior to November 1, 2020, Linnea had never worn a dry suit while scuba diving, she was not certified to use a dry suit while scuba diving, she did not own or have access to a dry suit for scuba diving, and she was unfamiliar with how to safely use a dry suit while scuba diving.

180. Prior to November 1, 2020, Nathan Dudden had never worn a dry suit while scuba diving, he was not certified to use a dry suit while scuba diving, he did not own or have access to a dry suit for scuba diving, and he was unfamiliar with how to safely use a dry suit while scuba diving.

181. Similarly, prior to November 1, 2020, Seth Liston had never worn a dry suit while scuba diving, he was not certified to use a dry suit while scuba diving, he did not own or have access to a dry suit for scuba diving, and he was unfamiliar with how to safely use a dry suit while scuba diving.

182. On October 31, 2020, Nathan Dudden paid Defendant, Gull Dive, $200 for one course of scuba training.

183. Prior to and on November 1, 2020, the Gull Dive Defendants had a duty to assess whether Linnea, Seth Liston and Nathan Dudden were competent and sufficiently trained, certified and skilled to use a dry suit while scuba diving.

184. Rather than rent a dry suit to an uncertified Linnea, in violation of the PADI RRA Membership Standards, the Gull Dive Defendants facilitated the sale of a used dry suit to Linnea from a private seller, Defendant, Heidi Houck.

185. Sometime between October 25, 2020 and October 29, 2020, Liston called Houck to ascertain whether she and her husband were in possession of two scuba diving dry suits that they would be willing to sell to Nathan Dudden and Linnea.

186. Sometime between October 25, 2020 and October 29, 2020, Liston and/or Snow, or both, provided Houck's contact information to Nathan Dudden and Linnea.

187. Defendant, Debbie Snow, encouraged her students, Nathan Dudden and Linnea, to acquire dry suits prior to the training dives on November 1, 2020.

188. At all material times, Snow knew that Nathan Dudden and Linnea were not certified or trained to safely use a dry suit for scuba diving.

189. At all material times, Defendants, David Olson and Jeannine Olson, knew or should have known that Nathan Dudden and Linnea were not certified or trained to safely use a dry suit for scuba diving, and their employees, Liston and Snow, were not qualified to safely teach Nathan Dudden and Linnea to scuba dive while wearing dry suits.

190. At all material times, Houck, knew or should have known that Nathan Dudden and Linnea were not certified or trained to safely use a dry suit for scuba diving.

191. Alternatively, Houck, failed to confirm that Nathan Dudden and Linnea were certified and/or trained to safely use a dry suit for scuba diving, before she sold two used dry suits to Nathan Dudden and Linnea.

192. On the evening of October 29, 2020, Houck, sold two used dry suits to Nathan Dudden and Linnea at her home in Missoula. Both dry suits were Brooks dry

suit custom made for their original owners, Heidi Houck and her husband, Kevin Houck.

193. Dry suits used for scuba diving come equipped with an inflator valve so the diver can add air to the suit as she descends, thereby eliminating suit squeeze as the air inside the dry suit is crushed by the increasing weight of the water surrounding the diver.

194. There are three common types of Quick Disconnect ("QD") connections, DIN or "International," CEJN and the Buddy connector, used for dry suit inflator valves, but there is no universal QD connector. Instead, there are different lengths and designs of stems used in the connector, and each is designed to work with a certain type of valve. Consequently, dry suit manufacturers routinely provide a hose equipped with the appropriate QD connector when they sell a dry suit to their customers, so the user can properly connect the dry suit inflator valve to a hose connected to their regulator, which is then connected to the diver's air tank.

195. The PADI Dry Suit Diver Specialty Course Manual briefly mentions: "With only a few exceptions, the connection between the [dry suit inflator] valve and the hose is the same as the one on your BCD." However, the PADI Advanced Open Water Manual says nothing about the different types of connectors used for dry suit inflator valves.

196. Brooks dry suits are manufactured with Si-Tech inflator valves, which are equipped with either International or CEJN connectors, depending on which connector is specified by the customer. Brooks then provides an inflator hose with the appropriate QD connector to the customer.

197. Upon information and belief, Defendant, Heidi Houck, did not provide the inflator hose that came with the smaller Brooks dry suit when she sold the suit to Linnea on October 29, 2020.

198. Defendant, Heidi Houck, also failed to advise or warn Linnea that the dry suit could not be used safely, because the dry suit could not be inflated without being connected to a hose equipped with the appropriate QD connector.

199. Indeed, Defendant, Heidi Houck, never even met with Nathan Dudden or Linnea when she sold them the dry suits. Instead, she had her brother-in-law meet with Nathan and Linnea to complete the transaction on October 29, 2020.

200. Nathan Dudden purchased the dry suits from Heidi Houck on the same day he was hired by Jeannine Olson to work for Gull Dive, October 29, 2000. Dudden paid Houck $200 in cash for each dry suit and then Linnea paid Dudden $200 via Venmo.

201. Accordingly, Dudden's act of purchasing a dry suit for use by Linnea, a student in a scuba diving training class offered by Gull Dive, with the active encouragement and assistance of other employees of Gull Dive, is attributable

to Defendant, Gull Dive, since Dudden was acting within the scope of his employment with Defendant, Gull Dive at the time of the transaction.

202. PADI's Training Standards require Instructors and Divemasters to "[o]rient divers to dry suits in confined water before divers use them for the first time in open water."

203. Prior to November 1, 2020, the Gull Dive Defendants, and particularly Snow and Jeannine Olson, knew that Linnea had not received the required orientation to dry suits in a confined water environment.

204. Prior to November 1, 2020, the Gull Dive Defendants, and particularly Snow and Jeannine Olson, knew that Linnea's only scuba diving experience in the past two years was one short, shallow dive in Seeley Lake while wearing two wetsuits, and her lifetime scuba diving experience consisted of making only six dives – five of which were in shallow, warm, salt water at sea level.

205. Despite having this knowledge, the Gull Dive Defendants, and particularly Snow, encouraged Linnea to acquire a dry suit from Houck, and to use it for her training dives on November 1, 2020. The Gull Dive Defendants even went so far as to offer to procure long underwear for Linnea to wear under her dry suit.

206. Prior to and on November 1, 2020, the Gull Dive Defendants, and particularly Snow and Jeannine Olson, who were aware of the dives planned for Lake

McDonald, possessed the authority to postpone, cancel or terminate the upcoming training dives due to Linnea's inexperience and her lack of preparation for the dives, but none of the Defendants exercised such authority.

207. Indeed, prior to and on November 1, 2020, the Gull Dive Defendants, and particularly Snow and Jeannine Olson, knew that the majority of the divers who were supposed to wear dry suits for the dives at Lake McDonald had received no confined water orientation to dry suit diving, and further that Snow was not qualified to teach dry suit diving or to supervise inexperienced divers wearing dry suits.

208. Each of the Gull Dive Defendant possessed the authority to postpone, cancel or terminate the upcoming training dives due to the dive team's inexperience and lack of preparation for the dives, but none of the Defendants exercised such authority.

209. Prior to and on November 1, 2020, the Gull Dive Defendants knew that Linnea would be using a dry suit during the training dives on November 1, 2020, and they had a duty, at the very least, to ensure that the equipment they rented to Linnea was compatible with the dry suit they encouraged her to buy from Houck.

210. At a minimum, this duty included inspecting the inflator valve on the Brooks dry suit and ensuring that the regulator the Gull Dive Defendants rented to

Linnea on November 1, 2020 was equipped with an appropriate connector, which would ensure that the dry suit could be connected to Linnea's regulator and the suit could be inflated underwater.

211. Moreover, the Gull Dive Defendants knew or should have known that Linnea had never received the required confined water orientation to the dry suit they knew she was buying, and therefore she was not qualified to make open water dives in a dry suit.

212. Pursuant to the PADI RRA Membership Standards, the Gull Dive Defendants had a duty to ensure that Linnea was appropriately certified for noninstructional dives – in other words, that she was certified to use a dry suit while other students in the water during her Advanced Open Water course were taking a Dry Suit Diver Specialty course.

213. Pursuant to the PADI RRA Membership Standards, the Gull Dive Defendants had a duty to provide modern dive equipment for instruction and for rent to Linnea that was compatible and safe to use with the dry suit Linnea purchased from Houck.

214. On the morning of October 31, 2020, Linnea sent an email to Snow inquiring about the plan for the training dives the next day, November 1, 2020. Linnea stated: "*Hey Debbie! what's the plan for tomorrow? I have not received an email*."

215. Snow responded to Linnea:

> *Oh I sent and email out about three days ago. I wonder who else didn't get it. I haven't heard from anyone[.] Let me talk to Seth and get back to you[.] Seth is going to call you. I have a class right now. The basic plan is we are meeting at 11 at the ship and spending the night. Did you get a dry suit?*

216. The email Snow was referring to was sent on October 27, 2020 to Nathan Dudden, Joel Wilson, and one other recipient. The email, entitled "Dry Suit Dives," stated:

> *Hello everyone. I hope you are prepared for this. The dry suit class is going ahead on schedule to Lake McDonald. We will be doing 2 dives. Some of us are spending the night so we can do a night dive. There is a place in Columbia Falls called Meadow Lake Resort that is very reasonable.*
>
> *We had to change the plan about the petrified forest due to the snow. We will not be able to get into the campground but I know we can at the Lake McDonald lodge.*
>
> *Prepare for cold weather. Please bring extra undergarments, extra gloves and hoods if you have them. Nothing worse than putting on wet cold gloves.*
>
> *We will meet at Gull at 11 am. I will not be able to haul all the tanks up there so someone will need to grab some. We can do that on Sunday/ Plus any extra equipment anyone forgot. If there are any issues or questions let me know at the shop at 406 549-[XXXX] or my cell phone at 406 880-[XXXX].*
> *See ya all on Sunday*
>
> *Thanks Debbie*

217. Nathan Dudden forwarded the "Dry Suit Dives" email to Linnea on October 31, 2020.

218. Later on October 31, 2020, Linnea advised Snow: "*I got a dry suit thankfully. Do you think I could get a ride again tomorrow?*"

219. Snow never advised Linnea that she should take a Dry Suit Diver Specialty course before she could safely use a dry suit. Snow also never advised Linnea that she was required to participate in a confined water orientation to the dry suit before she could safely use the dry suit in open water.

220. Snow never advised Linnea that she was required to visit Gull Dive with the dry suit so the Gull Dive Defendants could reconfigure Linnea's rental gear to be used safely with the dry suit. Among other things, Linnea would need a larger BCD, more weights, an inflator hose running from her regulator to the dry suit's power inflator button, a longer weight belt, and possibly other equipment.

221. Instead, Snow simply advised Linnea that she would give Linnea and Nathan Dudden a ride to Lake McDonald, she would pick Linnea up in the morning, and: "*I also have an undergarment you can wear but bring wool undergarments also if you have them*."

222. On the morning of Sunday, November 1, 2020, Snow picked up Linnea at her apartment and drove her to Gull Dive. Once there, the Gull Dive Defendants

never inspected Linnea's dry suit. The Gull Dive Defendants also failed to reconfigure Linnea's rental gear to be used safely with the dry suit before they departed for Lake McDonald.

223. Significantly, had the Gull Dive Defendants inspected Linnea's dry suit on the morning of November 1, 2020, they would have noticed that it was missing a hose to connect the power inflator on the dry suit to the regulator attached to Linnea's air tank.

224. Without this hose, the dry suit cannot be inflated, thus preventing the diver from being squeezed by increasing water pressure as the diver descends on their training dive.

225. Without this hose, the dry suit cannot be operated safely by the diver, and especially not by an inexperienced diver who has not had any orientation to the dry suit or training in the safe use of the dry suit.

226. Without a means to inflate the dry suit, a diver has no way to accurately predict their buoyancy on the surface or underwater, or the effect that not having a means to inflate the dry suit will have on their dive. Among other things, the diver cannot accurately predict the impact cold water will have on their body as they are being squeezed and the insulating property of the dry suit and undergarments is diminished; and, although air inside the dry suit being squeezed by outside water pressure creates negative buoyancy, it is impossible

for the diver to predict or anticipate how much additional negative buoyancy will be created as the diver descends.

227. Had the Gull Dive Defendants inspected Linnea's dry suit on the morning of November 1, 2020, they would have noticed that the zipper on the rear of the dry suit was sticking and incapable of being closed all the way. Consequently, a two-inch gap existed between the final point at which the zipper could travel and the fully closed position.

228. Had the Gull Dive Defendants inspected Linnea's dry suit on the morning of November 1, 2020, they would have noticed that the open zipper would allow cold water to enter the dry suit, flooding it, soaking Linnea's thermal undergarments and creating, at best, a distraction for the diver and, at worst, the potential for hypothermia and the loss of buoyancy and mobility of the diver.

229. Rather than encourage and facilitate Linnea's use of a dry suit on November 1, 2020, the Gull Dive Defendants should have recognized – and, indeed, they had a duty to recognize – that it was not safe for Linnea to use a dry suit during her Advanced Open Water training dives, and especially not an unfamiliar, inoperable dry suit.

230. On November 1, 2020, Linnea was subject to the direction and control of Defendant, Snow, acting on behalf of, and under the direction and supervision

of, Defendants, Gull Dive, David Olson and Jeannine Olson; and with the implied or express authority of Defendants, Gull Dive, David Olson and Jeannine Olson.

231. Lake McDonald is located 145 miles north of Missoula, Montana in Glacier National Park. The Gull Dive Defendants arranged for their students to travel to Lake McDonald despite it being entirely unsuitable for the type of training the students were capable of.

232. Lake McDonald is situated at an altitude of 3,153 feet, nestled in between several high mountain ranges, including the Lewis and Livingston Ranges to the west and north (with Edwards Mountain at 9,072 ft. immediately to the east), and the Apgar Mountains to the west (topped by Huckleberry Mountain at 6,593 ft.).

233. Given the high altitude of Lake McDonald, the ambient air pressure on its surface is 13.06 pounds per square inch ("psi").

234. Lake McDonald is shaped like a bathtub. At the dive site selected by the Gull Dive Defendants, the bottom slopes gently downward to a depth of 6-8 feet on a shallow ledge close to shore. Then, the lake bottom drops steeply – almost vertically – to a depth of 394 feet, before sloping gradually again to 430 feet.

235. The site the Defendants selected for this training dive was a short distance south of Lake McDonald Lodge, at the Snyder Creek alluvial fan, on the northeast shore of Lake McDonald. The dive site was at the deepest part of the lake.

236. Due to the ambiguous and confusing definition of "confined open water" in PADI's Training Standards, an inexperienced or "creative" PADI Instructor could mistake the shallow slope near the shore of Lake McDonald as fitting within PADI's definition of "confined open water."

237. The Lake McDonald Lodge was closed for the winter season by November 1, 2020.

238. There is no cell phone service outside the Lake McDonald Lodge, and the Lodge is surrounded by the vast wilderness of Glacier National Park. The closest community is West Glacier, Montana, located more than 11 miles away.

239. After meeting at Gull Dive on the morning of November 1, 2020, Linnea, Defendant Snow, Liston, Dudden, and the other student divers, traveled three hours to Glacier National Park to complete their training dives.

240. During the three-hour drive from Gull Dive to Lake McDonald, Defendant, Debbie Snow, did not conduct any knowledge reviews of verbal dive training with her two students, Nathan Dudden and Linnea.

241. Rather than arrive at the Lake McDonald Lodge at 2:00 p.m. to begin diving, as planned and communicated to the divers days earlier, the dive party did not arrive until closer to 4:00 p.m.

242. Sunset in Glacier National Park on November 1, 2020 was at 5:14 p.m., with the sun falling behind the mountains to the west southwest and creating dusk well before that time.

243. When the dive party arrived at the Lake McDonald Lodge, they were met by Bob, Shannon and E.G. Bob and E.G. were students in the Dry Suit Diver Specialty course who had completed their confined water dry suit orientation with the Gull Dive Defendants one month earlier at an indoor swimming pool.

244. At no time prior to or on November 1, 2020, did Linnea complete or return any form of medical statement, liability release and assumption of risk agreement, non-agency agreement, statement of understanding of safe diving practices, and/or statement of understanding and student learning agreement to the Gull Dive Defendants.

245. As the students prepared to enter the water for their training, Snow repeatedly asked Shannon if she wanted to use the extra scuba diving equipment in Snow's vehicle to go scuba diving, even though Shannon is not a certified scuba diver and had no prior experience scuba diving.

246. This extra diving equipment included at least one dry suit, and an appropriately fitted hose connected to a regulator. Snow eventually gave this equipment to Seth Liston to use, even though Liston had no training or experience diving in a dry suit.

247. Although they chose Lake McDonald as the site for these PADI training dives, the Gull Dive Defendants did not have a commercial use authorization ("CUA") issued by the United States National Park Service ("NPS") for Glacier National Park.

248. A CUA allows an individual, group, company, or other for-profit entity to conduct commercial activities and provide specific visitor services, including providing scuba diving training classes, within a national park.

249. To obtain a CUA, the applicant must state a use that is consistent with the park's purpose, management plans, policies, and regulations; and the CUA holder must agree to be familiar with and adhere to the park's purpose, management plans, policies, and regulations.

250. Had the Gull Dive Defendants obtained a CUA issued by the NPS for Glacier National Park, they would have been aware of the closure of park facilities, contact information for park personnel, the unavailability of emergency services in their diving location, and various other information necessary to safely plan the scuba training dives on November 1, 2020.

251. The scene on the beach at the Lake McDonald Lodge was chaotic as the divers prepared for their training dives. There was no briefing covering topics such as the dive objectives for the combined training classes, safety or care for the environment. There also was no supervised equipment assembly, practice using the divers' rental and personal equipment on land, or pre-dive safety check of the divers' equipment, comfort or preparedness.

252. Bob and E.G. entered the water before the rest of the dive group. Once in the water, they waited nearly a half an hour before they were finally joined by Snow.

253. Snow entered the water before her remaining students, including Linnea. Those students continued to don equipment for their training dives, assisted by Dudden and Liston.

254. As Linnea was donning her Brooks dry suit, Nathan Dudden assisted her in closing the back zipper, which Linnea was unable to reach. However, without Linnea's knowledge, the zipper was not closed completely, leaving a 1-2 inch gap where cold water could flow freely into the dry suit upon immersion.

255. On November 1, 2020, Linnea was wearing a Scubapro Glide BCD, which was rented to her by the Gull Dive Defendants. The BCD had 29.2 lbs. of lift. The Glide BCD holds 20 lbs. of weights in two pockets secured by buckles on either side of the diver's abdomen, plus two additional pockets for one

small weight each on the back of the BCD. The user manual for this BCD states: "WARNING - practice fastening and releasing the weight pockets several times before diving."

256. Linnea was not provided with the user manual for the BCD, and she was unaware of the manufacturer's warnings. Moreover, she was never instructed to "Practice fastening and releasing the weight pockets several times before diving."

257. While Nathan Dudden was assisting Linnea don her equipment, he placed 24 pounds of lead weights in the zippered pockets on the front of Linnea's BCD, not in the separate, integrated weight pockets meant to hold the lead weights so they could be easily removed in the event of an emergency.

258. In fact, at the time he was assisting Linnea prepare for her dive, Dudden did not know what an integrated weight system on a BCD was.

259. As the students were prepared for their training dives on the shore of Lake McDonald, Defendant, Debbie Snow, Nathan Dudden and Seth Liston, discovered for the first time that the low-pressure inflator hose on the Gull Dive regulator they had rented to Linnea did not have a connector that was compatible with the male stem on the Brooks dry suit's inflator valve. Consequently, the low-pressure inflator hose could not be attached to dry suit's inflator valve, and the dry suit could not be inflated.

260. Rather than cancel Linnea's dives because she was not properly equipped to perform the training dives and safely operate her dry suit, Defendant, Debbie Snow, simply advised Linnea that she could enter the water without an operational dry suit and use her BCD as her sole means of buoyancy control.

261. In accordance with the Defendant's instructions, Linnea entered the water with an inoperable and unsafe dry suit. *See* Fig. 1. The time was approximately 5:00 p.m., 14 minutes before sunset.

Fig. 1 – Linnea Mills on the surface, Nov. 1, 2020, with disconnected dry suit inflator

262. Although Linnea was wearing a dry suit in the water, she was not qualified to take part in the dry suit diving portion of the training. Linnea was not a certified or qualified dry suit diver, she had no experience diving in deep water, and she was incapable of assessing risk or making an informed decision to take part in that dive. Despite this, the Gull Dive Defendants made no effort to ensure that Linnea was appropriately certified to participate in this dive, which was a noninstructional dive for her, because she was not participating in the PADI Dry Suit Specialty course.

263. Indeed, there is no evidence that the Gull Dive Defendants Snow took any steps whatsoever to ensure that the training dives were conducted safely, a duty that Defendants owed not only to Linnea, but also to Bob, E.G., Liston and Dudden.

264. Thereafter, Liston entered the water with Nathan Dudden, leaving Shannon Gentry on the shore. Even though both divers were wearing dry suits for the first time, the two divers did not join the Dry Suit Diver instructional dive Snow was conducting with Bob and E.G., in the presence of Linnea. Instead, Snow instructed the two novice dry suit divers to go off an "do their own thing."

265. At the time the Gull Dive Defendants entered the water just south of the Lake McDonald Lodge at approximately 5:00 p.m. on November 1, 2020, they knew or should have known that:

a. the Gull Dive Defendants had no CUA issued by the NPS;

b. no surface marker buoys were being used by the dive group;

c. neither Defendant Snow nor Linnea had surface signaling devices;

d. at least three of the students, E.G., Linnea and Nathan Dudden, were not equipped with underwater dive lights;

e. there was no dive plan communicated to the students;

f. there were no pre-dive safety briefings given to the students;

g. there were no pre-dive equipment safety checks conducted by the Gull Dive Defendants, on the students' dive equipment;

h. there was no pre-dive practice with the operation of the students' rental scuba equipment, including practice fastening and releasing the weight pockets in the students' BCDs and practice inflating and deflating dry suits;

i. there were no qualified individuals present to provide dive training support to the Gull Dive Defendants, Linnea or the other students;

j. no safety and emergency contingency protocols had been put in place;

k. the Gull Dive Defendants had no surface support for the contemplated training dives;

l. no emergency and evacuation protocols had been put in place;

m. there were no emergency equipment or personnel nearby to effect a rescue response;

n. there was no plan for evacuation to a nearby medical facility;

o. the closest hospital was nearly 35 miles and a one-hour drive away;

p. the nearest town or operable phone was at least 11 miles and a 30-minute drive away;

q. there was no possible way for the Gull Dive Defendants or students to call for assistance from Lake McDonald in the event of an emergency; and

r. the divers had no local support in the event of an emergency.

266. On November 1, 2020, Bob Gentry was wearing a GoPro camera on his wrist. The camera captured video and audio of all of E.G.'s first and only training dive, and the final seven minutes of the second 11-minute dive with Seth Liston, Debbie Snow, Nathan Dudden, Bob and Linnea.

267. On the first dive, which lasted approximately six minutes, Snow can be seen dragging Plaintiff E.G., from shallow water, down a sloping ledge to a depth of approximately 15 feet, and back to the shallow area.

268. Throughout the entire dive, 14-year-old Plaintiff, E.G., is fearful, poorly positioned, unable to operate her scuba equipment or control her buoyancy, and indicating that she is having trouble clearing her ears.

269. At one point, Snow positioned herself behind E.G., holding on to the yoke at the top of E.G.'s scuba cylinder, and dragged her backward into shallow water. Once the student and Instructor are in shallow water, Snow reached to the bottom to retrieve rocks, which she stuffed into the pockets of E.G.'s dry suit to make her negatively buoyant.

270. After placing rocks in E.G.'s dry suit pockets, Snow led E.G. by the hand into deeper water. The instructor and student were accompanied by Linnea, but Snow appeared to be unaware of Linnea's presence. Meanwhile, Bob remained on the surface while Seth Liston and Nathan Dudden swam off by themselves into deeper water.

271. After a little more than five minutes, Snow returned to shore with E.G. and ended the dive. Although the training dive was unsuccessful, Snow told E.G. that she could participate in a night dive after the group ate dinner. Snow failed to notice that Plaintiff E.G. was fearful, distressed, unable to perform any skills, cold and uncomfortable throughout the entire dive.

272. Snow also failed to notice that whatever air was present inside Linnea's dry suit had been squeezed out when Linnea descended to a depth of approximately 15 feet with Snow and E.G. In fact, Snow never acknowledged Linnea's presence or checked on her at all during the dive or afterward.

273. The dive started at 5:08 p.m., six minutes before sunset.

274. On the second dive, Snow led her students into deep water. Seth Liston and Nathan Dudden were paired as a buddy team, while Linnea and Bob were not.

275. Only three divers had lights on the second dive, Defendant Snow, Seth Liston, and Bob.

276. By five minutes into the dive, Linnea was at a depth of approximately 60 feet, in gathering darkness, unable to control her buoyancy, and standing upright on a small ledge on the bottom. Seth Liston was positioned next to Linnea, close enough to touch her, while Nathan Dudden was four to five feet above Linnea.

277. At a depth of 59 feet, the water pressure on Linnea's body would be 38.5 psi, almost triple what she experienced at the surface. At this point, Linnea was experiencing suit "squeeze," which would have been painful. She was visibly exhibiting the symptoms of "squeeze," including the inability to breathe without restriction, to kick freely, and to move her arms freely. She was obviously having difficulty breathing, exhaling frequently and sharply. It is likely that cold water was also flowing in through the gap in the zipper on the back of her dry suit, soaking her thermal undergarments.

278. Although Seth Liston and Nathan Dudden were close enough to touch Linnea, they did not render any assistance. Instead, they left her on the bottom, alone, in the darkness without a light, and in distress.

279. Linnea attempted to follow Liston and Dudden as they ascended but, even though Linnea was kicking strongly, she was unable to ascend.

280. At this time, Snow and Bob were positioned ten feet above Linnea, with Bob approximately 25-30 feet away.

281. Although Snow swam directly over Linnea while she was visibly in distress, and she looked down toward Linnea, she failed to pay sufficient attention to Linnea and failed to notice that Linnea was in distress and needed assistance. *See* Fig. 2.

Fig. 2 – Linnea Mills being left on the sloping bottom, in distress

282. Instead of helping Linnea, Snow swam to Bob, who was at the same depth, communicated with him about using his compass and E.G.'s inability to clear her ears, and then proceeded to use her own compass.

283. After Snow communicated with Bob, she swam away and down toward Linnea, never looking at Linnea but instead remaining fixated on her compass.

284. As Snow approached her, Linnea was breathing rapidly and hard, still kicking toward the surface but not ascending. She searched for assistance but she was unable to communicate with the other divers.

285. After more than one minute of swimming toward Linnea, Snow crossed directly in front of Linnea, but Snow never acknowledged or checked on Linnea. Instead, Snow remained fixated on her compass, which she was holding extended in her right hand, as she passed by Linnea.

286. As Snow passed by, Linnea signaled and tried unsuccessfully to attract her attention. Now, Linnea, unable to attract her Instructor's attention, looked up to Bob and signaled urgently to him that she was in distress.

287. Seeing Linnea's signal that she needed help, Bob immediately went to her aid, swimming down and past Snow to assist Linnea.

288. Even though Snow kicked Bob with her fins as he passed by her, she never noticed that Linnea was in distress or that Bob was going to her aid.

289. Unfortunately, the act of signaling frantically to Bob caused Linnea to fall backward, and she plummeted down the wall, into the depths of Lake McDonald.

290. As she was sinking uncontrollably, Linnea extended her arm upward, reaching out to Bob, as she held her mouthpiece in her mouth with her other hand. She was in fear as she fell backwards into the darkness. *See* Fig. 3.

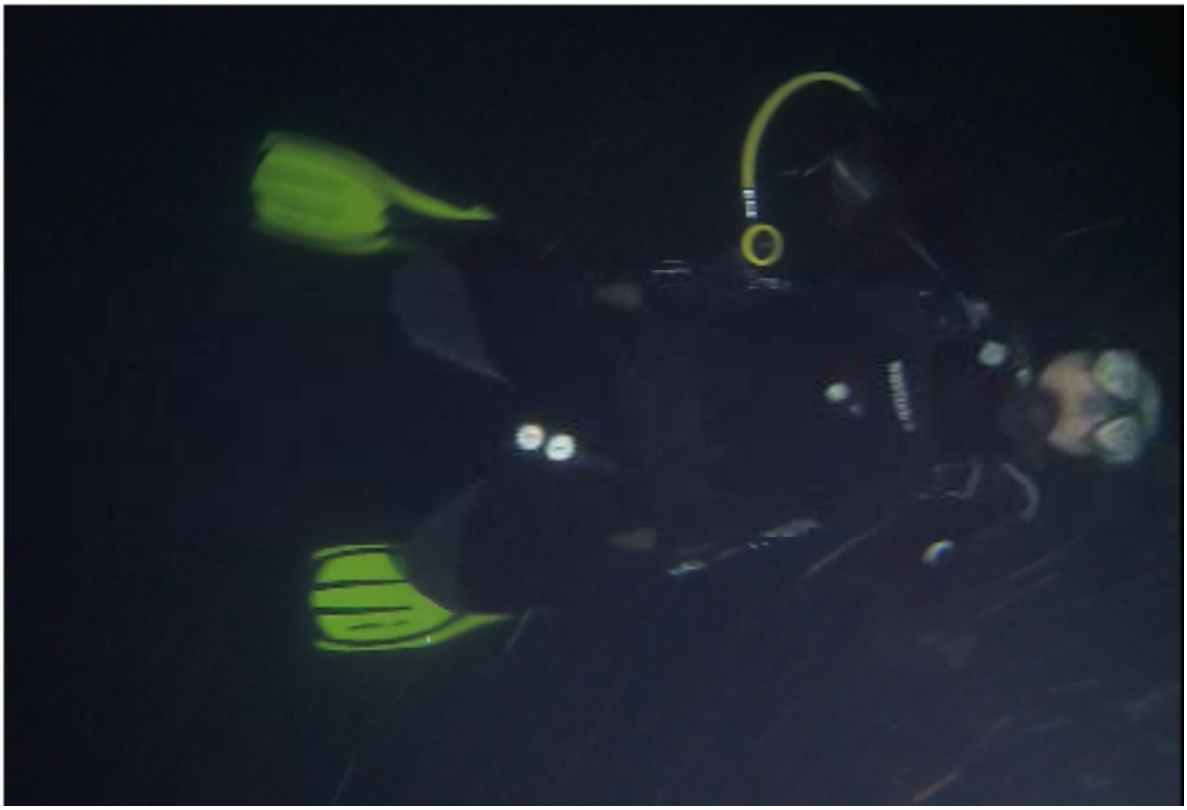


Fig. 3 – Linnea Mills falling to the bottom of Lake McDonald

291. Bob continued to chase Linnea as she fell down the steeply sloping side of Lake McDonald. After swimming downward for more than one minute, Bob finally caught up to Linnea at a depth of 85.3 feet.

292. At this depth, the hydrostatic pressure exerted on Linnea's body was 36.87 psi, almost three times the amount of pressure exerted on the surface at Lake McDonald. The ambient pressure would be 49.939 psia since the atmospheric

pressure needs to be added to the hydrostatic" pressure to arrive at absolute pressure. This means the ambient pressure – and gas density – were over 3.8 times greater than surface pressure, and both divers were rapidly depleting their supply of available gas to breathe.

293. The audio captured by the GoPro camera indicates that Linnea was trying desperately to breathe, but she was unable to do so due to the pressure being exerted on her body and the squeeze exerted by her dry suit. The walls of Linnea's torso, her chest and her neck were being crushed by the dry suit, and the increased pressure on her carotid arteries was causing her heart to slow down.

294. The video and audio captured by the GoPro camera also shows that Linnea was fully aware of her predicament and in terror as she was unable to assist Bob or save herself.

295. For the next one minute and 32 seconds, Bob tried urgently to save Linnea's life. First, he tried to drop Linnea's weight belt but he could not find it – because she was not wearing one. Next, he searched for Linnea's weights, but he could not find them – because he did not know they were zippered into her BCD and dry suit pockets. Then, after the regulator dropped from Linnea's mouth, Bob tried to share his air with her by giving Linnea his spare

emergency regulator mouthpiece. Finally, Bob tried to use brute force to swim upward with Linnea under tow. None of these efforts were successful.

296. As Bob worked to save Linnea's life, both divers continued to descend down the steep wall on the side of Lake McDonald, eventually reaching a depth of 105 feet. The hydrostatic pressure there was 45.38 psi, and the ambient pressure was 58.457 psia.

297. Bob stayed with Linnea, working desperately to save her, until Linnea lost consciousness. Then, low on air and thinking there was a chance Linnea could be saved if he could quickly obtain assistance from the Gull Dive Defendants or people on shore, Bob left the bottom and rocketed to the surface. He ascended from a depth of 105 feet to the surface in less than one minute, and the last 85 feet in under 45 seconds. This is more than triple the maximum safe rate of ascent for a diver.

298. When Bob reached the surface, there was nobody there. Snow eventually surfaced, completely unaware of what had happened.

299. After Bob informed Snow that Linnea had drowned, Snow made one brief dive to try to find Linnea, but she was unsuccessful.

300. Not having made any contingency plans to deal with an emergency, the Gull Dive Defendants initiated a feckless rescue and recovery plan.

301. After returning to shore and getting fresh air tanks, Defendant, Debbie Snow, and Seth Liston made a second dive and found Linnea at a depth of 127 feet. At this point, Liston made a rapid ascent to the surface, leaving Snow to recover Linnea's body alone. However, Snow was unable to do so without first removing Linnea's BCD filled with lead and Linnea's air tank. By this time, Linnea was beyond saving.

302. When Snow returned to the surface with Linnea's body, she made 14-year-old Plaintiff E.G. wade into the frigid waters of Lake McDonald to assist with Linnea's body.

303. Once Linnea's body was onshore, the Gull Dive Defendants' emergency protocols and efforts were chaotic and ineffective. The students and Shannon did what they could to summon help into the wilderness, at night, without any effective means to communicate with the outside world. Fortunately, a married couple from Florida happened upon the scene, and these Good Samaritans drove out of Glacier National Park to summon help.

304. While the dive party waited for help, Liston used up the emergency supply of oxygen, while complaining about the ill effects of his rapid ascent.

305. Rangers from Glacier National Park were the first responders on the scene, followed by a local medevac helicopter and ambulance. Linnea was declared

dead at the scene; Defendant, Debbie Snow, refused treatment; and Seth Liston was transported to the local hospital by ambulance.

306. On November 1, 2020, Linnea was wearing a Subgear XP10 downloadable dive computer, which was rented to her by the Gull Dive Defendants. The Subgear XP10's memory allows the computer to store approximately 25 hours of dive profile, and it records information in 4-second sampling intervals. With the included Dive Log software, a person can transfer this sampled information to a personal computer and visualize and analyze each dive on the computer's monitor.

307. Prior to the Flathead County Deputy Coroner arriving at the scene, and without the knowledge of the Glacier National Park Rangers, an employee of Gull Dive, or someone acting on their behalf, removed the Subgear XP10 dive computer from Linnea's dead body and took it from the scene.

308. In addition, Defendant, Debbie Snow, left the scene in her private vehicle with Nathan Dudden and Linnea's personal effects.

309. By the time the Flathead County Deputy Coroner arrived at the scene, all of the divers had dispersed. Consequently, the only person the Deputy Coroner could communicate with was Defendant, Jeannine Olson, who had not been present but was able to communicate with Defendant, Debbie Snow.

310. Contrary to the facts and the truth, Defendant, Jeannine Olson, reported to the Flathead County Deputy Coroner that Linnea was: "*Witnessed by [a] 'dive buddy' to panic, then fall passively to the bottom of a lake after swimming without difficulty at a depth of approximately 40 feet*."

311. This misinformation, as well as removing critical evidence from the scene, was intended to mislead the official investigation into Linnea's death, and it succeeded in doing so.

312. As a direct and proximate result of Defendant, Jeannine Olson's, misstatements to the investigating authorities, in violation of Montana law, and the lack of objective evidence revealing the circumstances of Linnea's last dives, the Montana State Medical Examiner, Aldo J. Fusaro, D.O., overlooked critical evidence of Linnea's manner of death, including severe bruising on Linnea's neck and body caused by dry suit squeeze; pulmonary edema caused by hydrostatic pressure; and the presence of watery sphenoid sinus fluid caused by Linnea's rapid descent and inability to mitigate squeeze in her sinuses and nasal cavity. Consequently, Dr. Fusaro mistakenly categorized the manner of death as "Accidental," and he completely overlooked the actual cause of Linnea's death by drowning.

313. Linnea's BCD and air tank were recovered the day after she died by law enforcement divers. After the scuba gear's recovery, it was discovered that

Linnea had approximately 24 pounds of lead weights zippered into the pockets of her BCD, where they could not be jettisoned in case of emergency. Dr. Fusaro was not made aware of this finding.

314. After Linnea's body was transported to the Montana State Crime Lab, it was discovered that Linnea had an additional 20 pounds of lead weights zippered into the pockets of her dry suit. Although Dr. Fusaro was aware of this finding, he did not understand its significance.

315. Dr. Fusaro was not informed of the existence of the GoPro video and audio of Linnea's death until several months after he completed his final autopsy report. Consequently, Defendant, Jeannine Olson's, lie that Linnea had been seen to "*fall passively*" to the bottom of Lake McDonald after she inexplicably panicked while "*swimming without difficulty at a depth of approximately 40 feet*" remains part of the official autopsy record of this case.

316. Dr. Fusaro also was not informed that the Gull Dive Defendants were in possession of the Subgear XP10 dive computer removed from Linnea's dead body, and he was never provided with the data downloaded from this computer.

317. The obfuscation of the truth caused by the Gull Dive Defendant, including Jeannine Olson and Debbie Snow, combined with their untruthful statements to the investigating authorities, in violation of federal and Montana law, has

directly and proximately caused Scott, as well as his wife, Lisa Mills, and their son, Nick Mills, to suffer severe emotional distress.

318. During the National Park Service's investigation into Linnea's death, Defendant, Jeannine Olson, telephoned Bob and accused him of being solely responsible for Linnea's death, saying he was Linnea's dive buddy and his actions and inactions were the reason for Linnea's death, and even threatened him with litigation.

319. Bob was already severely traumatized by the events he witnessed on November 1, 2020. The threats and allegations intentionally leveled against him by Defendant, Jeannine Olson, have greatly exacerbated the emotional distress that Bob was already experiencing as a result of his inability to rescue Linnea and her resulting death, thereby causing him to suffer from anxiety, guilt, fear, apprehension and additional trauma.

320. Defendant, Jeannine Olson's, comments to Bob were made after it had been revealed that Bob had GoPro footage of Linnea's death, and he intended to turn over this footage to the National Park Service's investigators to assist them in their investigation of the circumstances surrounding Linnea's death.

321. Upon information and belief, Defendant, Jeannine Olson's, comments to the Flathead County Deputy Coroner and Bob were intended to conceal the plethora of negligent and grossly negligent actions and omissions committed

by the Gull Dive Defendants, to mislead the authorities and the Mills family, and to avoid the Gull Dive Defendants being held responsible for Linnea's death.

322. At no time on or after November 1, 2020, has the data stored on the Subgear XP10 dive computer taken off Linnea's dead body by one or more of the Gull Dive Defendants been provided to the National Park Service investigators, the Flathead County Coroner, the Montana State Crime Lab, the Medical Examiner's Office or to the Mills family.

323. Indeed, weeks after the incident, when Defendant Debbie Snow surprisingly revealed to the National Park Service investigators that she was in possession of the Subgear XP10 dive computer used by Linnea on the day she died, Snow lied to the investigators and told them the computer's data was not downloadable.

324. Astonishingly, the two National Park Service investigators interviewing Snow did not recognize the significance of the data stored on the Subgear XP10 dive computer, they believed Snow's untruthful assertion that the Subgear XP10 dive computer's data was not downloadable, and they failed to immediately confiscate the Subgear XP10 dive computer from Snow and impound it as evidence.

325. On December 30, 2020, Snow asked Nathan Dudden in a text message: "Will you do me a favor and go thru the boxes of misc stuff in the back [of Gull Dive Center] and see if you can find an owners manual [sic] and software for our rental computers. The attorney wants me to send them to him." This text was accompanied by a photograph of a box for the Subgear XP10 dive computer.

326. In the weeks and months after Linnea's fatal dive, PADI issued seven certifications to three of the divers involved in the training courses with the Gull Dive Defendants, based on the dives made at Seeley Lake on October 25, 2020 and Lake McDonald on November 1, 2020.

a. Seth Liston was awarded PADI's Deep Diver and Peak Performance Buoyancy specialty certifications, presumably based on the unsuccessful dive he made to 127 feet to assist in the recovery of Linnea's body.

b. Nathan Dudden was awarded PADI's Deep Diver and Advanced Open Water certifications, even though he did not participate in the search and recovery dives, and he never entered the water at Seeley Lake.

c. Joel Wilson was awarded PADI Dry Suit Specialty Diver and PADI Advanced Open Water certifications, even though none of his dives met PADI's requirements to be considered training dives and he did not make it to Glacier National Park to participate in the dives at Lake McDonald.

327. The Certifying Instructor on the seven PADI certifications issued based on the dives at Seeley Lake and Lake McDonald is Debra Snow.

328. Ironically, after the Seeley Lake excursion one week before she died, Linnea wrote in her journal about how much she enjoyed the experience and how she

was looking forward to a future in scuba diving with the Gull Dive Defendants. She concluded her journal entry with these words:

> *That drive back [I] felt this exhilaration of energy like everything is here. Its all here. We made it. Life begins here. Let's manifest more.*

Sadly, Linnea would never have the chance.

COUNT I - NEGLIGENCE (SURVIVAL)
(Linnea Mills, deceased, by and through her Personal Representative, L. Scott Mills v. Defendant, Gull Scuba Center, LLC d/b/a Gull Dive Center)

329. Comes now the Plaintiff, Linnea Mills, deceased, by and through her Personal Representative, L. Scott Mills, and realleges and reaffirms all previous allegations above as if fully set forth herein.

330. At all relevant times hereto, Defendant Gull Dive acted by and through its owners, Jeannine Olson and David Olson, and employees, Debbie Snow, Seth Liston and Nathan Dudden, and therefore it is vicariously liable for the negligent acts of its owners and employees.

331. At all times relevant hereto, Gull Dive, its owners and employees, owed a duty of care to Linnea to act in a reasonable and prudent manner in renting scuba equipment and, specifically, to comply with governing PADI RRA Membership Standards and scuba diving industry standards worldwide, a duty which said Defendant breached.

332. Prior to and on November 1, 2020, Gull Dive, its owners and employees, failed to comply with the applicable standard of care in renting scuba equipment reasonably to be anticipated from the average PADI authorized retailer acting under the same or similar circumstances, thereby proximately causing Linnea to sustain grave physical injury, extreme conscious pain and suffering, mental anguish and resultant death.

333. At all times relevant hereto, the applicable standard of care, statutory and common law authority, as well as governing PADI RRA Membership Standards and scuba diving industry standards worldwide, required Gull Dive, its owners and employees, to act in a reasonable and prudent manner in renting scuba equipment so as to prevent injury and death to its customers, and said Defendant failed to comply with same, proximately causing Linnea to sustain physical injury, extreme conscious pain and suffering, mental anguish and resultant death.

334. Prior to and on November 1, 2020, Gull Dive, its owners and employees, breached PADI RRA Membership Standards, PADI Training Standards and scuba diving industry standards worldwide, its duty of care to Linnea and the standard of care applicable under the circumstances by, *inter alia*:

a. Encouraging and aiding Linnea in purchasing diving equipment that she was not trained or certified to use without advising her as to the

proper sizing, condition and configuration of this equipment to make it safe for its intended use;

b. Renting scuba equipment to Linnea without having verified that Linnea was adequately prepared and trained to use such equipment by PADI or by any other certifying organization, as was explicitly required by PADI RRA Membership Standards, PADI Training Standards, and scuba diving industry standards worldwide;

c. Failing to in any way verify or determine that Linnea understood and was competent to assemble and use the equipment that Gull Dive was renting to Linnea in a safe and prudent manner;

d. Failing to verify that Linnea understood how to safely utilize dive ballast, the buoyancy compensation device and other equipment, in combination with an unfamiliar and inoperable dry suit;

e. Failing to provide Linnea with any training or instruction on the use of the scuba tank, regulator, ballast, buoyancy compensation device and other equipment it rented, in combination with an unfamiliar and inoperable dry suit; and

f. Otherwise failing to conduct itself in a reasonable and prudent manner.

335. Defendant, Gull Dive, its owners and employees, had a duty to exercise reasonable care in training Linnea on November 1, 2020.

336. Prior to and on November 1, 2020, Defendant, Gull Dive, its owners and employees, breached the standard of care applicable under the circumstances and the duty of care they owed to Linnea by, *inter alia*:

a. Failing to fully inquire into Linnea's dive qualifications and ensure that her training was commensurate with her limited skills;

b. Facilitating the sale of a dry suit to Linnea while knowing that she was not certified to use a dry suit and she was not properly oriented to the Brooks dry suit they helped her purchase;

c. Failing to ensure that the Brooks dry suit purchased by Linnea was compatible and could function with the other scuba gear rented to Linnea by the Gull Dive Defendants;

d. Failing to inform Linnea of the risks and dangers involved in diving with an inoperable and unsafe dry suit;

e. Permitting the dive to occur when there were no qualified individuals nearby to provide diving or emergency support to them and Linnea;

f. Permitting the dive to occur while knowing that no safety and emergency protocols had been put in place;

g. Permitting the dive to occur when they knew that the dive team had no surface support for the dive;

h. Permitting the dive to occur when there was no project standards and procedures plan that had been put in place for the chosen dive location;

i. Permitting the dive to occur when there was no one nearby who possessed skill, training and experience in scuba diving contingency protocols and rescue response;

j. Permitting the dive to occur when there was no one nearby who possessed skill, training and experience in supervising the dive that was contemplated;

k. Permitting the dive to occur when there was no emergency equipment nearby to summon or effect a rescue response;

l. Permitting the dive to occur when there was no immediate plan for evacuation to a land-based medical facility;

m. Permitting the dive to occur when the divers had no local diving support;

n. Failing to adequately inspect Linnea's equipment to ensure that it was in working order;

o. Permitting, inducing and pressuring Plaintiff E.G. to participate in a training dive given, *inter alia*, her obvious anxiety about doing so, her lack of experience in scuba diving and her lack of understanding in how to safely assemble and utilize the scuba equipment;

p. Failing to abide by the PADI safety standards during the dive;

q. Failing to properly communicate with Linnea during the dive;

r. Failing to keep Linnea in sight during the dive;

s. Failing to maintain direct supervision of Linnea during the dive;

t. Failing to keep Linnea within their positive control at all times;

u. Combining certification classes with mixed and conflicting standards of care and control of student divers;

v. Failing to select a safe dive site, taking into account the individual students' experience level, comfort level, time of day, depth, bottom topography, cold, and availability of help in the event of an emergency;

w. Permitting and inducing Linnea to participate in the dive despite knowing that Linnea had inadequate, incomplete and unsafe diving equipment;

x. Overweighting Linnea and placing lead weights in her scuba gear and on her person in a manner that made them inaccessible in the event of an emergency;

y. Permitting, inducing and pressuring Linnea to participate in the dive after they knew or should have known that Linnea had no safe means of controlling her buoyancy or avoid unsafe conditions caused by dry suit squeeze and overweighting; and

z. Arranging for their students to travel to Lake McDonald, 145 miles away from Missoula, despite the site being entirely unsuitable for the type of training the students were capable of and given the other factors alleged herein.

337. The negligent acts and omissions of Gull Dive, its owners and employees, proximately caused Linnea to sustain severe physical injury, emotional injury and death.

338. Linnea's death was a foreseeable event which was avoidable had Gull Dive, its owners and employees, complied with the standard of care applicable under the circumstances.

339. But for the negligent acts and omissions of Gull Dive, its owners and employees, Linnea would not have died on November 1, 2020.

340. Prior to dying, Linnea survived her personal injuries proximately caused by the negligence of Gull Dive, its owners and employees, for a period of time, injuries that included, but were not limited to, hypoxia, respiratory arrest, hypoxic convulsion, pulmonary edema, accumulation of sphenoid sinus fluid, loss of consciousness, cardiac arrest, severe bruising and squeeze of her torso and neck, asphyxiation, severe emotional distress and mental anguish. Consequently, Plaintiff is entitled to maintain an action to recover those damages allowed by law for personal injuries to and the death of Linnea.

341. As a direct and proximate consequence of the negligence of Gull Dive, its owners and employees, Linnea suffered severe personal injury, physical pain and agony, extreme conscious pain and suffering, severe emotional distress,

mental anguish and death proximately caused by those physical injuries she sustained.

342. Had Linnea not died as a result of the aforesaid injuries sustained, she would have been legally entitled to assert a claim against Gull Dive, its owners and employees, for personal injuries that were proximately caused by the above-referenced negligent acts and omissions of Gull Dive, its owners and employees.

WHEREFORE, Plaintiff, Linnea Mills, deceased, by and through her Personal Representative, L. Scott Mills, demands judgment against Defendant, Gull Scuba Center, LLC, d/b/a Gull Dive Center, for:

A. Compensatory damages for decedent's pain and suffering, funeral expenses and all other damages allowed by law;

B. Interest;

C. Costs;

D. Expenses;

E. Attorney's fees as allowed by law; and

F. For such other and further relief as this Honorable Court deems meet and just.

COUNT II - NEGLIGENCE (SURVIVAL)
(Linnea Mills, deceased, by and through her Personal Representative, L. Scott Mills v. Defendant Debbie Snow)

343. Comes now the Plaintiff, Linnea Mills, deceased, by and through her Personal Representative, L. Scott Mills, and realleges and reaffirms all previous allegations above as if fully set forth herein.

344. At all times relevant hereto, Defendant, Debbie Snow, owed a duty of care to Linnea to act in a reasonable and prudent manner to avoid causing or contributing to harm to Linnea, a duty which she breached.

345. Prior to and on November 1, 2020, Defendant, Debbie Snow, given her training and experience, as well as Snow's PADI professional certifications and the PADI RRA Membership and Training Standards, failed to comply with the duty of care they owed Linnea, the applicable standard of care in renting scuba equipment from Gull Dive for Linnea's use, insofar as Linnea had failed to demonstrate that she was qualified and adequately trained to use a dry suit during her PADI Advanced Open Water training course, that she possessed sufficient skill, training and experience to safely assemble and operate the scuba equipment that was rented to her, and in having failed to ensure that Linnea received necessary education and training to safely use such equipment, thereby proximately causing Linnea to sustain grave physical

injury, extreme conscious pain and suffering, mental anguish and resultant death.

346. At all times relevant hereto, the applicable standard of care, statutory and common law authority, as well as governing PADI and PADI RRA Membership Standards and scuba diving industry standards worldwide, prohibited Snow from renting scuba equipment for Linnea's use on November 1, 2020 that was not compatible for use with her Brooks dry suit, insofar as Linnea had never provided any proof of PADI certification, or certification by any other organization, in the use of a dry suit, and said Defendant failed to comply with same, proximately causing Linnea to sustain grave physical injury, extreme conscious pain and suffering, mental anguish and resultant death.

347. Prior to and on November 1, 2020, Snow breached the standard of care applicable under the circumstances and the duty of care they owed to Linnea by, *inter alia*:

a. Failing to fully inquire into Linnea's dive qualifications and ensure that her training was commensurate with her limited skills;

b. Facilitating the sale of a dry suit to Linnea while knowing that she was not certified to use a dry suit and she was not properly oriented to the Brooks dry suit they helped her purchase;

c. Failing to ensure that the Brooks dry suit purchased by Linnea was compatible and could function with the other scuba gear rented to Linnea by the Gull Dive Defendants;

d. Failing to inform Linnea of the risks and dangers involved in diving with an inoperable and unsafe dry suit;

e. Permitting the dive to occur when there were no qualified individuals nearby to provide diving or emergency support to them and Linnea;

f. Permitting the dive to occur while knowing that no safety and emergency protocols had been put in place;

g. Permitting the dive to occur when they knew that the dive team had no surface support for the dive;

h. Permitting the dive to occur when there was no project standards and procedures plan that had been put in place for the chosen dive location;

i. Permitting the dive to occur when there was no one nearby who possessed skill, training and experience in scuba diving contingency protocols and rescue response;

j. Permitting the dive to occur when there was no one nearby who possessed skill, training and experience in supervising the dive that was contemplated;

k. Permitting the dive to occur when there was no emergency equipment nearby to summon or effect a rescue response;

l. Permitting the dive to occur when there was no immediate plan for evacuation to a land-based medical facility;

m. Permitting the dive to occur when the divers had no local diving support;

n. Failing to adequately inspect Linnea's equipment to ensure that it was in working order;

o. Permitting, inducing and pressuring Plaintiff E.G. to participate in a training dive given, *inter alia*, her obvious anxiety about doing so, her lack of experience in scuba diving and her lack of understanding in how to safely assemble and utilize the scuba equipment;

p. Failing to abide by the PADI safety standards during the dive;

q. Failing to properly communicate with Linnea during the dive;

r. Failing to keep Linnea in sight during the dive;

s. Failing to maintain direct supervision of Linnea during the dive;

t. Failing to keep Linnea within their positive control at all times;

u. Combining certification classes with mixed and conflicting standards of care and control of student divers;

v. Failing to select a safe dive site, taking into account the individual students' experience level, comfort level, time of day, depth, bottom topography, cold, and availability of help in the event of an emergency;

w. Permitting and inducing Linnea to participate in the dive despite knowing that Linnea had inadequate, incomplete and unsafe diving equipment;

x. Overweighting Linnea and placing lead weights in her scuba gear and on her person in a manner that made them inaccessible in the event of an emergency;

y. Permitting, inducing and pressuring Linnea to participate in the dive after they knew or should have known that Linnea had no safe means of controlling her buoyancy or avoid unsafe conditions caused by dry suit squeeze and overweighting; and

z. Arranging for their students to travel to Lake McDonald, 145 miles away from Missoula, despite the site being entirely unsuitable for the type of training the students were capable of and given the other factors alleged herein.

348. The above referenced negligent and grossly negligent acts and omissions of Snow proximately caused Linnea to sustain severe physical injury, emotional injury and death.

349. Linnea's death was a foreseeable event which was avoidable had Snow complied with the duty of care that they owed Linnea, and the standard of care applicable under the circumstances.

350. But for the negligent and grossly negligent acts and omissions of Snow, Linnea would not have died on November 1, 2020.

351. Prior to dying, Linnea survived her personal injuries proximately caused by the negligence and gross negligence of Snow for an extensive period of time, injuries that included, but were not limited to, hypoxia, respiratory arrest, hypoxic convulsion, pulmonary edema, accumulation of sphenoid sinus fluid, loss of consciousness, cardiac arrest, severe bruising and squeeze of her torso and neck, asphyxiation, severe emotional distress and mental anguish. Consequently, Plaintiff is entitled to maintain an action to recover those damages allowed by law for personal injuries to and the death of Linnea.

352. As a direct and proximate consequence of the negligence and gross negligence of Snow, Linnea suffered severe personal injury, physical pain and agony, extreme conscious pain and suffering, severe emotional distress, mental anguish and death proximately caused by those physical injuries he sustained.

353. Had Linnea not died as a result of the aforesaid injuries sustained, she would have been legally entitled to assert a claim against Snow for personal injuries proximately caused by Defendant's above-referenced negligent acts and omissions.

WHEREFORE, Plaintiff, Linnea Mills, deceased, by and through her Personal Representative, L. Scott Mills, demands judgment against Defendant, Debbie Snow, individually, for:

A. Compensatory damages for decedent's pain and suffering, funeral expenses and all other damages allowed by law;

B. Interest;

C. Costs;

D. Expenses;

E. Attorney's fees as allowed by law; and

F. For such other and further relief as this Honorable Court deems meet and just.

COUNT III - NEGLIGENCE (SURVIVAL)
(Linnea Mills, deceased, by and through her Personal Representative, L. Scott Mills v. Defendants, PADI Worldwide and PADI Americas, Inc.)

354. Comes now the Plaintiff, Linnea Mills, deceased, by and through her Personal Representative, L. Scott Mills, and realleges and reaffirms all previous allegations above as if fully set forth herein.

355. At all times relevant hereto, Defendants, PADI, owed a duty of care to Linnea to act in a reasonable and prudent manner in writing and reviewing PADI's

educational programs and standards, as well as training and supervising the PADI Members offering the PADI training dive to Linnea Mills on November 1, 2020, duties which said Defendants breached and which caused Linnea to sustain severe physical injury, conscious pain and suffering and death.

356. On and prior to November 1, 2020, Defendants, PADI, breached the duty of care that they owed to Linnea and the standard of care applicable under the circumstances by, *inter alia*:

a. Failing to monitor and enforce standards compliance by PADI Members;

b. Failing to actively police its Members' adherence to PADI RRA Membership Standards and PADI Training Standards;

c. Failing to timely and thoroughly advise the public of those PADI Members who are suspended or expelled for violating PADI standards;

d. Failing to timely and thoroughly advise the public of PADI's suspension and/or expulsion of the Gull Dive Defendants;

e. Failing to timely and thoroughly advise the public of PADI's disciplining of the Gull Dive Defendants;

f. Failing to create, write and review PADI's educational programs and standards so that they are clear, unambiguous, not conflicting and not open to subjective interpretation by PADI Members;

g. Prioritizing the generation of profits over ensuring the safety of students;

h. Misrepresenting to the public, and the Plaintiffs here, that "*PADI Instructors are trained and held to diving's highest standards, backed up by a solid, proactive quality management system*" and "*All PADI programs, from entry-level through scuba instructor training, fall*

under strict educational standards monitored for worldwide consistency and quality[;]"

i. Misrepresenting to the public, and the Plaintiffs here, that PADI's Advanced Open Water certification course is actually an advanced-level scuba instruction course;

j. Misrepresenting and failing to disclose to the public, and the Plaintiffs here, that PADI's Advanced Open Water certification course is little more than a mechanism to "up sell" entry-level divers and induce them to enroll in more scuba certifications sold by PADI;

k. Making it difficult, if not impossible, for members of the public to search for suspended or expelled PADI Members by name or region;

l. Making it difficult, if not impossible, for members of the public to search for the credentials of PADI Members to determine if they are qualified to teach a particular course of instruction;

m. Failing to advise the public that PADI is not actually committed to ensuring its safety while under the care and supervision of PADI Members and Dive Centers;

n. Adhering to a purposefully vague and confusing "confined open water" standard when PADI was on notice that this standard was unsafe, unreasonably dangerous, and that it had contributed or caused the death of other student divers before Linnea;

o. Allowing a PADI Instructor to combine training classes, even though the two courses have different required levels of Instructor supervision of students;

p. Allowing Defendant, Debbie Snow, to pass the Instructor Exam administered by PADI after she had failed the exam in November 2019;

q. Failing to make any accommodation in the PADI Training Standards for training dives conducted at altitude, and to adjust safety standards accordingly;

r. Allowing a PADI Instructor who has not taken a PADI Dry Suit Diver Specialty course to add a Dry Suit Adventure Dive to an Advanced Open Water course of instruction for a student, even though the student is inexperienced, as young as 14 years old, and has completed as few as four dives; and even if the Instructor has never taken the PADI Dry Suit Diver Specialty course herself;

s. Permitting Instructors to self-certify that they are qualified and competent to teach the PADI Dry Suit Specialty course, among others, without having an Instructor Trainer verify the Instructor's skills and credentials;

t. Failing to take subsequent remedial measures that are both feasible and necessary upon learning of known risks to students engaged in PADI training courses, including, among other things, making changes to PADI Training Standards to ensure that student divers are appropriately trained in the use of a dry suit before engaging in PADI scuba training while wearing a dry suit;

u. Failing to alert PADI Members to the possibility that students using a dry suit could fail to attach the inflator hose on their dry suit, causing the student diver to rapidly lose buoyancy and drown, as had happened to a student engaged in a PADI Deep Specialty course in British Columbia in March 2020; and

v. Failing to ensure that Instructors are actually qualified and competent to teach the PADI Dry Suit Specialty course, among others.

357. Defendants, PADI, are also vicariously liable for all negligent acts and omissions committed by Defendants, Gull Dive, David Olson, Jeannine Olson and Debbie Snow, on and prior to November 1, 2020, that proximately caused Linnea's grave physical injury, extreme conscious pain and suffering and death.

358. The negligent acts and omissions of Defendants, PADI, proximately caused Linnea to sustain severe physical injury and death.

359. Linnea's death was a foreseeable event that was avoidable had Defendants, PADI, complied with the duty of care that they owed to Linnea and the standard of care applicable under the circumstances, not to mention the standard of care that PADI professes to the public that it voluntarily adheres to.

360. But for the negligent acts and omissions of Defendants, PADI, Linnea would not have died on November 1, 2020.

361. Prior to dying, Linnea survived her personal injuries proximately caused by the negligence of Defendants, PADI, for a period of time, injuries that included, but were not limited to, hypoxia, respiratory arrest, hypoxic convulsion, pulmonary edema, accumulation of sphenoid sinus fluid, loss of consciousness, cardiac arrest, severe bruising and squeeze of her torso and neck, asphyxiation, severe emotional distress and mental anguish. Consequently, Plaintiff is entitled to maintain an action to recover those damages allowed by law for personal injuries to and the death of Linnea.

362. As a direct and proximate consequence of the negligence of Defendants, PADI, Linnea suffered severe personal injury, physical pain and agony, extreme conscious pain and suffering, severe emotional distress, mental

anguish and death proximately caused by the physical injuries that he sustained.

363. Had Linnea not died as a result of the aforesaid injuries sustained, he would have been legally entitled to assert a claim against Defendants, PADI, for personal injuries proximately caused by Defendants' above-referenced negligent acts and omissions.

WHEREFORE, Linnea Mills, deceased, by and through her Personal Representative, L. Scott Mills, demands judgment against Defendants, PADI Worldwide and PADI Americas, Inc., jointly and severally, for:

A. Compensatory damages for decedent's pain and suffering, funeral expenses and all other damages allowed by law;

B. Interest;

C. Costs;

D. Expenses;

E. Attorney's fees as allowed by law; and

F. For such other and further relief as this Honorable Court deems meet and just.

COUNT IV - NEGLIGENCE (SURVIVAL)
(Linnea Mills, deceased, by and through her Personal Representative, L. Scott Mills v. Defendant, Heidi Houck)

364. Comes now the Plaintiff, Linnea Mills, deceased, by and through her Personal Representative, L. Scott Mills, and realleges and reaffirms all previous allegations above as if fully set forth herein.

365. At all times relevant hereto, Defendant, Heidi Houck, owed a duty of care to act in a reasonable and prudent manner to avoid causing or contributing to harm to Linnea, a duty which she breached.

366. Prior to and on November 1, 2020, Defendant, Heidi Houck, given her prior scuba training and experience, knew or should have known that it was unsafe to sell a dry suit intended for scuba diving to a buyer who was not certified to use a dry suit while scuba diving and, indeed, who was entirely unfamiliar with using a dry suit for scuba diving.

367. Sometime between October 25, 2020 and October 29, 2020, Liston and/or Snow, or both, provided Houck's contact information and/or a Craig's List listing identifying Defendant, Heidi Houck, as the seller of two dry suits, to Nathan Dudden and/or Linnea.

368. Between October 25, 2020 and October 29, 2020, Nathan Dudden and/or Linnea communicated with Defendant, Heidi Houck, to ascertain whether she would sell two used dry suits to Dudden and Linnea prior to November 1, 2020.

369. Between October 25, 2020 and October 29, 2020, Defendant, Heidi Houck, owed a duty of care to inquire as to whether Nathan Dudden and Linnea were certified or trained to safely use a dry suit while scuba diving.

370. At all material times, Defendant, Heidi Houck, knew or should have known that Nathan Dudden and Linnea were not certified or trained to safely use a dry suit for scuba diving.

371. At all material times, Defendant, Heidi Houck, owed a duty of care to inquire as to whether Nathan Dudden and Linnea could obtain the requisite training, certification and experience to safely use a dry suit while scuba diving from the Gull Dive Defendants.

372. At all material times, Defendant, Heidi Houck, knew or should have known that Liston and Snow were not certified or trained to safely teach Nathan Dudden and Linnea to scuba dive while wearing dry suits.

373. Alternatively, Defendant, Heidi Houck, failed to confirm that Nathan Dudden and Linnea were certified and/or trained to safely use a dry suit for scuba diving before she sold two used dry suits to Nathan Dudden and Linnea.

374. On October 29, 2020, Defendant, Heidi Houck, sold two used dry suits to Nathan Dudden and Linnea at her home in Missoula, Montana. Both were Brooks dry suits custom made for the size and shape of their original owners, which was not Nathan Dudden or Linnea.

375. Defendant, Heidi Houck, did not personally meet with Nathan Dudden or Linnea at the time of the sale. Instead, she left the transaction in the hands of her brother-in-law to complete.

376. Upon information and belief, Defendant, Heidi Houck, did not provide the inflator hose that came with the Brooks dry suit from the manufacturer when she sold the suit to Linnea on October 29, 2020.

377. Upon information and belief, Defendant, Heidi Houck, did not provide the owner's manual, warnings and instructions that came with the Brooks dry suit from the manufacturer when she sold the suit to Linnea on October 29, 2020.

378. Upon information and belief, Defendant, Heidi Houck, also failed to advise or warn Linnea that the dry suit could not be used safely, because the dry suit could not be inflated without being connected to a hose equipped with the appropriate QD connector.

379. At all material times, Defendant, Heidi Houck, owed a duty of care to inquire as to whether Linnea had received the required orientation to dry suits in a confined water environment.

380. At all material times, Defendant, Heidi Houck, knew or should have known that Linnea had not received the required orientation to dry suits in a confined water environment.

381. At all material times, Defendant, Heidi Houck, owed a duty of care to inquire into Linnea's prior scuba diving experience to determine whether Linnea had the requisite skill, knowledge and experience to safely use the Brooks dry suit she sold to Linnea.

382. At all material times, Defendant, Heidi Houck, knew or should have known that Linnea's only scuba diving experience in the past two years was one short, shallow dive in Seeley Lake while wearing two wetsuits, and her lifetime scuba diving experience consisted of making only six dives – five of which were in shallow, warm, salt water at sea level.

383. Prior to and on October 29, 2020, Defendant, Heidi Houck, possessed the authority to postpone, cancel or terminate the sale of the Brooks dry suit to Linnea, given all of the facts and circumstances, and Linnea's total lack of preparation, orientation or certification to use said dry suit, and given the Gull Dive Defendants' inability to provide preparation, orientation or certification to Linnea.

384. At all material times, it was foreseeable to Defendant, Heidi Houck, that Linnea would experience grave physical and emotional harm if she were sold an inoperable and unsafe dry suit, without proper warnings and instructions from the manufacturer, that was missing critical parts, and under circumstances where her use of the dry suit was imminent and Linnea could not obtain adequate confined water orientation to the dry suit and qualified instruction in its use from the Gull Dive Defendants.

385. Defendant, Heidi Houck, breached the duty of care she owed to Linnea, and the applicable standard of care for individuals selling dangerous products to

buyers without proper warnings and instructions, by selling the Brooks dry suit to Linnea given all the facts and circumstances, thereby proximately causing or contributing to Linnea sustaining grave physical injury, extreme conscious pain and suffering, mental anguish and resultant death.

386. Linnea's death was a foreseeable event that was avoidable had Defendant, Heidi Houck, complied with the duty of care that she owed to Linnea.

387. But for the negligent acts and omissions of Defendant, Heidi Houck, Linnea would not have died on November 1, 2020.

388. Prior to dying, Linnea survived her personal injuries proximately caused by the negligence of Defendant, Heidi Houck, for a period of time, injuries that included, but were not limited to, hypoxia, respiratory arrest, hypoxic convulsion, pulmonary edema, accumulation of sphenoid sinus fluid, loss of consciousness, cardiac arrest, severe bruising and squeeze of her torso and neck, asphyxiation, severe emotional distress and mental anguish. Consequently, Plaintiff is entitled to maintain an action to recover those damages allowed by law for personal injuries to and the death of Linnea.

389. As a direct and proximate consequence of the negligence of Defendant, Heidi Houck, Linnea suffered severe personal injury, physical pain and agony, extreme conscious pain and suffering, severe emotional distress, mental

anguish and death proximately caused by those physical injuries she sustained.

390. Had Linnea not died as a result of the aforesaid injuries sustained, she would have been legally entitled to assert a claim against Defendant, Heidi Houck, for personal injuries proximately caused by Defendant's above-referenced negligent acts and omissions.

WHEREFORE, Linnea Mills, deceased, by and through her Personal Representative, L. Scott Mills, demands judgment against Defendant, Heidi Houck, for:

A. Compensatory damages as allowed by law;

B. Interest;

C. Costs;

D. Expenses;

E. Attorney's fees as allowed by law; and

F. For such other and further relief as this Honorable Court deems meet and just.

COUNT V - NEGLIGENCE (WRONGFUL DEATH)
(L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, on behalf of the heirs of Linnea Mills, and L. Scott Mills, Individually v. Defendants, Gull Scuba Center, LLC, d/b/a Gull Dive Center, David Olson and Jeannine Olson)

391. Come now the Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, on behalf of the heirs of Linnea Mills, and L. Scott

Mills, individually, and reallege and reaffirm all previous allegations above as if fully set forth herein.

392. At all times relevant hereto, Defendants, Gull Dive, David Olson and Jeannine Olson, owed a duty of care to act in a reasonable and prudent manner in training and supervising their staff, as well as renting scuba equipment and providing scuba diving training to Linnea.

393. Specifically, Defendants, Gull Dive, David Olson and Jeannine Olson, owed a duty to comply with PADI RRA Membership Standards, PADI Training Standards and scuba diving industry safety standards worldwide in that regard, a duty that said Defendants breached.

394. Prior to and on November 1, 2020, Defendants, Gull Dive, David Olson and Jeannine Olson, failed to comply with the applicable standard of care in training and supervising their staff, as well as renting scuba equipment reasonably to be anticipated from the average PADI authorized retailer acting under the same or similar circumstances, thereby proximately causing Linnea to sustain grave physical injury, extreme conscious pain and suffering, mental anguish and resultant death.

395. At all times relevant hereto, the applicable standard of care, statutory and common law authority, as well as governing PADI RRA Membership Standards PADI Training Standards, and scuba diving industry standards

worldwide, required Defendants, Gull Dive, David Olson and Jeannine Olson, to act in a reasonable and prudent manner in in training and supervising their staff, as well as renting scuba equipment, so as to prevent injury and death to its customers. Said Defendants failed to comply with same, proximately causing Linnea to sustain physical injury, extreme conscious pain and suffering, mental anguish and resultant death.

396. Prior to and on November 1, 2020, Defendants, Gull Dive, David Olson and Jeannine Olson, breached PADI RRA Membership Standards, PADI Training Standards and scuba diving industry standards worldwide, its duty of care to Linnea and the standard of care applicable under the circumstances by, *inter alia*:

a. Renting scuba equipment to Linnea that was incompatible for safe use with a Brooks dry suit and without having verified that Linnea was certified to use such equipment by PADI or by any other certifying organization, as was required by PADI RRA Membership Standards and scuba diving industry standards worldwide;

b. Failing to in any way verify or determine that Linnea understood and was competent to assemble and use the equipment Defendant, Gull Dive, was renting to Linnea in a safe and prudent manner;

c. Failing to in any way verify that Linnea understood how to safely utilize dive ballast, the buoyancy compensation device and other equipment while using a dry suit;

d. Failing to provide Linnea with any training or instruction on the use of the scuba tank, regulator, ballast, buoyancy compensation device and other equipment it rented in combination with a dry suit;

e. Failing to cancel the training dives in Seeley Lake and Lake MacDonald, which took place in conditions that were unsuitable for the experience and training of the students and Defendant, Debbie Snow;

f. Failing to properly vet the qualifications of Defendant, Debbie Snow, to ensure that she was properly qualified to teach the PADI scuba certification courses the Defendants sold to consumers, including Linnea Mills, Robert Gentry, E.G. and Joel Wilson;

g. Failing to adequately train and supervise their staff;

h. Fraudulently selling scuba certification courses to consumers, including Linnea Mills, Robert Gentry, E.G., Nathan Dudden and Joel Wilson, and then providing substandard and unsafe scuba instruction to these unsuspecting consumers; and

i. Otherwise failing to conduct themselves in a reasonable and prudent manner.

397. Prior to and on November 1, 2020, Defendants, Gull Dive, David Olson and Jeannine Olson, acting through their employees and duly authorized agents, Defendant, Debbie Snow, Seth Liston and Nathan Dudden, failed to comply with the duty of care they owed Linnea, the applicable standard of care in renting scuba equipment from Defendant, Gull Dive, for Linnea's use, and the PADI RRA Membership and Training Standards, insofar as Linnea had failed to demonstrate that she was qualified and adequately trained to use a dry suit during her PADI Advanced Open Water training course, that she possessed sufficient skill, training and experience to safely assemble and operate the scuba equipment that was rented to her, and ensuring that Linnea received

necessary education and training to safely use such equipment, thereby proximately causing Linnea to sustain grave physical injury, extreme conscious pain and suffering, mental anguish and resultant death.

398. Prior to and on November 1, 2020, Defendants, Gull Dive, David Olson and Jeannine Olson, acting through their employees and duly authorized agents, Defendant, Debbie Snow, Liston and Dudden, breached the standard of care applicable under the circumstances and the duty of care they owed to Linnea by, *inter alia*:

a. Failing to fully inquire into Linnea's dive qualifications and ensure that her training was commensurate with her limited skills;

b. Facilitating the sale of a dry suit to Linnea while knowing that she was not certified to use a dry suit and she was not properly oriented to the Brooks dry suit they helped her purchase;

c. Failing to ensure that the Brooks dry suit purchased by Linnea was compatible and could function with the other scuba gear rented to Linnea by Gull Dive;

d. Failing to inform Linnea of the risks and dangers involved in diving with an inoperable and unsafe dry suit;

e. Permitting the dive to occur when there were no qualified individuals nearby to provide diving or emergency support to them and Linnea;

f. Permitting the dive to occur while knowing that no safety and emergency protocols had been put in place;

g. Permitting the dive to occur when they knew that the dive team had no surface support for the dive;

h. Permitting the dive to occur when there was no emergency standards and procedures plan that had been put in place for the chosen dive location;

i. Permitting the dive to occur when there was no one nearby who possessed skill, training and experience in scuba diving contingency protocols and rescue response;

j. Permitting the dive to occur when there was no one nearby who possessed skill, training and experience in supervising the dive that was contemplated;

k. Permitting the dive to occur when there was no emergency equipment nearby to summon or effect a rescue response;

l. Permitting the dive to occur when there was no immediate plan for evacuation to a land-based medical facility;

m. Permitting the dive to occur when the divers had no local diving support;

n. Failing to adequately inspect Linnea's equipment to ensure that it was in working order;

o. Permitting, inducing and pressuring E.G. to participate in a training dive given, *inter alia*, her obvious anxiety about doing so, her lack of experience in scuba diving and her lack of understanding in how to safely assemble and utilize the scuba equipment;

p. Failing to abide by the PADI safety standards before and during the dive;

q. Failing to properly communicate with Linnea during the dive;

r. Failing to keep Linnea in sight during the dive;

s. Failing to maintain direct supervision of Linnea during the dive;

t. Failing to keep Linnea within their positive control at all times;

u. Combining certification classes with mixed and conflicting standards of care and control of student divers;

v. Failing to select a safe dive site, taking into account the individual students' experience level, comfort level, time of day, depth, bottom topography, cold, and availability of help in the event of an emergency;

w. Permitting and inducing Linnea to participate in the dive despite knowing that Linnea had inadequate, incomplete and unsafe diving equipment;

x. Overweighting Linnea and placing lead weights in her scuba gear and on her person in a manner that made them inaccessible in the event of an emergency;

y. Permitting, inducing and pressuring Linnea to participate in the dive after they knew or should have known that Linnea had no safe means of controlling her buoyancy or avoid unsafe conditions caused by dry suit squeeze and overweighting; and

z. Arranging for their students to travel to Lake McDonald, 145 miles away from Missoula, despite the site being entirely unsuitable for the type of training the students were capable of and given the other factors alleged herein.

399. The above referenced negligent acts and omissions of Defendants, Gull Dive, David Olson, Jeannine Olson and Debbie Snow, and Gull Dive employees Seth Liston and Nathan Dudden, proximately caused Linnea to sustain severe physical injury, emotional injury and death.

400. The negligent acts and omissions of the Gull Dive Defendants, individually and collectively, proximately caused Linnea to sustain severe physical injury and death.

401. Linnea's death was a foreseeable event which was avoidable had the Gull Dive Defendants complied with PADI RRA Membership Standards, PADI Training Standards and scuba diving industry standards worldwide, the duty of care it owed Linnea and the standard of care applicable under the circumstances.

402. After the death of Jesse Hubbell, Defendants, Gull Dive, David Olson and Jeannine Olson, had a duty to redouble their efforts to ensure compliance with PADI RRA Membership Standards, PADI Training Standards and scuba diving industry safety standards worldwide.

403. Rather than fulfill this duty, Defendants, Gull Dive, David Olson and Jeannine Olson, further weakened their compliance with PADI RRA Membership Standards, PADI Training Standards and scuba diving industry safety standards by, among other things, hiring inadequate and inexperienced staff, allowing training classes to be taught in adverse conditions and at unsuitable dive sites, failing to ensure that rental equipment was adequately checked for safety and function, failing to ensure that training was being offered to students who were qualified to receive it, encouraging and requiring staff to sell as many PADI training classes and equipment to as many potential students and customers as possible, and otherwise putting securing profits ahead of ensuring the safety of students and customers.

404. But for the negligent acts and omissions of Defendants, Gull Dive, David Olson and Jeannine Olson, Linnea would not have died on November 1, 2020.

405. Prior to dying, Linnea survived her personal injuries proximately caused by the Gull Dive Defendants' negligence and gross negligence for an extensive period of time, injuries that included, but were not limited to, hypoxia, respiratory arrest, hypoxic convulsion, pulmonary edema, accumulation of sphenoid sinus fluid, loss of consciousness, cardiac arrest, severe bruising and squeeze of her torso and neck, asphyxiation, severe emotional distress and mental anguish. Consequently, Plaintiff is entitled to maintain an action to recover those damages allowed by law for personal injuries to and the death of Linnea.

406. As a direct and proximate consequence of the negligence of Defendants, Gull Dive, David Olson and Jeannine Olson, Linnea suffered severe personal injury, physical pain and agony, extreme conscious pain and suffering, severe emotional distress, mental anguish and death proximately caused by those physical injuries he sustained.

407. As a direct, immediate and proximate consequence of the wrongful death of Linnea, as proximately caused by the aforesaid negligent acts and omissions committed and omitted by Defendants, Gull Dive, David Olson and Jeannine Olson, the heirs of Linnea have been deprived of her love, affection,

assistance, comfort, aid, companionship and consortium all to their great damage.

WHEREFORE, Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, on behalf of the heirs of Linnea Mills, and L. Scott Mills, individually, demand judgment against Defendants, Gull Scuba Center, LLC, d/b/a Gull Dive Center; David Olson and Jeannine Olson, jointly and severally, for:

A. Compensatory damages as allowed by law;

B. Interest;

C. Costs;

D. Expenses;

E. Attorney's fees as allowed by law; and

F. For such other and further relief as this Honorable Court deems meet and just.

COUNT VI – NEGLIGENCE (WRONGFUL DEATH)
(L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, on behalf of the heirs of Linnea Mills, and L. Scott Mills, Individually v. Defendant, Heidi Houck)

408. Come now the Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, on behalf of the heirs of Linnea Mills, and L. Scott Mills, individually, and reallege and reaffirm all previous allegations above as if fully set forth herein.

409. At all times relevant hereto, Defendant, Heidi Houck, owed a duty of care to act in a reasonable and prudent manner to avoid causing or contributing to harm to Linnea, a duty which she breached.

410. Prior to and on November 1, 2020, Defendant, Heidi Houck, knew or should have known that it was unsafe to sell a dry suit intended for scuba diving to a buyer who was not certified to use a dry suit while scuba diving and, indeed, who was entirely unfamiliar with using a dry suit for scuba diving.

411. Sometime between October 25, 2020 and October 29, 2020, Liston and/or Snow, or both, provided Houck's contact information and/or a Craig's List listing identifying Houck as the seller of two dry suits, to Nathan Dudden and/or Linnea.

412. Between October 25, 2020 and October 29, 2020, Nathan Dudden and/or Linnea communicated with Defendant, Heidi Houck, to ascertain whether she would sell two used dry suits to Dudden and Linnea prior to November 1, 2020.

413. Between October 25, 2020 and October 29, 2020, Defendant, Heidi Houck, owed a duty of care to inquire as to whether Nathan Dudden and Linnea were certified or trained to safely use a dry suit while scuba diving.

414. At all material times, Defendant, Heidi Houck, knew or should have known that Nathan Dudden and Linnea were not certified or trained to safely use a dry suit for scuba diving.

415. At all material times, Defendant, Heidi Houck, owed a duty of care to inquire as to whether Nathan Dudden and Linnea could obtain the requisite training,

certification and experience to safely use a dry suit while scuba diving from the Gull Dive Defendants.

416. At all material times, Defendant, Heidi Houck, knew or should have known that Liston and Snow were not certified or trained to safely teach Nathan Dudden and Linnea to scuba dive while wearing dry suits.

417. Alternatively, Defendant, Heidi Houck, failed to confirm that Nathan Dudden and Linnea were certified and/or trained to safely use a dry suit for scuba diving before she sold two used dry suits to Nathan Dudden and Linnea.

418. On October 29, 2020, Defendant, Heidi Houck, sold two used dry suits to Nathan Dudden and Linnea at her home in Missoula, Montana. One of the dry suits was a Brooks dry suit custom made for the size and shape of its original owner, which was not Nathan Dudden or Linnea.

419. Upon information and belief, Defendant, Heidi Houck, did not provide the inflator hose that came with the Brooks dry suit from the manufacturer when she sold the suit to Linnea on October 29, 2020.

420. Upon information and belief, Defendant, Heidi Houck, did not provide the owner's manual, warnings and instructions that came with the Brooks dry suit from the manufacturer when she sold the suit to Linnea on October 29, 2020.

421. Upon information and belief, Defendant, Heidi Houck, also failed to advise or warn Linnea that the dry suit could not be used safely, because the dry suit

could not be inflated without being connected to a hose equipped with the appropriate QD connector.

422. At all material times, Defendant, Heidi Houck, owed a duty of care to inquire as to whether Linnea had received the required orientation to dry suits in a confined water environment.

423. At all material times, Defendant, Heidi Houck, knew or should have known that Linnea had not received the required orientation to dry suits in a confined water environment.

424. At all material times, Defendant, Heidi Houck, owed a duty of care to inquire into Linnea's prior scuba diving experience to determine whether Linnea had the requisite skill, knowledge and experience to safely use the Brooks dry suit she had for sale.

425. At all material times, Defendant, Heidi Houck, knew or should have known that Linnea's only scuba diving experience in the past two years was one short, shallow dive in Seeley Lake while wearing two wetsuits, and her lifetime scuba diving experience consisted of making only six dives – five of which were in shallow, warm, salt water at sea level.

426. Prior to and on October 29, 2020, Defendant, Heidi Houck, possessed the authority to postpone, cancel or terminate the sale of the Brooks dry suit to Linnea, given all of the facts and circumstances, and Linnea's total lack of

preparation, orientation or certification to use said dry suit, and given the Gull Dive Defendants' inability to provide preparation, orientation or certification to Linnea.

427. At all material times, it was foreseeable to Defendant, Heidi Houck, that Linnea would experience grave physical and emotional harm if she were sold an inoperable and unsafe dry suit, without proper warnings and instructions from the manufacturer, that was missing critical parts, and under circumstances where her use of the dry suit was imminent and Linnea could not obtain adequate confined water orientation to the dry suit and qualified instruction in its use from the Gull Dive Defendants.

428. Defendant, Heidi Houck, breached the duty of care she owed to Linnea, and the applicable standard of care for individuals selling dangerous products to buyers without proper warnings and instructions, by selling the Brooks dry suit to Linnea given all the facts and circumstances, thereby proximately causing or contributing to Linnea sustaining grave physical injury, extreme conscious pain and suffering, mental anguish and resultant death.

429. Linnea's death was a foreseeable event that was avoidable had Defendant, Heidi Houck, complied with the duty of care that she owed to Linnea.

430. But for the negligent acts and omissions of Defendant, Heidi Houck, Linnea would not have died on November 1, 2020.

431. Prior to dying, Linnea survived her personal injuries proximately caused by the negligence of Defendant, Heidi Houck, for a period of time, injuries that included, but were not limited to, hypoxia, respiratory arrest, hypoxic convulsion, pulmonary edema, accumulation of sphenoid sinus fluid, loss of consciousness, cardiac arrest, severe bruising and squeeze of her torso and neck, asphyxiation, severe emotional distress and mental anguish. Consequently, Plaintiff is entitled to maintain an action to recover those damages allowed by law for personal injuries to and the death of Linnea.

432. As a direct and proximate consequence of the negligence of Defendant, Heidi Houck, Linnea suffered severe personal injury, physical pain and agony, extreme conscious pain and suffering, severe emotional distress, mental anguish and death proximately caused by those physical injuries he sustained.

433. As a direct, immediate and proximate consequence of the wrongful death of Linnea, as proximately caused by the aforesaid negligent acts and omissions committed and omitted by Defendant, Heidi Houck, the heirs of Linnea have been deprived of her love, affection, assistance, comfort, aid, companionship and consortium all to their great damage.

WHEREFORE, Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, on behalf of the heirs of Linnea Mills, and L. Scott Mills, individually, demand judgment against Defendant, Heidi Houck, for:

A. Compensatory damages as allowed by law;

B. Interest;

C. Costs;

D. Expenses;

E. Attorney's fees as allowed by law; and

F. For such other and further relief as this Honorable Court deems meet and just.

COUNT VII - NEGLIGENCE (WRONGFUL DEATH)
(L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, on behalf of the heirs of Linnea Mills, and L. Scott Mills, Individually v. Defendants, PADI Worldwide and PADI Americas, Inc.)

434. Come now the Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, on behalf of the heirs of Linnea Mills, and L. Scott Mills, individually, and reallege and reaffirm all previous allegations above as if fully set forth herein.

435. Defendants, PADI, had a duty to exercise reasonable care in monitoring their Members, agents and partners to ensure that the Members, agents and partners using the PADI brand and PADI logos and certifications actually comply with PADI safety standards and PADI RRA Membership Standards, when those members, agents and partners use the PADI brand and PADI logos and certifications,

436. The PADI brand, PADI logos PADI web site and PADI marketing materials are designed to serve as a marketing device to give customers the assurance of competence and adherence to PADI's safety standards.

437. Defendant, PADI, breached that duty by failing to ensure and enforce the following safety standards:

a. Safety standard of refraining from dry suit diving unless specifically trained and oriented to do so;

b. Safety standard of planning the dive beforehand and diving the plan, including communications, procedures for reuniting in case of separation, and emergency procedures;

c. Safety standard of adhering to a buddy system during the dive;

d. Safety standard of staying within depth limits for recreational divers;

e. Safety standard of allowing a margin of safety during the dive;

f. Safety standard of ensuring that divers are appropriately certified to participate in noninstructional dives with other students receiving instruction in other specialties;

g. Safety standard of ensuring that PADI RRA Members provide modern dive equipment for instruction and for rent to students and certified divers as described in the *PADI Instructor Manual*;

h. Safety standard of taking subsequent remedial measures that are both feasible and necessary upon learning of known risks to students engaged in PADI training courses; and

i. Safety standard of ensuring that Instructors are actually qualified and competent to teach the PADI Dry Suit Specialty course, among others.

438. Despite the apparent change in Defendant, Gull Dive's, status as a PADI RRA Member, and the certainty of a PADI Quality Management review of the death of Jesse Hubbell, PADI never issued a Consumer Alert regarding Gull Dive, and Gull Dive is not listed as a suspended or expelled PADI Member on PADI's web site.

439. Accordingly, Linnea, Bob, Shannon and E.G. had no warning from PADI that the Gull Dive Defendants ran an unsafe operation and failed to adhere to PADI safety standards.

440. At all times relevant hereto, Defendants, PADI, owed a duty of care to Linnea to act in a reasonable and prudent manner in supervising their Members and assisting the Gull Dive Defendants in the safe operation of a PADI Dive Center, including ensuring that Defendant, Debbie Snow, was qualified to safely teach the PADI scuba certification courses conducted on November 1, 2020, duties which said Defendants breached and which caused Linnea to sustain severe physical injury, conscious pain and suffering and death.

441. PADI designed, marketed, and implemented the Advanced Open Water and Dry Suit Diver Specialty courses, with the direct involvement of senior risk management professionals like Charles Algy Hornsby, Defendant, PADI Worldwide's Senior Vice President, Legal Affairs, and it policed the teaching of these courses worldwide in regular, bi-weekly Quality

Management Committee meetings and by seeking student feedback through the extensive use of Course Evaluation Questionnaires.

442. Alternatively, PADI did not design, market, and implement the Advanced Open Water and Dry Suit Diver Specialty courses with the direct involvement of senior risk management professionals like Mr. Hornsby, and it failed to police the teaching of these courses worldwide in regular Quality Management Committee meetings and by seeking student feedback, as PADI has represented it does in sworn documents submitted to various judicial tribunals and on PADI's web site and in PADI's training manuals.

443. PADI engaged in a deliberate and systematic pattern of misleading and deceiving Montana consumers in regard to the marketing, advertising and selling of PADI scuba diving certification courses, as alleged herein, and by issuing worthless PADI diver certification cards to students who PADI knew or should have known had received substandard scuba instruction.

444. PADI had a duty to ensure that these courses did not have differing and conflicting standards, that could be easily understood and taught safely by all PADI Professional Members, in such a way that a certified Instructor was required to:

a. Be qualified to teach the Dry Suit Specialty course if she was going to offer a Dry Suit Adventure Dive to an inexperienced student;

b. Eliminate the Dry Suit Adventure Dive from the Advanced Open Water course, and require students to successfully complete and be certified in the advanced buoyancy control techniques taught in the Advanced Open Water course before students are allowed to engage in *any* dry suit dives;

c. Not permit Instructors to self-certify that they are competent to teach the PADI Dry Suit Specialty course;

d. Employ direct supervision of all students engaged in dry suit diving;

e. Employ depth corrections for all dives conducted at altitude, and require supervision requirements to be adjusted accordingly;

f. Undertake "confined water" training dives in actual confined environments like a swimming pool, not in "open water" environments that are subject to an individual Member's "creative" interpretation of what areas of open water could subjectively be explained away as being like a swimming pool on any given day;

g. Only teach scuba training courses in an environment that is commensurate with the students' prior training and experience, so that students trained in temperate environments are not taking Advanced Open Water or Specialty course in sub-zero temperatures or at altitude; and

h. Eliminate the use of the confusing and ambiguous "confined open water" definition and standard altogether.

445. Because of the special relationship that exists between PADI and PADI RRA Members, where PADI provides detailed inspections and critiques of the RRA Members' business practices, as well as mentoring and "hands on" instruction in many aspects of running a safe and successful PADI Dive center, PADI and Gull Dive had a special and enhanced duty to protect

Linnea Mills and all of Gull Dive's students from the foreseeable risks associated with being rented unsafe equipment, incorrectly trained and left unattended by the Instructor during a course of instruction, including the foreseeable harm of death by drowning.

446. PADI and Gull Dive breached their duty to protect Linnea from the foreseeable risks associated with being rented unsafe equipment, incorrectly trained and left unattended by the instructor during an Advanced Open Water or Dry Suit Specialty course, including the foreseeable harm of death by drowning, and said breach proximately caused Linnea's death by drowning on November 1, 2020.

447. At all times relevant hereto, Defendants, PADI Americas, Inc., PADI Worldwide Corporation, David Olson, Jeannine Olson, Gull Dive and Debbie Snow, were joint venturers, contractors, members of a consortium, and assigns of each other.

448. At all relevant times, PADI had a "special relationship" with its PADI-certified Instructors, including Snow, and its PADI Dive Centers, including Gull Dive, which special relationships imposed on PADI a special and enhanced duty to control the conduct of Gull Dive and/or Snow to prevent each of them from causing physical harm to participants in the Advanced Open Water or Dry Suit Specialty courses, including Linnea, Bob and E.G.

449. The duty mentioned in the preceding paragraph was especially enhanced after PADI became aware of the death of Jesse Hubbell in July 2019, and the allegation that the Gull Dive Defendants had rented scuba gear to Mr. Hubbell that he was not certified or qualified to use, and therefore PADI had a duty to ensure that the Gull Dive Defendants did not engage in similar future behavior, as well as a duty to warn potential customers and PADI students of the Gull Dive Defendants' propensity to commit these foreseeable acts.

450. PADI failed to exercise reasonable care to control the conduct of the Gull Dive Defendants to prevent each of them from causing physical harm to Linnea during a PADI course of instruction, and said breach of their special and enhanced duty of care proximately caused Linnea's death by drowning.

451. As a direct and proximate consequence of the negligence of Defendants, PADI, Linnea suffered severe personal injury, physical pain and agony, extreme conscious pain and suffering, severe emotional distress, mental anguish and death proximately caused by those physical injuries he sustained.

452. As a direct, immediate and proximate consequence of the wrongful death of Linnea, as proximately caused by the aforesaid negligent acts and omissions committed and omitted by Defendants, PADI, the heirs of Linnea have been

deprived of her love, affection, assistance, comfort, aid, companionship and consortium all to their great damage.

WHEREFORE, Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, on behalf of the heirs of Linnea Mills, and L. Scott Mills, individually, demand judgment against Defendants, PADI Worldwide and PADI Americas, Inc., jointly and severally, for:

A. Compensatory damages as allowed by law;

B. Interest;

C. Costs;

D. Expenses;

E. Attorney's fees as allowed by law; and

F. For such other and further relief as this Honorable Court deems meet and just.

COUNT VIII - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS (Plaintiffs, L. Scott Mills, Robert Gentry, Shannon Gentry and E.G., a minor by her mother and next friend, Shannon Gentry v. Gull Scuba Center, LLC, d/b/a Gull Dive Center, Debbie Snow, Heidi Houck, David Olson and Jeannine Olson)

453. Come now the Plaintiffs, L. Scott Mills, Robert Gentry, Shannon Gentry and E.G., a minor by her mother and next friend Shannon Gentry, and reallege and reaffirm all previous allegations as if fully set forth herein.

454. As a proximate consequence of Defendants' negligent acts and omissions, as alleged herein, Plaintiffs, L. Scott Mills, Robert Gentry, Shannon Gentry and E.G., have each sustained serious, severe and ongoing emotional distress.

455. Plaintiffs' serious and severe emotional distress was the reasonably foreseeable consequence of Defendants' negligent conduct.

456. The emotional distress sustained by each Plaintiff was and continues to be of a type and kind that no reasonable person could be expected to endure without being cognizant of it.

457. The emotional distress sustained by each Plaintiff is both reasonable and justified under the circumstances.

458. The Defendants' conduct, and that of each of them, has had a severe and traumatic effect upon each Plaintiff's emotional tranquility since it caused and continues to cause severe emotional harm.

459. The Defendants, and each of them, acted negligently and in a manner that was wholly indifferent to the likely and foreseeable impact of their conduct.

460. Defendants' conduct, and that of each of them, is conduct that is atrocious, utterly intolerable in a civilized community, extreme, outrageous and went beyond all possible bounds of decency.

461. As a direct, immediate and proximate consequence of Defendants' negligent and grossly negligent conduct, as alleged herein, Plaintiffs, L. Scott Mills, Robert Gentry, Shannon Gentry and E.G., have each experienced and continue to experience serious and severe emotional distress, all to their great damage.

462. As a direct, immediate and proximate consequence of Defendants' negligent and grossly negligent conduct, as alleged herein, Plaintiffs, L. Scott Mills, Robert Gentry, Shannon Gentry and E.G., have each experienced, and continue to experience, physical manifestations of their emotional distress, including, but not limited to, sleeplessness, anxiety, fear, apprehension, physical pain and discomfort, depression, trauma, the inability to concentrate, forgetfulness, anger, feelings of inadequacy, guilt and other symptoms of trauma and grief.

WHEREFORE Plaintiffs, L. Scott Mills, Robert Gentry, Shannon Gentry and E.G., a minor by her mother and next friend, Shannon Gentry, demand judgment against Defendants, Gull Scuba Center, LLC, d/b/a Gull Dive Center, Debbie Snow, Heidi Houck, David Olson and Jeannine Olson, jointly and severally, for:

A. Compensatory damages;

B. Interest;

C. Costs;

D. Expenses;

E. Attorney's fees as allowed by law; and

F. For such other and further relief as this Honorable Court deems meet and just.

COUNT IX - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (Plaintiffs, L. Scott Mills, Individually and L. Scott Mills, as Personal Representative of the Estate of Linnea Mills Robert Gentry v. Jeannine Olson)

463. Come now the Plaintiffs, L. Scott Mills, Individually; L. Scott Mills, as Personal Representative of the Estate of Linnea Mills; and Robert Gentry, and they reallege and reaffirm all previous allegations as if fully set forth herein.

464. Defendant, Jeannine Olson, acted intentionally, maliciously and recklessly with regard to Plaintiffs, L. Scott Mills, and the Mills family when she provided demonstrably false information to the officials investigating Linnea Mills' death.

465. Defendant, Jeannine Olson, acted intentionally, maliciously and recklessly with regard to Plaintiff, L. Scott Mills, and the Mills family when she withheld critical information, including the Subgear XP10 dive computer taken off Linnea's body after she died and data stored thereon, from the officials investigating Linnea Mills' death.

466. Defendant, Jeannine Olson, acted intentionally, maliciously and recklessly with regard to Plaintiff, Robert Gentry, when she telephoned him and accused him of causing Linnea Mills's death and threatened to sue Plaintiff, Robert Gentry, and hold him financially responsible if litigation resulted from

Linnea's death and/or if Plaintiff, Robert Gentry, revealed what he knew about Linnea's death to the National Park Service investigators or Flathead County Deputy Coroner.

467. At all times relevant hereto, Defendant, Jeannine Olson, intended to inflict emotional distress on the Plaintiffs, and knew or should have known that severe emotional distress was the likely consequence of her actions.

468. Defendant, Jeannine Olson's, actions were beyond all bounds of decency, atrocious and of a kind utterly intolerable in a civilized society.

469. The extreme and outrageous conduct on the part of Defendant, Jeannine Olson, proximately caused the Plaintiffs to sustain serious and severe emotional distress, and it compounded the severe emotional distress they were already suffering as a result of Linnea's death.

470. The emotional distress sustained by the Plaintiffs was and continues to be severe, acute and substantial.

471. The emotional distress suffered by the Plaintiffs was and continues to be of a type and nature that no reasonable person could be expected to endure without being cognizant of same.

472. The Defendant's conduct has had a severe and traumatic effect upon Plaintiffs' emotional tranquility since it caused and continues to cause them to suffer severe emotional harm.

473. As a direct, immediate and proximate consequence of Defendant, Jeannine Olson's, intentional misconduct, as alleged herein, Plaintiffs, L. Scott Mills and Robert Gentry, as well as their families, has each experienced, and continue to experience, physical manifestations of their emotional distress, including, but not limited to, sleeplessness, anxiety, fear, apprehension, physical pain and discomfort, depression, trauma, the inability to concentrate, forgetfulness, anger, feelings of inadequacy, guilt and other symptoms of trauma and grief.

474. The Defendant acted intentionally and in a manner that was wholly indifferent to the likely and foreseeable impact of her conduct.

475. The Defendant acted maliciously, with reckless disregard and in a manner that was wholly indifferent to the likely and foreseeable impact of her conduct.

476. At all times relevant hereto, it was reasonably foreseeable to Defendant, Jeannine Olson, that her actions, known to her to be in reckless disregard of the risk, would proximately cause the Plaintiffs, as well as their families and any reasonable person, to sustain serious and severe emotional distress.

477. The emotional distress sustained by the Plaintiffs and their families is both reasonable and justified under the circumstances.

478. As a direct, immediate and proximate consequence of Defendant, Jeannine Olson's, intentional, reckless, extreme and outrageous conduct, Plaintiffs, L.

Scott Mills, Individually; L. Scott Mills, as Personal Representative of the Estate of Linnea Mills; and Robert Gentry have experienced and continue to experience serious and severe emotional distress, all to his great damage.

WHEREFORE Plaintiff, L. Scott Mills, Individually; L. Scott Mills, as Personal Representative of the Estate of Linnea Mills; and Robert Gentry, demand judgment against Defendant, Jeannine Olson, for:

A. Compensatory damages;

B. Punitive damages for the Defendant's grossly negligent, willful, wanton and malicious acts and reckless indifference to the rights of Linnea Mills;

C. Interest;

D. Costs;

E. Expenses;

F. Attorney's fees as allowed by law; and

G. For such other and further relief as this Honorable Court deems meet and just.

COUNT X – UNFAIR AND DECEPTIVE TRADE PRACTICES
(Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, and L. Scott Mills, Individually, Joel Wilson, Robert Gentry, Shannon Gentry and E.G., by her mother and next friend, Shannon Gentry v. PADI Worldwide and PADI Americas, Inc.)

479. Come now the Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, and Individually, Robert Gentry, Shannon Gentry and E.G., by her mother and next friend, Shannon Gentry, and reallege and reaffirm all previous allegations above as if fully set forth herein.

480. The Montana Unfair Trade Practices and Consumer Protection Act of 1973, §§ 30-14-101 to 226, M.C.A., prohibits unfair competition, including the use of false or misleading statements to the public and "unfair methods of competition and unfair or deceptive acts or practices." *See* § 30-14-103, M.C.A.

481. Section 27-1-712, M.C.A., prohibits the use of willful deception to induce a person to alter their position to the person's injury. *See* § 27-1-712(1), M.C.A. A deceit, within the meaning of the statute, is either:

a. The suggestion as a fact of that which is not true by one who does not believe it to be true;

b. The assertion as a fact of that which is not true by one who has no reasonable ground for believing it to be true;

c. The suppression of a fact by one who is bound to disclose it or who gives information of other facts that are likely to mislead for want of communication of that fact; or

d. A promise made without any intention of performing it.

482. Defendants have committed unfair and deceptive practices and intentionally deceived consumers, in violation of the Montana law, by making the following false and/or misleading statements to the public:

a. The Gull Dive Defendants adhere to the safety standards set forth by PADI;

b. PADI proactively monitors and confirms that its Members, including Defendants, Gull Dive and Snow, meet PADI's safety standards, Training Standards, and RRA Member standards;

c. PADI proactively disciplines and expels PADI Members for failing to meet PADI's safety standards, Training Standards, and RRA Member standards;

d. PADI proactively, and in a timely manner, notifies the public through various means of communication, including on the "consumer protection" page of the PADI web site, of disciplinary action it has taken against PADI Members for failing to meet PADI's safety standards, Training Standards, and RRA Member standards;

e. PADI never suspended or expelled Defendant, Gull Dive, prior to Linnea Mills's death;

f. To date, PADI has never suspended or expelled Defendant, Gull Dive or Defendant, Snow as a result of Linnea Mills's death;

g. Defendant, Debbie Snow, is qualified to properly teach PADI scuba certification courses in accordance with PADI Training Standards; and

g. "*PADI Instructors are trained and held to diving's highest standards, backed up by a solid, proactive quality management system*" and "*All PADI programs, from entry-level through scuba instructor training, fall under strict educational standards monitored for worldwide consistency and quality*[.]"

483. PADI has also committed unfair and deceptive practices and intentionally deceived consumers, in violation of Montana law, by representing to the public that PADI proactively follows dive industry and international standards for designing, implementing and providing scuba training courses when, in fact, PADI fails to disclose to the public and its customers that

PADI manipulates the development and creation of said standards to suit its own internal business priorities, increase profitability and lessen safety.

484. At all relevant times, PADI deliberately concealed and/or withheld known information concerning the safety hazards related to the PADI Advanced Open Water course to bolster corporate profits at the expense of human life, while at the same time encouraging use of the PADI Advanced Open Water course as a PADI diver acquisition program, particularly to bolster the sale of additional PADI Specialty Diver courses and additional PADI scuba certification courses.

485. PADI's fraudulent concealment of the safety hazards associated with the PADI Advanced Open Water course and Dry Suit Specialty course, include, but are not limited to:

a. The extreme hazards associated with allowing the Dry Suit Adventure Dive to be undertaken in the PADI Advanced Open Water course without requiring an Instructor to be certified to teach the Dry Suit Specialty course, or even certified to use a dry suit;

b. The differing student supervision standards between the two courses, even though the PADI Advanced Open Water course involves essentially novice divers, as aforesaid;

c. The wholly inadequate standards for offering a Dry Suit Adventure Dive as part of a PADI Advanced Open Water course, as compared to the far more thorough standards of the PADI Dry Suit Specialty course; and

d. Allowing the Instructor to get creative in interpreting the nonsensical and conflicting "confined open water" standard;

486. At all relevant times, PADI deliberately concealed and/or withheld known information concerning the safety hazards related to the Gull Dive Defendants to bolster corporate profits at the expense of human life, while at the same time encouraging use of Gull Dive as a PADI diver acquisition program.

487. Defendants' representations were untrue, misleading and deceptive; and Defendants did not provide the services they had promised.

488. PADI's deceptive conduct, as alleged herein, was a proximate cause of Linnea Mills' death by drowning.

489. Bob Gentry relied on Defendants,' PADI's, false assurances of safety and supervision, representations, certifications and association in choosing to purchase PADI products and participate in scuba diving training for himself and his minor daughter, Plaintiff, E.G., with the Gull Dive Defendants.

490. Shannon relied on Defendant, PADI's, false assurances of safety and supervision, representations, certifications and association in choosing to purchase PADI products and participate in scuba diving training for her husband Bob, and her minor daughter, Plaintiff, E.G., with the Gull Dive Defendants.

491. Linnea relied on Defendants,' PADI's, false assurances of safety and supervision, representations, certifications and association in choosing to

purchase PADI products and participate in scuba diving training with the Gull Dive Defendants.

492. Bob, Shannon and E.G. rightfully expected that Defendants would adhere to and implement the PADI standards applicable to their Dry Suit Diver Specialty course and the dives required to acquire this specialty certification.

493. Linnea rightfully expected that Defendants would adhere to and implement the PADI standards applicable to her Advanced Open Water course and the dives required to acquire this scuba certification.

494. Defendants' conduct, as alleged herein, was willful, wanton, malicious, and in reckless indifference to the safety and rights of Linnea Mills and the Plaintiffs.

495. Plaintiffs have been damaged by Defendants' conduct and are entitled to recover their pecuniary losses and other damages allowed by law.

WHEREFORE Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, and L. Scott Mills, Individually, Joel Wilson, Robert Gentry, Shannon Gentry and E.G., by her mother and next friend, Shannon Gentry, demand judgment against Defendants, PADI Worldwide and PADI Americas, Inc., jointly and severally, for:

A. Compensatory damages;

B. Punitive damages;

C. Interest;

D. Costs;

E. Expenses;

F. Attorney's fees; and

G. For such other and further relief as this Honorable Court deems meet and just.

COUNT XI – UNFAIR AND DECEPTIVE TRADE PRACTICES (Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, and L. Scott Mills, Individually, Joel Wilson, Robert Gentry, Shannon Gentry and E.G., by her mother and next friend, Shannon Gentry v. Gull Scuba Center, LLC, d/b/a Gull Dive Center, Debbie Snow, David Olson and Jeannine Olson)

496. Come now the Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, and Individually, Joel Wilson, Robert Gentry, Shannon Gentry and E.G., by her mother and next friend, Shannon Gentry, and reallege and reaffirm all previous allegations above as if fully set forth herein.

497. The Montana Unfair Trade Practices and Consumer Protection Act of 1973, §§ 30-14-101 to 226, M.C.A., prohibits unfair competition, including the use of false or misleading statements to the public and "unfair methods of competition and unfair or deceptive acts or practices." *See* § 30-14-103, M.C.A.

498. Section 27-1-712, M.C.A., prohibits the use of willful deception to induce a person to alter their position to the person's injury. *See* § 27-1-712(1), M.C.A. A deceit, within the meaning of the statute, is either:

a. the suggestion as a fact of that which is not true by one who does not believe it to be true;

b. the assertion as a fact of that which is not true by one who has no reasonable ground for believing it to be true;

c. the suppression of a fact by one who is bound to disclose it or who gives information of other facts that are likely to mislead for want of communication of that fact; or

d. a promise made without any intention of performing it.

499. Defendants have committed unfair and deceptive practices and intentionally deceived consumers, in violation of the Montana law, by making the following false and/or misleading statements to the Plaintiffs, public and Linnea Mills:

a. The Gull Dive Defendants adhere to the safety standards set forth by PADI;

b. The Gull Dive Defendants are PADI Members in good standing;

c. Linnea Mills would be participating in a PADI Advanced Open Water scuba certification course when, in fact, Linnea was placed into an ongoing PADI Dry Suit Specialty scuba certification course that contained far greater knowledge and accomplished skills than she had as a diver;

d. Linnea Mills would be participating in a PADI Advanced Open Water scuba certification course when, in fact, Linnea was placed into an ongoing PADI Dry Suit Specialty scuba certification course that had significantly more comprehensive Training Standards and information about how to safely scuba dive while wearing a dry suit; and

e. Joel Wilson had successfully demonstrated the skills necessary to earn two PADI advanced level scuba certification courses.

500. Defendants have committed unfair and deceptive practices and intentionally deceived consumers, in violation of the Montana law, by selling substandard PADI scuba certification courses to the Plaintiffs and Linnea Mills, and allowing PADI scuba certification cards to be issued under the auspices of Defendant Gull Dive, to multiple customers/students who unknowingly failed to complete the minimum training requirements necessary to earn such certifications.

501. Defendants, by their deceptive acts, exposed Plaintiffs, Robert Gentry, E.G., Joel Wilson and Linnea Mills, to great risk, including the risk of death and serious bodily injury, both in their training courses and in the future, in that they relied upon the Gull Dive Defendants to provide scuba diving training in compliance with PADI Training Standards and to issue certifications to them only after the students, including Plaintiffs, Joel Wilson, Robert Gentry, E.G., and Linnea Mills, non-parties Nathan Dudden and Seth Liston, had successfully learned the requisite skills and completed the minimum training requirements necessary to earn such certifications.

502. By issuing PADI scuba certifications to students who did not complete the skills necessary to earn such certifications, Defendants, David Olson and Jeannine Olson, jeopardized the health and safety of these individuals, and others diving with them, because the students did not know that they had

received inadequate training and they were not equipped dive safely with their invalid PADI certifications, and others diving with them would rely on the students' unearned PADI certifications in planning and conducting dives with such students.

503. Defendants, David Olson and Jeannine Olson, knowingly represented to consumers through their web sites and Facebook that Gull Dive was a PADI Member in good standing, that consumers who purchased PADI scuba diving certification courses from Gull Dive would receive safe scuba diving instruction in accordance with PADI Training Standards, and that, upon completion of said courses, consumers would receive a PADI certification that is recognized worldwide.

504. Defendants, David Olson and Jeannine Olson, acting under the auspices of Gull Dive, and with the knowing assistance of Defendant, Debbie Snow, fraudulently issued several advanced-level PADI certification cards to unsuspecting students who unknowingly had not performed all of the skills and prerequisites necessary to earn these PADI scuba certifications.

505. Defendants, David Olson and Jeannine Olson, acting under the auspices of Gull Dive, and with the knowing assistance of Defendant, Debbie Snow, collected substantial sums of money from unsuspecting students who relied upon the Defendants' misrepresentations that they would be provided PADI

scuba certification courses by competent PADI scuba instructors who would be teaching skills in accordance with PADI Training Standards.

506. At all relevant times, Defendants, Gull Dive, Debbie Snow, David Olson and Jeannine Olson, deliberately concealed and/or withheld known information concerning the safety hazards related to the Gull Dive Defendants to bolster corporate profits at the expense of human life, while at the same time encouraging use of Gull Dive as a PADI diver acquisition program.

507. Defendants' representations were untrue, misleading and deceptive; and Defendants did not provide the services they had promised.

508. The deceptive and deceitful conduct of Defendants, Gull Dive, Debbie Snow, David Olson and Jeannine Olson, as alleged herein, was a proximate cause of Linnea Mills' death by drowning.

509. Joel Wilson relied on Defendants' false assurances of safety and supervision, representations, certifications and association in choosing to purchase PADI products and participate in scuba diving training for himself with the Gull Dive Defendants.

510. Bob Gentry relied on Defendants' false assurances of safety and supervision, representations, certifications and association in choosing to purchase PADI products and participate in scuba diving training for himself and his minor daughter, Plaintiff, E.G., with the Gull Dive Defendants.

511. Shannon Gentry relied on Defendants' false assurances of safety and supervision, representations, certifications and association in choosing to purchase PADI products and scuba diving training from the Gull Dive Defendants for her husband Bob, and her minor daughter, Plaintiff, E.G., with the Gull Dive Defendants.

512. Linnea Mills relied on Defendants' false assurances of safety and supervision, representations, certifications and association in choosing to purchase PADI products and participate in scuba diving training with the Gull Dive Defendants.

513. Plaintiffs, Joel Wilson, Robert Gentry, Shannon Gentry and E.G., rightfully expected that Defendants would adhere to and implement the PADI standards applicable to their Dry Suit Diver Specialty course and the dives required to acquire this specialty certification.

514. Linnea rightfully expected that Defendants would adhere to and implement the PADI standards applicable to her Advanced Open Water course and the dives required to acquire this scuba certification.

515. Defendants' conduct, as alleged herein, was willful, wanton, malicious, and in reckless indifference to the safety and rights of Linnea Mills and the Plaintiffs.

516. Plaintiffs have been damaged by Defendants' conduct and are entitled to recover their pecuniary losses and other damages allowed by law.

517. Plaintiffs are entitled to recover punitive damages from Defendants, and each of them, pursuant to § 27-1-220, M.C.A.; § 27-1-221, M.C.A. and § 27-1-712, M.C.A.

WHEREFORE Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, and L. Scott Mills, Individually, Joel Wilson Robert Gentry, Shannon Gentry and E.G., by her mother and next friend, Shannon Gentry, demand judgment against Defendants, Gull Scuba Center, LLC, d/b/a Gull Dive Center; Debbie Snow; David Olson and Jeannine Olson; jointly and severally, for:

A. Punitive damages;

B. Interest;

C. Costs;

D. Expenses;

E. Attorney's fees;

F. Any and all damages suffered by Plaintiffs, as proven at trial; and

G. For such other and further relief as this Honorable Court deems meet and just.

COUNT XII - PUNITIVE DAMAGES
(Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, and Individually, Joel Wilson, Robert Gentry, Shannon Gentry and E.G., by her mother and next friend, Shannon Gentry v. All Defendants)

518. Come now the Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, and Individually, Robert Gentry, Shannon Gentry and

E.G., by her mother and next friend, Shannon Gentry, and reallege and reaffirm all previous allegations above as if fully set forth herein.

519. At all times relevant hereto, Defendants, and each of them, deliberately proceeded to act in conscious or intentional disregard of the high probability of injury to Linnea.

520. At all times relevant hereto, Defendants, and each of them, deliberately proceeded to act with indifference to the high probability of injury to Linnea.

521. At all times relevant hereto, the Defendants, and each of them, had knowledge of facts or intentionally disregarded facts that created a high probability of injury to Linnea.

522. The Defendants, and each of them, are guilty of actual malice.

523. The Defendants, and each of them, are guilty of willful and wanton misconduct, and reckless indifference to the rights of Linnea Mills.

524. Plaintiffs are entitled to recover punitive damages from Defendants, and each of them, pursuant to § 27-1-220, M.C.A.; § 27-1-221, M.C.A. and § 27-1-712, M.C.A.

WHEREFORE Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, and L. Scott Mills, Individually, Joel Wilson, Robert Gentry, Shannon Gentry and E.G., by her mother and next friend, Shannon Gentry, demand judgment against Defendants, Gull Scuba Center, LLC, d/b/a Gull Dive Center; David Olson and Jeannine Olson; PADI Worldwide; PADI Americas, Inc.; and Heidi Houck, jointly and severally, for:

H. Punitive damages;

I. Interest;

J. Costs;

K. Expenses;

L. Attorney's fees; and

M. For such other and further relief as this Honorable Court deems meet and just.

COUNT XIII – PIERCING THE CORPORATE VEIL
(Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, and Individually, Joel Wilson, Robert Gentry, Shannon Gentry and E.G., by her mother and next friend, Shannon Gentry v. Defendants, Gull Scuba Center, LLC d/b/a Gull Dive Center, David Olson and Jeannine Olson)

525. Come now the Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, and Individually, Joel Wilson, Robert Gentry, Shannon Gentry and E.G., by her mother and next friend, Shannon Gentry, and reallege and reaffirm all previous allegations above as if fully set forth herein.

526. Defendants, David Olson and Jeannine Olson, are the owners and/or shareholders of Defendant, Gull Dive.

527. Defendants, David Olson and Jeannine Olson, are the source of funding for Defendant, Gull Dive, and they manage and control Defendant, Gull Dive's daily operations (subject to the PADI RRA Standards, when applicable).

528. At all relevant times herein, Defendants, David Olson and Jeannine Olson exercised complete dominion and control over Defendant, Gull Dive. This control over Defendant, Gull Dive, rendered the company without a separate mind, will, or existence of its own.

529. Defendants, David Olson and Jeannine Olson, exercised control over Defendant, Gull Dive, in such a manner to defraud and harm Plaintiffs. For example, Defendants, David Olson and Jeannine Olson, implied and/or stated to the customers like the Plaintiffs and the general public that Defendant, Gull Dive, was, at all times material hereto, a PADI Dive Center, subject to and in compliance with PADI's RRA Standards, Training Standards and safety standards.

530. Defendants, David Olson and Jeannine Olson, committed fraud in the operation of Defendant, Gull Dive, in such a manner as to cause harm Plaintiffs. For example, Defendants, David Olson and Jeannine Olson, sold PADI scuba certification courses, and allowed PADI scuba certification cards to be issued under the auspices of Defendant Gull Dive, to multiple customers/students who unknowingly failed to complete the minimum training requirements necessary to earn such certifications. Defendants, David Olson and Jeannine Olson, under the auspices of Gull Dive, misled these students into believing that they had successfully completed all of the

standards required to earn the PADI certifications issued to them, and that they were safe to dive without supervision in deep water, in dry suits and in circumstances in which they had not, in fact, been properly or adequately trained. Consequently, these students were exposed to great risk, both in their training courses and in the future, in that they relied upon the Gull Dive Defendants to provide scuba diving training in compliance with PADI Training Standards and to issue certifications to them only after the students, including Plaintiffs Joel Wilson and Linnea Mills, non-parties Nathan Dudden and Seth Liston, had successfully learned the requisite skills and completed the minimum training requirements necessary to earn such certifications.

531. By issuing PADI scuba certifications to students who did not complete the skills necessary to earn such certifications, Defendants, David Olson and Jeannine Olson, jeopardized the health and safety of these individuals, and others diving with them, because the students, future diving partners and the facilities where they would dive, did not know that they had not received adequate training and they were not equipped dive safely with their invalid PADI certifications, and others diving with them would rely on the students' unearned PADI certifications in planning and conducting dives with such students.

532. Defendants, David Olson and Jeannine Olson, knowingly represented to consumers through their web sites and Facebook that Gull Dive was a PADI Member in good standing, that consumers who purchased PADI scuba diving certification courses from Gull Dive would receive safe scuba diving instruction in accordance with PADI Training Standards, and that, upon completion of said courses, consumers would receive a PADI certification that is recognized worldwide.

533. Defendants, David Olson and Jeannine Olson, acting under the auspices of Gull Dive, and with the knowing assistance of Defendant, Debbie Snow, fraudulently issued several advanced-level PADI certification cards to unsuspecting students who unknowingly had not performed all of the skills and prerequisites necessary to earn these PADI scuba certifications.

534. Defendants, David Olson and Jeannine Olson, acting under the auspices of Gull Dive, and with the knowing assistance of Defendant, Debbie Snow, never advised their unsuspecting students of the requirements of the PADI Training Standards for their individual courses, thereby leaving the students ignorant as to what they should learn, the skills they were required to complete, and the manner in which they were to be taught to be safe.

535. Defendants, David Olson and Jeannine Olson, acting under the auspices of Gull Dive, and with the knowing assistance of Defendant, Debbie Snow,

collected substantial sums of money from unsuspecting students who relied upon the Defendants' misrepresentations that they would be provided PADI scuba certification courses by competent PADI scuba instructors who would be teaching skills in accordance with PADI Training Standards.

536. Defendant, Gull Dive, through Defendants, David Olson and Jeannine Olson, failed to observe corporate formalities and was grossly undercapitalized at all relevant times herein, rendering it unable to pay vendors and subcontractors that performed work, maintained equipment or provided inventory to the dive shop.

537. Specifically, upon information and belief, Defendant, Gull Dive, through Defendants, David Olson and Jeannine Olson, were diverting funds received from students and customers to themselves rather than to Defendant Gull Dive.

538. Moreover, Defendants David Olson and Jeannine Olson were reporting the completion of training and issuance of student certifications to PADI through the dive center's PADI Member number, as if issued by Defendant Gull Dive, rather than the actual Instructor's Member number, so Defendants David Olson and Jeannine Olson could personally obtain additional benefits and financial incentives from PADI instead of the individual Instructor that actually performed student training and certifications.

539. Defendants, David Olson and Jeannine Olson, diverted funds or other property of Defendant, Gull Dive, for their personal use, including clothing and diving equipment, without accounting for said diversion of property.

540. Defendants, David Olson and Jeannine Olson, have concealed or misrepresented the members and owners of Defendant, Gull Dive.

541. Upon information and belief, Defendants, David Olson and Jeannine Olson, have failed to maintain arm's length relationships with related entities.

542. Upon information and belief, Defendants, David Olson and Jeannine Olson, have failed to observe corporate formalities in terms of behavior and documentation.

543. Upon information and belief, Defendants, David Olson and Jeannine Olson, have committed the intermingling of assets of the corporation and of the shareholders.

544. Upon information and belief, Defendants, David Olson and Jeannine Olson, have committed manipulation of assets or liabilities to concentrate the assets or liabilities.

545. Upon information and belief, Defendant, Gull Dive, has non-functioning corporate officers and/or directors who do not hold meetings, keep minutes, or exercise independent fiduciary actions.

546. Upon information and belief, Defendants, David Olson and Jeannine Olson, have siphoned corporate funds from Defendant, Gull Dive.

547. Upon information and belief, Defendants, David Olson and Jeannine Olson, have treated the assets of the corporation as his/her own.

548. Upon information and belief, Defendants, David Olson and Jeannine Olson, have used Defendant, Gull Dive for their personal dealings.

549. Upon information and belief, Defendants, David Olson and Jeannine Olson, have failed to maintain corporate records.

550. Upon information and belief, the corporation was a mere façade for the operations of the dominant shareholders, Defendants, David Olson and Jeannine Olson.

551. Upon information and belief, the shareholders of Defendant, Gull Dive, Defendants, David Olson and Jeannine Olson, held themselves out as being personally liable for certain corporate obligations.

552. As a direct and proximate result of Defendants, David Olson's and Jeannine Olson's, control and actions, Plaintiffs have suffered unjust loss and injury, for which Defendants, David Olson and Jeannine Olson, are personally liable.

553. In this case, Defendant, Gull Dive, was so controlled and manipulated that it had become a mere instrumentality of Defendants, David Olson and Jeannine Olson.

554. In this case, recognition of a separate corporate identity would sanction a fraud or promote injustice.

555. In this case, this Court should allow personal liability against the individual members and/or managers of Defendant, Gull Dive, based upon tort because Defendants, David Olson and Jeannine Olson, would be liable for their actions and omissions as set forth herein if acting in an individual capacity.

WHEREFORE, Plaintiffs, L. Scott Mills, as Personal Representative of the Estate of Linnea Mills, and L. Scott Mills, Individually, Robert Gentry, Shannon Gentry and E.G., a minor by her mother and next friend, Shannon Gentry, petition this Court to pierce the corporate veil and permit Plaintiffs to have judgment against Defendants, David Olson and Jeannine Olson, for their actions and omissions as set forth herein, in an amount in excess of $12,000,000, the precise amount to be proven at the trial of this action.

JURY DEMAND

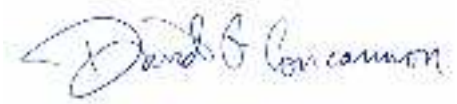
L. Scott Mills, Individually and L. Scott Mills, as Personal Representative of the Estate of Linnea Mills; Robert Gentry, Shannon Gentry, E.G., by her mother and next friend, Shannon Gentry and Joel Wilson demand a trial by jury on all issues so triable.

Respectfully submitted this 29th day of November, 2021.

DATSOPOULOS, MACDONALD & LIND, P.C.

/s/ Terance P. Perry
Terance P. Perry, Esq.

CONCANNON & CHARLES, P.C.



CERTIFICATE OF SERVICE

I, Terance P. Perry, hereby certify that I have served true and accurate copies of the foregoing Complaint - Amended Complaint to the following on 11-29-2021:

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Electronically signed by Ashley Baugus on behalf of Terance P. Perry
Dated: 11-29-2021