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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SEP 05 2006

at 3 o'clock and 50 min P.M.
SUE BEITIA, CLERK

Attorneys for Defendants
PADI WORLDWIDE CORPORATION, a California
Corporation, INTERNATIONAL PADI, INC.,
aka PROFESSIONAL ASSOCIATION OF DIVING
INSTRUCTORS, a California Corporation,
DIVING SCIENCE AND TECHNOLOGY CORP.,
aka DSAT, a California Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MATHEW ISHAM and	)	CIVIL NO. CV 06-00382 DAE/BMK
ROXANNE BEST ISHAM)	
	)	DEFENDANTS PADI WORLDWIDE
Plaintiffs,	)	CORPORATION, A CALIFORNIA
	)	CORPORATION, INTERNATIONAL PADI,
vs.	)	INC., AKA PROFESSIONAL
	)	ASSOCIATION OF DIVING
PADI WORLDWIDE CORPORATION,	)	INSTRUCTORS, A CALIFORNIA
a California Corporation,	)	CORPORATION, AND DIVING SCIENCE
INTERNATIONAL PADI, INC.,	)	AND TECHNOLOGY CORP., AKA DSAT,
aka PROFESSIONAL ASSOCIATION	)	A CALIFORNIA CORPORATION'S
OF DIVING INSTRUCTORS, a	)	ANSWER TO COMPLAINT FOR PERSONAL
California Corporation,	)	INJURY DAMAGES AND LOSS OF
DIVING SCIENCE AND TECHNOLOGY	)	CONSORTIUM FILED ON JULY 13,
CORP., aka DSAT, a California	)	2006; DEMAND FOR JURY TRIAL;
Corporation,	)	CERTIFICATE OF SERVICE
)	
Defendants.)	
)	
)	

DEFENDANTS PADI WORLDWIDE CORPORATION, A CALIFORNIA CORPORATION, INTERNATIONAL PADI, INC., AKA PROFESSIONAL ASSOCIATION OF DIVING INSTRUCTORS, A CALIFORNIA CORPORATION, AND DIVING SCIENCE AND TECHNOLOGY CORP., AKA DSAT, A CALIFORNIA CORPORATION'S ANSWER TO COMPLAINT FOR PERSONAL INJURY DAMAGES AND LOSS OF CONSORTIUM FILED ON JULY 13, 2006

Come now Defendants PADI WORLDWIDE CORPORATION, a California Corporation, INTERNATIONAL PADI, INC., aka PROFESSIONAL ASSOCIATION OF DIVING INSTRUCTORS, a California Corporation, DIVING SCIENCE AND TECHNOLOGY CORP., aka DSAT, a California Corporation (collectively "PADI Defendants") and for an answer to the Complaint for Personal Injury Damages and Loss of Consortium heretofore filed in the above-entitled matter on July 13, 2006 ("the Complaint"), alleges and avers as follows:

FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. The allegations contained in Paragraphs 1 and 4 of the Complaint are neither admitted nor denied, since there presently is insufficient knowledge or information to form a belief as to the truth of these allegations.

3. In response to the allegations contained in Paragraph 2 of the Complaint, PADI Defendants admit that Plaintiff ISHAM was a member of the Professional Association of Diving Instructors on July 20, 2004, but is without knowledge as to the

truth or falsity of the remaining allegations of Paragraph 2 and therefore denies the same.

4. In response to the allegations contained in Paragraph 3 of the Complaint, PADI Defendants admit that Plaintiff ISHAM was required to comply with all rules and regulations, training standards and course requirements relating to any PADI course he taught, but is without knowledge as to the truth or falsity of the remaining allegations of Paragraph 3 and therefore deny the same.

5. The allegations contained in Paragraphs 5, 6, 7, 10, and 11 of the Complaint are admitted.

6. In response to the allegations contained in Paragraph 8 of the Complaint, Defendant INTERNATIONAL PADI, INC. admits that it is responsible for the standards of membership for PADI diving instructors, the training standards required for PADI members to teach or instruct the DSD course, but is without knowledge as to the truth or falsity of the remaining allegations of Paragraph 8 as they may pertain to Defendant INTERNATIONAL PADI, INC. and therefore denies the same; in further response to Paragraph 8, the other PADI Defendants deny that they are responsible for the standards of membership for PADI diving instructors, and the training standards required for PADI members to teach or instruct the DSD course, but are without knowledge as to the truth or falsity of the remaining allegations of Paragraph

pertain to the remaining PADI Defendants and therefore deny the same.

7. The allegations contained in Paragraph 9 are denied.

8. In response to the allegations contained in Paragraph 12 of the Complaint, PADI Defendants admit that Plaintiff ISHAM was certified as a DAN Oxygen First Aid Instructor, but are without knowledge as to the truth or falsity of the remaining allegations of Paragraph 12 and therefore deny the same.

9. In response to the allegations contained in Paragraph 13 of the Complaint, PADI Defendants admit that Plaintiff ISHAM on or about July 20, 2004 was authorized to instruct students in the DSD experience, but is without knowledge as to the truth or falsity of the remaining allegations of Paragraph 13 and therefore deny the same.

10. In response to the allegations contained in Paragraph 14 of the Complaint that "[o]n July 20, 2004, at the Makole Anchorage located in the territorial waters of the Island of Kauai, State of Hawaii, Plaintiff ISHAM was instructing his student Dennis Claypool (hereinafter Claypool), and others in a PADI DSD experience," PADI Defendants state that they are without knowledge as to the truth or falsity of those allegations and therefore deny the same; in further response to the remaining allegations of Paragraph 14 of the Complaint, PADI Defendants deny said allegations.

**First Cause of Action
(Negligence)**

11. In response to Paragraph 15 of the Complaint, PADI Defendants repeat and reallege their previous answers to the allegations incorporated in Paragraphs 1-14 of the Complaint.

12. PADI Defendants deny the allegations contained in Paragraphs 16, 17, 18, and 19 of the Complaint.

**Second Cause of Action
(Strict Liability)**

13. In response to Paragraph 20 of the Complaint, PADI Defendants repeat and reallege their previous answers to the allegations incorporated in Paragraphs 1-19 of the Complaint.

14. PADI Defendants deny the allegations contained in Paragraphs 21, 24, and 25(a)-(e) of the Complaint.

15. In response to Paragraph 22 of the Complaint, Defendant INTERNATIONAL PADI, INC. admits that it edited, adopted, packaged, recommended, advertised, updated, published, and sold PADI programs to PADI members, but Defendant INTERNATIONAL PADI, INC. denies the remaining allegations contained in Paragraph 22 of the Complaint; in further response to Paragraph 22 of the Complaint, Defendant DIVING SCIENCE AND TECHNOLOGY CORP. ("DSAT") admits that it created designed, tested, and edited various PADI programs, but DSAT denies the remaining allegations contained in Paragraph 22 of the Complaint; and, Defendant PADI WORLDWIDE CORPORATION denies the allegations

contained in Paragraph 22 of the Complaint as it pertains to Defendant PADI WORLDWIDE CORPORATION.

16. In response to Paragraph 23 of the Complaint, PADI Defendants admit that certified instructors are required to use the course brochure/pamphlet in conducting DSD experience programs, but deny the remaining allegations of Paragraph 23 of the Complaint.

**Third Cause of Action
(Breach of Warranty)**

17. In response to Paragraph 26 of the Complaint, PADI Defendants repeat and reallege their previous answers to the allegations incorporated in Paragraphs 1-25 of the Complaint.

18. PADI Defendants deny the allegations contained in Paragraphs 27 and 29 of the Complaint.

19. In response to Paragraph 28 of the Complaint, Defendant INTERNATIONAL PADI, INC. admits that it edited, adopted, packaged, recommended, advertised, updated, published, and sold PADI programs to PADI members, but Defendant INTERNATIONAL PADI, INC. denies the remaining allegations contained in Paragraph 28 of the Complaint; in further response to Paragraph 28 of the Complaint, Defendant DIVING SCIENCE AND TECHNOLOGY CORP. ("DSAT") admits that it created designed, tested, and edited various PADI programs, but DSAT denies the remaining allegations contained in Paragraph 28 of the Complaint; and, Defendant PADI WORLDWIDE CORPORATION denies the allegations

contained in Paragraph 28 of the Complaint as it pertains to Defendant PADI WORLDWIDE CORPORATION.

**Fourth Cause of Action
(Loss of Consortium)**

20. In response to Paragraph 30 of the Complaint, PADI Defendants repeat and reallege their previous answers to the allegations incorporated in Paragraphs 1-29 of the Complaint.

21. PADI Defendants deny the allegations contained in Paragraph 31 of the Complaint.

22. The allegations contained in Paragraphs 32 and 33 of the Complaint are neither admitted nor denied, since there presently is insufficient knowledge or information to form a belief as to the truth or falsity of these allegations.

23. All allegations in any of the causes of action, not specifically referred to hereinabove are denied.

THIRD DEFENSE-ALL COUNTS

24. Plaintiffs are precluded from recovery by reason of their own negligence which was the sole cause of or the greater cause of the damages and/or by reason of the defense of assumption of risk.

FOURTH DEFENSE-ALL COUNTS

25. Plaintiffs were aware of the facts, circumstances and conditions existing at the time and place set forth in the Complaint and voluntarily assumed all risks present and arising therefrom.

FIFTH DEFENSE-ALL COUNTS

26. PADI Defendants state that if Plaintiffs were injured and/or damaged as alleged in the Complaint, and if any negligent act or omission by PADI Defendants contributed to such injury and/or damage, nevertheless the Plaintiffs are precluded from recovery by reason of their own negligence, which was the sole cause or the greater cause of such injury and/or damage.

SIXTH DEFENSE-ALL COUNTS

27. PADI Defendants state that if Plaintiffs were injured and/or damaged as alleged in the Complaint, and if any negligent act or omission by PADI Defendants was the cause or a greater cause of such injury and/or damage in comparison to the negligent act or omission of Plaintiffs, nevertheless Plaintiffs are precluded from recovery of that portion of the injury and/or damage which was caused or contributed to by their own negligence.

SEVENTH DEFENSE-ALL COUNTS

28. Plaintiffs are barred from maintaining this action against PADI Defendants by reason of their own negligence or other wrongful conduct which caused the accident and injuries alleged in the Complaint herein.

EIGHTH DEFENSE-ALL COUNTS

29. Any injuries or damages sustained by Plaintiffs were caused by their own lack of due care and fault, by pre-existing

conditions, and/or the lack of due care or fault of others for whom PADI Defendants had no responsibility or control.

NINTH DEFENSE-ALL COUNTS

30. PADI Defendants may rely upon the defenses of avoidable consequences and/or failure to mitigate damages.

TENTH DEFENSE-ALL COUNTS

31. PADI Defendants may rely upon the defense that Plaintiffs' voluntarily released their claims pursuant to § 663-1.54, Hawaii Revised Statutes.

ELEVENTH DEFENSE-ALL COUNTS

32. PADI Defendants owed no duty to Plaintiffs. If, however, PADI Defendants did owe a duty to Plaintiffs, any injuries and/or damages alleged by Plaintiffs was not the result of a breach by PADI Defendants of any duty of care owed.

TWELFTH DEFENSE-ALL COUNTS

33. if Plaintiffs sustained the injuries and/or damages alleged in the Complaint, those injuries and/or damages, all or in part, were not proximately caused by PADI Defendants and were not proximately the result of any breach by PADI Defendants of any duty of care owed to Plaintiffs.

THIRTEENTH DEFENSE-ALL COUNTS

34. If Plaintiffs sustained the injuries and/or damages alleged in the Complaint, the injuries and/or damages were not caused, in whole or in part, by PADI Defendants.

FOURTEENTH DEFENSE-ALL COUNTS

35. PADI Defendants may rely upon the defense that liability for Plaintiffs' alleged injuries and damages, if any, are that of persons, corporations and/or entities other than PADI Defendants.

FIFTEENTH DEFENSE-ALL COUNTS

36. PADI Defendants may rely upon the defense that Plaintiffs' alleged injuries and/or damages were not reasonably foreseeable.

SIXTEENTH DEFENSE-ALL COUNTS

37. PADI Defendants may rely upon the defense that any injuries or damages suffered by Plaintiffs were caused by unavoidable and/or intervening, superseding, or other causes beyond the control of PADI Defendants.

SEVENTEENTH DEFENSE-ALL COUNTS

38. PADI Defendants give notice that they intend to rely on the defense of failure to join indispensable party or parties.

EIGHTEENTH DEFENSE-ALL COUNTS

39. PADI Defendants may rely upon the defenses of laches, waiver, estoppel, and/or unclean hands.

NINETEENTH DEFENSE-ALL COUNTS

40. PADI Defendants give notice that they intend to rely on the defense of accord and satisfaction.

TWENTIETH DEFENSE-ALL COUNTS

41. Plaintiffs' claims for relief are precluded or barred by the doctrine of *in pari delicto* or unclean hands.

TWENTY-FIRST DEFENSE-ALL COUNTS

42. PADI Defendants may rely upon the defense that it does not create, design, test, edit, adopt, package, recommend, merchandise, advertise, update, publish, or otherwise sell a "product."

TWENTY-SECOND DEFENSE-ALL COUNTS

43. At all times relevant, PADI Defendants' alleged product complied with all applicable federal and/or industry standards, which constitutes the extent of PADI Defendants' duty, if any.

TWENTY-THIRD DEFENSE-ALL COUNTS

44. The incident and damages (if any) alleged in Plaintiffs' Complaint, were caused by the unauthorized, unintended and improper use, misuse, alteration, modification, repair and/or handling of the alleged product in question which amounted to intervening and superceding causes of Plaintiffs' injuries.

TWENTY-FOURTH DEFENSE-ALL COUNTS

45. There was no warranty, express or implied, between PADI Defendants and Plaintiffs for the alleged defects, and, by reason thereof, no recovery can be had against PADI Defendants for any

alleged breach of such warranty. PADI Defendants further assert that if there were any implied warranty, which is denied, Plaintiffs failed to notify PADI Defendants of any alleged breach as required, which is further plead in bar of the claims against PADI Defendants.

TWENTY-FIFTH DEFENSE-ALL COUNTS

46. PADI Defendants aver that the Complaint fails to state a claim upon which punitive damages may be awarded to Plaintiffs.

TWENTY-SIXTH DEFENSE-ALL COUNTS

47. PADI Defendants deny that it has been guilty of any conduct which entitles Plaintiffs to recover punitive damages.

TWENTY-SEVENTH DEFENSE-ALL COUNTS

48. PADI Defendants acted without malice.

TWENTY-EIGHTH DEFENSE-ALL COUNTS

49. PADI Defendants give notice that they may rely upon the defense that any award of punitive damages would exceed the remedies available under the common law, and would violate the due process clause of the Fifth Amendment and/or the equal protection clause of the Fourteenth Amendment to the United States Constitution.

TWENTY-NINTH DEFENSE-ALL COUNTS

50. PADI Defendants give notice that it intends to rely upon any other matter constituting an avoidance or affirmative defense as set forth in Rule 8(c) of the Federal Rules of Civil

Procedure, and that it intends to seek leave to amend its answer to specifically allege those defenses of which it may become aware during the course of discovery or trial of this matter.

THIRTIETH DEFENSE-ALL COUNTS

51. Loss of consortium damages are not recoverable under general maritime law.

WHEREFORE, Defendants PADI WORLDWIDE CORPOPATION, a California Corporation, INTERNATIONAL PADI, INC., aka PROFESSIONAL ASSOCIATION OF DIVING INSTRUCTORS, a California Corporation, DIVING SCIENCE AND TECHNOLOGY CORP., aka DSAT, a California Corporation pray that the suit be dismissed and Defendants PADI WORLDWIDE CORPORATION, a California Corporation, INTERNATIONAL PADI, INC., aka PROFESSIONAL ASSOCIATION OF DIVING INSTRUCTORS, a California Corporation, DIVING SCIENCE AND TECHNOLOGY CORP., aka DSAT, a California Corporation be awarded costs or that the jury find the degree of comparative negligence of all parties and that the damages awarded the Plaintiffs be discounted by an amount directly proportional to the total

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damages as the proportion of the Plaintiffs' negligence is to the total negligence that caused the injury and/or damages.

DATED: Honolulu, Hawaii, SEP 05 2006



JAMES KAWASHIMA
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CARTER K. SIU
Attorneys for Defendants
PADI WORLDWIDE CORPORATION, a California Corporation, INTERNATIONAL PAUL, INC., aka PROFESSIONAL ASSOCIATION OF DIVING INSTRUCTORS, a California Corporation, DIVING SCIENCE AND TECHNOLOGY CORP., aka DSAT, a California Corporation