

Edie A. Feldman 5518
345 Queen Street, Suite 900
Honolulu, HI 96813
Telephone: (808) 528-1777
Facsimile: (808) 263-5879
E-Mail: ediefeldman@Hawaii.iantel.net

Joseph W. Walker *Pro Hac Vice*
4200 Westheimer, Suite 130
Houston, Texas 77027
Telephone: (713) 840-7395
Facsimile: (713) 840-7448
E-Mail: deepsea6@fmw.xohost.com

Attorneys for Plaintiffs
MATTHEW ISHAM and
ROXANNE BEST ISHAM

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

MATTHEW ISHAM and	)	CIVIL NO. 06-00382 DAE-BMK
ROXANNE BEST ISHAM,)	
)	
Plaintiffs,	)	PLAINTIFFS MATTHEW
	)	ISHAM AND ROXANNE
vs.	)	BEST ISHAM'S FIRST
	)	AMENDED COMPLAINT
PADI WORLDWIDE CORPORATION,	)	FOR DAMAGES; DEMAND
a California Corp., INTERNATIONAL	)	FOR JURY TRIAL;
PADI, INC. a.k.a. PROFESSIONAL	)	CERTIFICATE OF SERVICE
ASSOCIATION OF DIVING)	
INSTRUCTORS, a California Corp.,)	
DIVING SCIENCE AND TECHNOLOGY)	
CORPORATION, a.k.a. DSAT, a)	
California Corporation, Capital)	
Investments & Ventures Corporation,)	
a.k.a. CIVCO, a California Corporation,)	
)	
Defendants.)	

PLAINTIFFS' MATTHEW ISHAM AND ROXANNE BEST ISHAM'S
FIRST AMENDED COMPLAINT

COME NOW PLAINTIFFS MATTHEW ISHAM AND ROXANNE BEST ISHAM, who allege and otherwise submit their causes of action against the named Defendants as follows:

I. PARTIES

1. Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM (“Plaintiffs”) are a duly married couple and residents of the State of Texas. At all times relevant herein they were residing as husband and wife in the County of Kauai, State of Hawai`i.

2. Defendant PADI WORLDWIDE CORPORATION [hereinafter “PADI Worldwide”] was and is a corporation duly organized and existing under the laws of the State of California, and authorized to do business, *inter alia*, as a dive training agency in the State of Hawai`i, at all times relevant herein.

3. Defendant INTERNATIONAL PADI, INC., a.k.a. PROFESSIONAL ASSOCIATION OF DIVING INSTRUCTORS [hereinafter “International PADI”] was and is a corporation duly licensed and existing under the laws of the State of California, and authorized to do business, *inter alia*, as a dive training agency in the State of Hawai`i, at all times relevant herein.

4. Defendant DIVING SCIENCE AND TECHNOLOGY CORPORATION, a.k.a. DSAT [hereinafter “DSAT”], was and is a corporation duly organized and existing under the laws of the State of California authorized to do business, and is doing business, *inter alia*, as a dive training agency, at all relevant times herein.

5. At all times herein mentioned, Defendant CAPITAL INVESTMENTS AND & VENTURES CORPORATION [hereinafter “CIVCO”], was and is a corporation duly organized and existing under the laws of the State of California.

6. Plaintiffs are informed and believe, and therefore allege, that CIVCO is the parent corporation of Defendants PADI Worldwide, International PADI, and DSAT [hereinafter collectively referred to as “PADI Defendants”].

7. At all times relevant herein, each Defendant acted as principal, agent, employer, and employee of every other co-Defendant, and in so doing, all acts and/or omissions of each Defendant (hereinafter more fully alleged), was under the scope and authority of each co-Defendant, except as otherwise stated.

8. To an extent unknown at this time, all Defendants, acting as agents of each other co-Defendant, were the authors, distributors, promulgators, and otherwise controlling parties establishing the safety standards and procedures for diving instructors and participants in PADI diving programs, including, but not

limited to, PADI introductory scuba courses such as the Discover Scuba Diving program.

II. JURISDICTION AND VENUE

9. All acts and/or omissions of each Defendant combined and cooperated with the acts and/or omissions of the other Defendants, so as to cause the subject incident occurring in navigable waters and subject to the admiralty jurisdiction of this Court under the “Savings to Suitors” Clause, 28 U.S.C. § 1333(1).

10. Plaintiffs’ damages exceed the jurisdictional requirements of 28 U.S.C. § 1332. Pendant jurisdiction is established by 28 U.S.C. § 1367.

11. Venue resides in the United States District Court for the District of Hawai`i pursuant to 28 U.S.C. § 1391(b), *inter alia*, as substantially all of the events and/or omissions described herein occurred in the territorial waters of the State of Hawai`i.

III. OPERATIVE FACTS

A. Padi’s Training of Plaintiff Matthew Isham

12. Commencing on or about August 1999, Plaintiff MATTHEW ISHAM entered into agreements with the PADI Defendants whereby Plaintiff MATTHEW ISHAM, in exchange for certain monetary consideration, received training in the following courses of instruction: PADI Open Water Diver, PADI Advanced Open

Water Diver, PADI Rescue Diver, PADI Dive Master, and PADI Open Water Dive Instructor.

13. Following completion of the above identified PADI courses, Plaintiff MATTHEW ISHAM was certified in the aforementioned areas of diving.

14. Plaintiff MATTHEW ISHAM also paid the PADI Defendants certain monetary consideration for certification in the following areas: Medic First Aid, Enriched Air Diver, Night Diver, Search & Recovery, Wreck Diver, Underwater Navigator, Deep Diver, Boat Diver, Multilevel Diver, Underwater Photographer, Equipment Specialist, Drift Diver, and Underwater Naturalist.

15. Plaintiff MATTHEW ISHAM paid the PADI Defendants a certain consideration for training and certification as a TDI Re-breathing Diver, a TDIT Re-breathing Instructor, TDI Nitrox/Blending Technician, a Diver Alert Network (DAN) Oxygen First Aid Instructor, and a PADI Resort Operations Specialist.

16. The PADI Defendants are authors and instructors of Plaintiff MATTHEW ISHAM'S instructor training manuals, courses, rules, regulations, and diving standards for all PADI programs.

17. Upon completion of the above-named training, instruction, and certification, Plaintiff MATTHEW ISHAM was required to and did comply with all PADI rules, regulations, training standards and specific course requirements

relating to all PADI courses he taught, including the PADI Defendants' Discover Scuba Diving program.

18. At all times relevant herein, Plaintiff MATTHEW ISHAM was a member in good standing of PADI and held the position of Open Water Dive Instructor.

19. Plaintiff MATTHEW ISHAM entered into yearly contracts with the PADI Defendants, whereby Plaintiff MATTHEW ISHAM promised to abide by all PADI diving instructor rules, regulations, standards and procedures.

20. By strictly promising to abide by all PADI Defendants' rules, regulations, standards and procedures, the PADI Defendants authorized Plaintiff MATTHEW ISHAM to instruct Open Water Diving in the Discover Scuba Diving ("DSD") program.

21. As a PADI diving instructor, Plaintiff MATTHEW ISHAM was duly obligated to provide assistance, rescue, and relief to all diving participants under his instruction, care, supervision and/or control.

B. Padi's Discover Scuba Diving (DSD) Program

22. The PADI Defendants designed, manufactured and copyrighted introductory scuba programs to encourage inexperienced divers to engage in open-ocean water diving while wearing underwater scuba equipment for which they received instruction from certified PADI instructors.

23. Sometime in the early 1990's, the PADI Defendants marketed new introductory dive programs as a means to increase their market share, halt dropping sales figures and increase profits. To facilitate the growth and popularity of these new programs, the PADI Defendants modified, reduced or eliminated basic instructional procedures as prerequisites to Open Water Dive courses.

24. For instance, some PADI introductory scuba programs merely required Open Water Dive participants to experience a brief pool orientation session just prior to scuba diving in open ocean water. The pool session allowed participants to familiarize themselves with their scuba gear and learn basic skills while in a pool—skills such as clearing ones diving mask, and inflating and deflating a buoyancy compensator device—so that they were prepared for the Open Water Dive.

25. In order to further increase its market share and to capture the marketplace provided by daily cruise ships, the PADI Defendants “dumbed down” their introductory scuba programs even further and allowed participants to perform Open Water Dives under a “boat option.”

26. The PADI Defendants' copyrighted Discover Scuba Diving (“DSD”) program's boat option completely eliminated the contained, calm water pool session instruction and familiarity with scuba equipment prior to the Open Water Dive.

27. The PADI Defendants' DSD program contained no instruction for its participants in the basic operation of the buoyancy compensator device—a necessary and critical skill fundamental to all safe Open Water Divers.

28. Participants of PADI'S DSD program merely reviewed a flip chart and received instruction while on the boat ride to the dive site—and first time participants like Plaintiff DENNIS CLAYPOOL became familiar with his dive gear only upon entering the ocean in open sea conditions.

29. A safe and effective student-teacher ratio for an inexperienced, Open Water Diver is 1:1—however, PADI'S DSD program put its novice participants into open, navigable, ocean water with a student to instructor ratio of 4:1.

30. The PADI Defendants continued its DSD boat option program even after being warned of its dangers by instructors and after knowing that numerous, unwary participants had been killed or seriously injured.

31. Plaintiffs are informed and believe, and thereby allege that the PADI Defendants knew or should have known that on an annual basis, approximately forty (40) participants and/or instructors suffer death due to their participation in a PADI scuba dive courses, including the DSD program.

32. Plaintiffs are informed and believe, and thereby allege that the PADI Defendants knew or should have known that on an annual basis, approximately

four hundred (400) participants and/or instructors suffer bodily injuries due to their participation in a PADI scuba dive programs, including DSD.

33. The PADI Defendants failed to inform or advise Plaintiff MATTHEW ISHAM of the number of annual deaths and/or injuries suffered by instructors and/or participants of PADI introductory scuba courses, as well as the causes of deaths and injuries—and Plaintiff MATTHEW ISHAM was led to believe that the standards, guidelines, and/or procedures for PADI scuba dive programs were safe—when the DSD program he was obligated to follow was inherently defective and dangerous to him and participants such as Plaintiff DENNIS CLAYPOOL.

34. The PADI Defendants failed to warn Plaintiff MATTHEW ISHAM that the instructional methods he was obligated to follow while teaching DSD could place both him and his students in extreme danger.

35. The PADI Defendants failed to warn MATTHEW ISHAM that the DSD boat option went squarely against PADI'S basic requirements for safe diving instruction and practices for Open Water Diving.

36. The PADI Defendants created, designed, composed, prepared, tested, collated, edited, adopted, published, packaged, distributed, described, recommended, merchandised, advertised, promoted, and sold the copyrighted DSD Program to be placed in the stream of commerce and taught by PADI certified dive instructors like Plaintiff MATTHEW ISHAM.

37. The PADI Defendants provided Plaintiff MATTHEW ISHAM with a PADI Discover Scuba Diving Instructor's Guide (PADI Product No. 79181, Version 1.0), a PADI DSD video, a PADI DSD flip chart, and a PADI Discover Scuba Diving Participant's Pamphlet (PADI Product No. 60108, Version 2.1), as well as various other training materials and bulletins regarding instruction of the DSD program, but failed to warn Plaintiff MATTHEW ISHAM that the program was dangerously defective.

38. The PADI Defendants' copyrighted DSD program is unsafe and defective for its intended use because it contains defects in the design, manufacture, testing, publication, description, and packaging, and promulgates inadequate and unsafe standards for qualification, which maximizes PADI'S profits at the cost of human life and limb.

C. The Accident

39. On or about July 20, 2004, Plaintiff MATTHEW ISHAM was employed as a certified PADI dive instructor aboard the *Blue Dolphin*, a vessel which transported participants of Discover Scuba Diving ("DSD") and others from Port Allen to Makol'e Reef located in the navigable waters of the United States, off the island of Kauai, State of Hawai'i.

40. During the ride from Port Allen to Makol'e, Plaintiffs DENNIS CLAYPOOL and SCOTT CLAYPOOL were deemed qualified to participate in the

PADI Defendants' Discover Scuba Dive ("DSD") program in the Open Water Dive.

41. Plaintiff MATTHEW ISHAM followed the PADI Defendants' protocol and provided instruction to DSD participants, using PADI flipcharts and other PADI instructional materials for teaching introductory scuba diving to the inexperienced divers.

42. At or about 4:00 p.m. on the afternoon of July 20, 2004, while the *Blue Dolphin* was anchored at Makol'e Reef, Plaintiff MATTHEW ISHAM along with Plaintiff DENNIS CLAYPOOL and other novices of PADI'S DSD program, entered the ocean water wearing their scuba equipment, including scuba masks, scuba tanks, buoyancy compensators, and fins.

43. Plaintiff DENNIS CLAYPOOL had no prior scuba diving experience, training, or instruction when he entered the ocean water at Makol'e. Shortly after he began his dive experience, Plaintiff DENNIS CLAYPOOL began to experience problems with the buoyancy compensator device and began to drift up toward the ocean surface, becoming separated from the rest of the DSD participants.

44. Plaintiff MATTHEW ISHAM was with other DSD participants in an underwater lava tube down near the reef's bottom and saw Plaintiff DENNIS CLAYPOOL drifting upwards because of problems with buoyancy compensation.

45. In fulfillment of his duties to rescue, relief, and assist student Plaintiff DENNIS CLAYPOOL, PADI instructor Plaintiff MATTHEW ISHAM immediately swam to retrieve Plaintiff DENNIS CLAYPOOL to assist him with his device, but the *M/V Spirit of Kauai*, a twin-screwed catamaran, motored through the ocean water and struck both Plaintiffs MATTHEW ISHAM and DENNIS CLAYPOOL with its starboard hull and propeller.

46. Both Plaintiffs' MATTHEW ISHAM and DENNIS CLAYPOOL suffered grievous, permanent and life-threatening injuries.

47. Plaintiff MATTHEW ISHAM'S left leg was so severely slashed by the catamaran's propeller that his left leg was totally amputated above his left knee. Due to the extent of his physical injuries, Plaintiff MATTHEW ISHAM is unable to serve as an open water dive instructor in any dive program.

48. As a direct and proximate result of the aforesaid acts and/or omissions of the PADI Defendants, Plaintiff MATTHEW ISHAM suffered serious injuries which have caused, and will continue to cause him great mental, physical, emotional, and nervous pain, distress and suffering, all to his general damages in an amount to be proven at trial, which exceeds the jurisdictional limits of the District Court.

49. As a direct and proximate result of the aforesaid acts and/or omissions of the PADI Defendants, Plaintiff MATTHEW ISHAM has incurred and will

continue to incur medical bills and expenses, all to his special damages in an amount to be proven at the time of trial.

50. As a direct and proximate result of the aforesaid acts and/or omissions of the PADI Defendants, Plaintiff MATTHEW ISHAM has been harmed in his capacity to work and earn wages, and has thereby suffered, and shall continue to suffer, a loss of income and earning capacity, all to his special damage in an amount to be proven at the time of trial.

FIRST CAUSE OF ACTION
(Strict Liability)

51. Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM refer to and incorporate by reference as though fully set forth herein, each and every allegation contained in Paragraphs 1 through 50 herein above.

52. The PADI Defendants had a duty to create, design, compose, prepare, test, collate, edit, adopt, publish, package, distribute, describe, recommend, merchandise, advertise, promote, update and sell an Open Water Dive program like DSD that was reasonably safe from foreseeable hazards to its participants and instructors.

53. The PADI Defendants created, designed, designed, composed, prepared, tested, collated, edited, adopted, published, packaged, distributed, described, recommended, merchandised, advertised, promoted, updated and sold

the copyrighted DSD Program to be placed in the stream of commerce and taught by its certified dive instructors like Plaintiff MATTHEW ISHAM.

54. The PADI Defendants' copyrighted DSD program was unsafe and unfit for its intended use by reason of the unreasonably dangerous defects in its design, manufacture, testing, publication, description, and packaging—specifically, because the program places inexperienced, novice participants to engage in compressed air scuba diving for the first time, from a boat, in the open ocean water—when such activity is unreasonably dangerous.

55. The PADI Defendants' DSD program is unsafe and defective for its intended use because it (1) omits the prerequisite of a pool training session, (2) fails to adequately train participants in the proper control of the buoyancy compensator device, (3) fails to adequately provide a sufficient participant-instructor ratio for inexperienced, first time divers in an Open Water Dive; (4) prevents its instructors from providing sufficient training in compressed air scuba diving instruction; (5) places its certified instructors like Plaintiff MATTHEW ISHAM in a foreseeable zone of danger as he is mandated to rescue, assist and provide relief to all DSD participants; and (6) fails to warn its certified instructors of program's inherent defects of the program by concealing the number of yearly deaths and injuries suffered by participants and/or instructors.

56. It was foreseeable that the PADI Defendants' certification of Plaintiff MATTHEW ISHAM to provide instruction in an unsafe and dangerous scuba diving program would cause him to suffer from serious bodily and emotional injuries.

57. As a direct and proximate result of the herein above alleged acts and/or omissions of the PADI Defendants, Plaintiff MATTHEW ISHAM was injured while in the performance of certified PADI activity, causing him serious injuries which have caused, and will continue to cause him great mental, physical, emotional, and nervous pain, distress and suffering, all to his general damages in amounts which exceed the jurisdictional limits of the District Court.

58. As a further direct and proximate result of the aforesaid acts and/or omissions of the PADI Defendants, Plaintiff MATTHEW ISHAM has incurred and will continue to incur medical bills and expenses, all to his special damages in amounts to be proven at the time of trial.

59. As a further direct and proximate result of the aforesaid acts and/or omissions of the PADI Defendants, Plaintiff MATTHEW ISHAM has been harmed in his capacity to work and earn wages, and has thereby suffered, and shall continue to suffer a loss of income and earning capacity, all to his special damages in amounts to be proven at the time of trial.

Wherefore, Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM pray judgment against the PADI Defendants as is hereinafter more fully set forth.

SECOND CAUSE OF ACTION
(Breach of Warranty)

60. Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM refer to and incorporate by reference as though fully set forth herein, each and every allegation contained in Paragraphs 1 through 59 herein above.

61. The PADI Defendants' aforesaid copyrighted DSD Program was designed, composed, prepared, tested, collated, edited, adopted, published, packaged, distributed, described, recommended, merchandised, advertised, promoted, administered, interpreted, updated, and sold by said Defendants for instruction by PADI trained instructors like Plaintiff MATTHEW ISHAM in Open Water Dives.

62. As the said DSD Program had material defects that could cause its dive instructors harm or even death when used in the manner for which it was designed, composed, prepared, tested, collated, edited, adopted, published, packaged, distributed, described, recommended, merchandised, advertised, promoted, administered, interpreted, updated, and sold by said PADI Defendants, it was not fit for its ordinary, intended purpose.

Wherefore, Plaintiff MATTHEW ISHAM and ROXANNE BEST ISHAM pray judgment against the PADI Defendants, as is hereinafter more fully set forth.

THIRD CAUSE OF ACTION
(Breach Express and Implied Warranties)

63. Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM refer to and incorporate by reference as though fully set forth herein, each and every allegation contained in Paragraphs 1 through 62 herein above.

64. The PADI Defendants and Plaintiff MATTHEW ISHAM entered into ongoing contractual agreements containing express and implied warranties, including, but not limited to, that the copyrighted DSD program was safe for its intended use. Plaintiff MATTHEW ISHAM was obligated to follow all PADI procedures and guidelines for its instructors, without deviation, in order to be allowed to serve as a PADI DSD instructor.

65. The PADI Defendants' rules, regulations and standards expressly and impliedly warranted that the PADI dive instructors' handbooks, guidelines, procedures and standards for the DSD program were carefully and fully tested, researched and monitored and deemed adequate for training inexperienced divers in Open Water Dives.

66. Plaintiff MATTHEW ISHAM reasonably relied upon the PADI Defendants' express and implied warranties, that following his training,

certification and compliance with PADI guidelines, he would be teaching DSD participants in a reasonably safe environment.

67. The PADI Defendants breached their agreements and warranties with Plaintiff MATTHEW ISHAM to his substantial detriment, causing him to suffer serious personal injury.

Wherefore, Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM pray judgment against the PADI Defendants, as is hereinafter more fully set forth.

FOURTH CAUSE OF ACTION
(Fraudulent Concealment/Failure to Warn)

68. Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM refer to and incorporate by reference as though fully set forth herein, each and every allegation contained in Paragraphs 1 through 67 herein above.

69. On and before July 20, 2004, the PADI Defendants knew that due to defects in their design, composition, preparation, testing, collation, editing, adoption, publication, packaging, distribution, description, merchandising, advertisement, and promotion, of the aforesaid copyrighted DSD Program was unsafe and unfit for instruction by PADI divers and its participants.

70. The PADI Defendants knew that inexperienced, novice divers would be unable to master the skill of regulating buoyancy after receiving only minimal instruction in a program which all DSD dive instructors were obligated to follow.

The PADI Defendants knew that an inexperienced diver experiencing buoyancy problems would likely become separated from the instructor and begin to rapidly surface. The PADI Defendants knew that a student-teacher ratio of 1:4 was inadequate for first time, inexperienced novices in the ocean's navigable waters. The PADI Defendants knew that its dive instructors would be faced with an unreasonable risk of harm if the PADI guidelines for instructing participants of the DSD program were followed. The PADI Defendants had been both warned by other instructors and were on notice that on a yearly basis, a significant number of students and/or instructors had died and/or suffered serious injuries while participating in PADI'S programs.

71. By concealing the material, known dangers of the DSD program, dive instructors like Plaintiff MATTHEW ISHAM were encouraged to take groups of inexperienced divers into the open ocean water, thereby creating an unreasonable risk of underwater injury for Plaintiff MATTHEW ISHAM while he was obligated to assist and/or retrieve a struggling DSD participant.

72. The PADI Defendants knew or should have known that the concealment of the known dangerous defects of the DSD program from Plaintiff MATTHEW ISHAM materially misled him to serve as an instructor of PADI'S DSD program. By concealing the material defects of the DSD program, Plaintiff MATTHEW ISHAM relied and acted upon the PADI Defendants' omissions and

reasonably believed that adherence to PADI'S instructors' guidelines rendered the program safe.

73. At all times relevant hereto, Plaintiff MATTHEW ISHAM was not aware of the existence of facts that the PADI Defendants suppressed, omitted and/or refused to disclose. Had Plaintiff MATTHEW ISHAM been aware of the existence of said concealed material facts, he would not have participated as an instructor in the unsafe and defective DSD Program in the Open Water Dive in the waters off Makol'e, Kauai on July 20, 2004.

74. Plaintiff MATTHEW ISHAM justifiably relied on the reputation and specific assurance of the PADI Defendants, who certified that the DSD Program was safe and fit, in all material respects, for instruction and use for which it was intended.

75. By failing and/or refusing to disclose said material facts, Plaintiff MATTHEW ISHAM suffered serious bodily and injuries and other damages as a result of his participation as an instructor in PADI'S DSD program on July 20, 2004.

76. The PADI Defendants intentionally failed and refused to disclose the known defects of the DSD program to Plaintiff MATTHEW ISHAM, from whom they intentionally and deliberately concealed such information.

77. The PADI Defendants acted or failed to act intentionally, fraudulently, willfully, wantonly, and with malice and oppression, entitling Plaintiffs to an award of punitive or exemplary damages to be determined at the time of trial.

Wherefore, Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM pray judgment against the PADI Defendants, as is hereinafter more fully set forth.

FIFTH CAUSE OF ACTION
(Unfair and Deceptive Trade Practices)

78. Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM refer to and incorporate by reference as though fully set forth herein, each and every allegation contained in Paragraphs 1 through 77 herein above.

79. Plaintiff MATTHEW ISHAM is a consumer as defined under Section 480-1, Hawai`i Revised Statutes (H.R.S.), as he is a natural person who primarily for personal, family, or household purposes, purchased goods and services from the PADI Defendants, and who committed money or services in a personal investment to the PADI Defendants.

80. The PADI Defendants are persons as defined under Section 480-1, HRS who engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, as defined by Section 480-2, Unfair competition, practices, declared unlawful, Hawai`i Revised Statutes.

81. Plaintiff MATTHEW ISHAM committed the payment of money to the PADI Defendants for diver training, specializations and certifications, and Plaintiff MATTHEW ISHAM did provide his services as an Open Water Dive instructor in the PADI Defendants' DSD program.

82. As a PADI dive instructor, Plaintiff MATTHEW ISHAM was mandated to teach only pursuant to PADI standards. In fact, the PADI Defendants required Plaintiff MATTHEW ISHAM to sign annual membership renewal agreements, where it states that he must "abide by all diving course standards and procedures published in the PADI Instructor Manual."

83. The PADI Defendants engaged in false, misleading, and/or deceptive acts or practices. Specifically, among other things, the PADI Defendants:

a) Failed to disclose information concerning the safety of the DSD program which was known at the time Plaintiff MATTHEW ISHAM provided instruction to Plaintiff DENNIS CLAYPOOL and others;

b) Induced Plaintiff MATTHEW ISHAM into entering into agreements and other transactions that he would not have otherwise entered into had the concealed information been disclosed;

c) Withheld material information regarding the safety of the DSD program from its instructors;

d) Represented that the DSD program was safe for its intended use and for its instructors like Plaintiff MATTHEW ISHAM;

e) Breached express and implied warranties as set forth herein;

f) Engaged in unconscionable courses of action for the sole purpose of making a profit; and

g) Concealed from Plaintiff MATTHEW ISHAM the yearly number of deaths, accidents and other injuries to participants and instructors of PADI scuba dive programs.

84. Plaintiff MATTHEW ISHAM relied upon the PADI Defendants' false and misleading acts and practices to his detriment. As a result of his participation in DSD Program, Plaintiff MATTHEW ISHAM is forever precluded from teaching any further diving courses for which he is certified to teach because of the extent of his injuries.

85. The PADI Defendants knew of the dangerous condition, defect, or failure of the DSD program, constituting the breach of warranty giving rise to Plaintiffs' claims. The PADI Defendants acted with specific intent to induce Plaintiff MATTHEW ISHAM'S detrimental reliance on PADI'S misleading practices and/or his detrimental ignorance of the unfairness of their practices.

86. The PADI Defendants' intentional and knowing false, misleading, and deceptive trade acts and practices caused significant damages to Plaintiff

MATTHEW ISHAM. Under Section 480-13(b)(1), H.R.S. Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM seek the imposition of threefold the amount of damages they sustained, together with reasonable attorneys' fees and costs of this lawsuit against the PADI Defendants.

Wherefore, Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM pray judgment against the PADI Defendants, as is hereinafter more fully set forth.

SIXTH CAUSE OF ACTION
(Negligence)

87. Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM refer to and incorporate by reference as though fully set forth herein, each and every allegation contained in Paragraphs 1 through 86 herein.

88. The PADI Defendants owed a duty to use reasonable care in the creation, design, production, publication and marketing of the DSD program taught by its certified dive instructor Plaintiff MATTHEW ISHAM.

89. The PADI Defendants had a duty to use reasonable care in monitoring the injuries and accidents suffered by participants of the DSD program and to determine whether the DSD standards and course content are sufficient to prevent unnecessary death and injuries.

90. Once the PADI Defendants knew or should have known that the DSD program was inherently unsafe and defective, they had a duty to use reasonable

care in warning Plaintiff MATTHEW ISHAM of the inherent dangers of the DSD program, especially since Plaintiff MATTHEW ISHAM was required to and did follow all PADI guidelines, regulations, standards and procedures for instruction in the Discover Scuba Diving Program, and was led to believe that his strict compliance with all PADI requirements would render him safe.

91. Despite its knowledge that the DSD program was inherently unsafe and defective, the PADI Defendants nevertheless continues to market, promote and advertise the DSD program, and in fact “dumbed down” the program by eliminating basic skills for underwater scuba instruction, thereby creating an unreasonable risk of harm to Plaintiff MATTHEW ISHAM as a DSD instructor.

92. Despite its knowledge that the DSD program was inherently unsafe and defective, the PADI Defendants mandated that Plaintiff MATTHEW ISHAM follow all its guidelines, regulations, standards and procedures for instruction, but failed to warn him that despite strict compliance with all PADI guidelines, regulations, standards and procedures, the DSD program was inherently defective, thereby creating an unreasonable risk of harm to Plaintiff MATTHEW ISHAM.

93. As a direct and proximate cause of the PADI Defendants’ breach of their duties to PADI dive instructor Plaintiff MATTHEW ISHAM, he suffered severe injuries despite compliance with the PADI Defendants’ guidelines, regulations, standards and procedures for instruction in the DSD program.

94. The negligent acts and omissions by the PADI Defendants proximately caused Plaintiff MATTHEW ISHAM to suffer serious bodily injuries emotional distress.

Wherefore, Plaintiff MATTHEW ISHAM and ROXANNE BEST ISHAM pray judgment against the PADI Defendants as is hereinafter more fully set forth.

SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

95. Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM refer to and incorporate by reference as though fully set forth herein, each and every allegation contained in Paragraphs 1 through 94 herein above.

96. Each of the PADI Defendants' material omissions and/or misrepresentations regarding the DSD program were made without exercising reasonable care in obtaining the information that was communicated to them, and were omitted and/or concealed without exercising reasonable care in communicating the information to Plaintiff MATTHEW ISHAM.

97. The PADI Defendants failed to disclose to Plaintiff MATTHEW ISHAM all information necessary for him to decide whether it was safe to instruct inexperienced divers in open ocean waters in the DSD program. Because Plaintiff MATTHEW ISHAM relied upon the PADI Defendants to disclose known information regarding the safety and/or hazards of its DSD program and the

increasing number of deaths, injuries and deaths to participants of its scuba courses, and the PADI Defendants failed to communicate such vital information beneficial to Plaintiff MATTHEW ISHAM, Plaintiff MATTHEW ISHAM'S reliance upon PADI'S negligent misrepresentations and/or omissions caused him to suffer serious injury and other damages.

Wherefore, Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM pray judgment against the PADI Defendants, as is hereinafter more fully set forth.

SEVENTH CAUSE OF ACTION
(Gross Negligence and Willful Wanton Indifference)

98. Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM refer to and incorporate by reference as though fully set forth herein, each and every allegation contained in Paragraphs 1 through 97 herein above.

99. The PADI Defendants' acted negligently, willfully, wantonly, intentionally and with reckless and callous disregard for Plaintiffs' MATTHEW ISHAM and ROXANNE BEST ISHAM'S safety and health when they designed, composed, prepared, tested, collated, edited, adopted, published, packaged, distributed, described, recommended, merchandised, advertised, promoted, administered, interpreted, updated, "dumbed down" and sold their copyrighted DSD program in that they:

a. Knew that it was extremely dangerous to permit instructors take groups of up to four inexperienced scuba divers into the open ocean water, while wearing scuba equipment for the first time, and without proper instruction in the buoyancy compensator device;

b. Knew that withholding information from Plaintiff MATTHEW ISHAM regarding the extremely dangerous nature of the DSD program would induce him to continue his participation as an Open Water Dive Instructor;

c. Knew that by continuing to encourage and permit its instructors to engage in risky dangerous conduct unbeknownst to them would serve to bolster their corporate profits; and

d. Knew that by deliberately encouraging instructors and novices to continue to participate in their risky DSD Open Water Dive program, future profits could be made at the cost of human life and limb.

100. Had the PADI shown a modicum of regard for their instructors or participants, and exercised an even a slight degree of care, the DSD program would not continue to be designed, composed, prepared, tested, collated, edited, adopted, published, packaged, distributed, described, recommended, merchandised, advertised, promoted, “dumbed down” and sold in the manner in which they did.

101. By willfully and wantonly conducting themselves with such gross, reckless, and callous disregard for the Plaintiffs’ safety, the PADI Defendants

acted with deliberate indifference, entitling Plaintiffs to an award of punitive or exemplary damages under general maritime law, in an amount to be determined at the time of trial.

Wherefore Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM pray judgment against the PADI Defendants as is hereinafter more fully set forth.

NINTH CAUSE OF ACTION
(Emotional Distress)

102. Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM refer to and incorporate by reference as though fully set forth herein, each and every allegation contained in Paragraphs 1 through 101 herein above.

103. The PADI Defendants aforementioned unlawful conduct surpasses all possible bounds of decency and is utterly intolerable in a civilized community. The intentional and/or reckless acts and/or omissions by the PADI Defendants directly and proximately caused Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM to suffer serious emotional and psychological injuries.

104. The PADI Defendants knew of the dangers of the DSD program—yet they refused to inform Plaintiff MATTHEW ISHAM of its dangers because of pure corporate greed—as increasing the guidelines and standards for the program would severely hamper the number of qualified participants and increase the cost

to allow for adequate training and instruction of its participants, and would require a lower student-instructor ratio.

105. The PADI Defendants, and their deliberate, manipulative behaviors are precisely what takes this case beyond the realm of an ordinary dispute and into the realm of outrageous behavior.

106. As a result of the aforesaid acts and/or omissions of the PADI Defendants, and each of them, Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM have suffered great mental anguish, emotional distress, anxiety, embarrassment, humiliation, worry, and grief. Plaintiffs have suffered, are presently suffering, and will continue to suffer great pain, fear, serious mental and emotional distress, loss of enjoyment of life in the future and other general damages in amounts that exceed the jurisdictional limits of the District Court.

Wherefore, Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM pray judgment against the PADI Defendants, as is hereinafter more fully set forth.

TENTH CAUSE OF ACTION
(Loss of Consortium)

107. Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM refer to and incorporate by reference as though fully set forth herein, each and every allegation contained in Paragraphs 1 through 106 herein above.

108. Prior to his herein above alleged injuries, Plaintiff MATTHEW ISHAM was able to and did perform all of his duties, services and activities as the spouse of Plaintiff ROXANNE BEST ISHAM. Subsequent to his aforesaid injuries, and as a direct and proximate result thereof, Plaintiff MATTHEW ISHAM has been unable, and will continue to be unable to perform companionship, aid, assistance, comfort and society, and services to his wife in performing his domestic and other household functions.

109. By reason thereof, Plaintiff ROXANNE BEST ISHAM has been deprived, and will continue to be deprived, of the consortium of her husband, Plaintiff MATTHEW ISHAM, all to her general damages in amounts that exceed the jurisdictional limits of the District Court.

Wherefore, Plaintiffs MATTHEW ISHAM and ROXANNE BEST ISHAM, and each of them, pray judgment against the PADI Defendants, and each of them, as follows:

1. For general damages in excess of the jurisdictional limits of the District Court;
2. For special damages according to proof;
3. For pre-judgment interest according to general maritime law;
4. For punitive and exemplary damages according to the allegations set forth in Paragraphs 68-77 and 98-101;

5. For the award of attorneys' fees and court costs of suit herein according to the allegations set forth in Paragraphs 78-86; and

6. For such other and further relief as this Court may deem proper.

Dated: Honolulu, Hawaii, June 1, 2007.

/s/

Edie A. Feldman

Joseph W. Walker

Attorneys for Plaintiffs MATTHEW ISHAM
and ROXANNE BEST ISHAM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MATTHEW ISHAM and	)	CIVIL NO. 06-00382 DAE-BAK
ROXANNE BEST ISHAM,)	
)	
Plaintiffs,	)	DEMAND FOR JURY TRIAL
)	
vs.)	
)	
PADI WORLDWIDE CORPORATION,)	
a California Corp., INTERNATIONAL)	
PADI, INC. a.k.a. PROFESSIONAL)	
ASSOCIATION OF DIVING)	
INSTRUCTORS, a California Corp.,)	
DIVING SCIENCE AND TECHNOLOGY)	
CORPORATION, a.k.a. DSAT, a)	
California Corporation, Capital)	
Investments & Ventures Corporation,)	
a.k.a. CIVCO, a California Corporation,)	
)	
Defendants.)	
_____)	

DEMAND FOR JURY TRIAL

Plaintiffs above-named, by and through their attorneys, hereby demand a trial by jury as to all issues referable to a jury in the above-entitled case.

DATED: Honolulu, Hawaii: June 1, 2007.

/s/
Edie A. Feldman
Joseph W. Walker
Attorneys for ISHAM Plaintiffs

