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Attorneys for Defendant PADI Worldwide Corp.

IN THE UNITED STATES DISTRICT COURT
OF THE
FOR THE NORTHERN MARIANA ISLANDS

MADELYN JONES, personal)
representative of John Jones, deceased,)

Plaintiff,)

vs.)

AXE MURDERER TOURS, LLC, HARRY)
BLALOCK, GREEN FLASH, LLC, JOE)
MCDOULETT, PADI WORLDWIDE)
CORP., and PADI AMERICAS, INC., both)
dba PROFESSIONAL ASSOCIATION OF)
DIVE INSTRUCTORS,)

Defendants.)

Civil Action No. 1:20-CV-00004

DECLARATION OF CHARLES A.
HORNSBY IN SUPPORT OF PADI
WORLDWIDE CORP.'S MOTION TO
DISMISS

Judge: Tydinco-Gatewood

I, Charles A. Hornsby, hereby swear and state, under the penalty of perjury, as follows:

1. I am a U.S. citizen residing in the state of California, and I am over the age of 18.

2. I am the Senior Vice President Legal Affairs of PADI Worldwide Corp. ("PADI Worldwide"), a Defendant in the above-captioned lawsuit.

3. I am familiar with the structure, organization, and operations of PADI Worldwide, and the relationship between PADI member individual instructors and dive centers, and PADI Worldwide.

1 4. PADI Worldwide is a corporation incorporated under the laws of California, and
2 its principal place of business is located in California.

3 5. PADI Worldwide has no direct involvement or ties with the Commonwealth of
4 the Northern Mariana Islands (“CNMI”). It neither offers nor sells any products or services
5 directly to CNMI.
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7 6. PADI Worldwide has never had any CNMI business license, and has never
8 maintained any office, bank account, agent, employee, or address in CNMI.

9 7. The acronym “PADI” stands for the “Professional Association of Diving
10 Instructors.”

11 8. PADI is a diving training organization and an association of diving instructors
12 and dive centers that develops and designs training courses and related educational materials for
13 various levels of recreational scuba diving.
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15 9. In order for an individual or a dive center to become a member of PADI, the
16 individual or dive center must meet certain qualification criteria, agree to abide by PADI
17 training standards, agree to be subjected to PADI’s quality assurance review if there is any issue
18 regarding the individual’s or dive center’s adherence to PADI training standards, sign a PADI
19 membership agreement with PADI Worldwide that specifies that the individual or dive center,
20 upon being granted membership, is not an agent, employee, or franchisee of any PADI entity,
21 and pay PADI a membership fee.
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23 10. Once a PADI member, the individual member or dive center may purchase PADI
24 course materials for resale to the individual member or dive center’s customers and use the
25 PADI logos and trademarks when marketing services to the public.

26 11. While the PADI membership agreement is with PADI Worldwide, regional PADI
27 entities, rather than PADI Worldwide, administer PADI membership.
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1 12. For example, PADI membership in the U.S. states and territories, including
2 CNMI, is administered by PADI Americas, Inc. (“PADI America”), another Defendant in the
3 above-captioned lawsuit.

4 13. PADI membership administration includes determining which dive centers and
5 individuals qualify for membership, sending educational and operational materials to such
6 member dive centers and individual members and collecting revenues for materials sold and
7 processing fees for student certifications for courses offered by the dive centers and individual
8 members.

9 14. While PADI individual members and member dive centers are required to abide
10 by PADI standards in order to maintain certification, neither PADI Worldwide nor PADI
11 Americas has control over or involvement with PADI members’ day-to-day operations and
12 activities and bears no responsibility for the same.

13 15. Specifically, regarding the relationship between PADI Worldwide, on one hand,
14 and Defendants Axe Murderers, LLC (“AM Dive Shop”) and Green Flash, LLC (“GF Dive
15 Shop”) and the individual Defendants, Messrs. Harry Blalock and Joe McDoulett (collectively,
16 the “Dive Shop Defendants”), on the other hand, the following is true:

- 17 a. PADI Worldwide has never had any ownership interest in any of the Dive
18 Shop Defendants;
19 b. The Dive Shop Defendants have never been an agent or franchisee of PADI
20 Worldwide and have never been given authority to act on behalf of PADI
21 Worldwide as an agent;
22 c. Instead, each of the Dive Shop Defendants would have signed an agreement
23 stating that they were not agents of any PADI entity, including without
24 limitation, PADI Worldwide and PADI Americas;
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- d. PADI Worldwide has never had any right to share in profits made by any of the Dive Shop Defendants or any fees charged by them to their customers, nor has PADI Worldwide had any obligation to share in their losses;
- e. PADI Worldwide has never had any right to hire, fire, or control the employment of any of the employees or former employees of the Dive Shop Defendants;
- f. PADI Worldwide has never paid any wages, salaries, or other work compensation to any of the employees or former employees of any of the Dive Shop Defendants;
- g. PADI Worldwide has never had any right or ability to control the business operations of any of the Dive Shop Defendants, including any decision made by any of the Dive Shop Defendants, if any, relating to the pleasure dive involving the decedent- in this case, John Jones.
- h. PADI Worldwide has never had the right or ability to monitor any of the Dive Shop Defendants as to how they conduct dives in their daily operations, including the pleasure dive with the decedent in this matter, John Jones, or as to if any of the Dive Shop Defendants are following PADI standards or not in their day-to-day operations.

16. PADI Worldwide has never entered into a partnership agreement, whether written, oral, informal, or otherwise, with any of the Dive Shop Defendants, has never acted as a partner of any one of them, and has never represented to any one that it has a partnership relationship with any of the Dive Shop Defendants.

17. The “PADI” mark and PADI logos and certifications are not designed to serve as a guarantee or assurance by PADI Worldwide of any PADI member’s competence or adherence

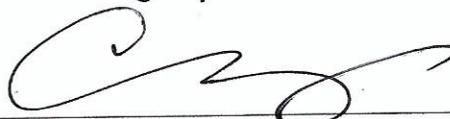
1 to PADI safety standards, and PADI Worldwide has never represented to anyone that they are
2 designed to serve as such a guarantee or assurance by PADI Worldwide.

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

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7 19. PADI Worldwide has never represented to John Jones that the Dive Shop
8 Defendants adhered to PADI safety standards, or that PADI Worldwide proactively monitored
9 and confirmed the Dive Shop Defendants met PADI safety standards.

10 I, Charles A. Hornsby, swear and state under penalty of perjury under the laws of the
11 United States that the foregoing is true and correct, to the best of my knowledge and belief, and
12 if called upon to testify, I would competently testify thereto.

13 Executed on this 13th day of April, 2020 in Singapore.

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16 _____
17 Charles A. Hornsby, Sr. VP Legal Affairs,
18 PADI Worldwide Corp.