

Attorney for Plaintiff

THE PARTIES

2. Plaintiff Colin R. Cross (Cross) is, and at all relevant times mentioned herein was a resident of British Columbia, Canada, and was the husband of Ronda Cross, deceased who was also a resident of British Columbia, Canada.

3. Plaintiff Cross is informed and believes, and based thereon alleges that Defendant PADI Americas, Inc. (PADI) is a corporation, duly organized and existing under the laws of the State of California, and has its world headquarters in Rancho Santa Margarita, California.

4. Plaintiff Cross is informed and believes, and based thereon alleges that Defendant Hotels and Resorts, LLC, (Wyndham) is a Delaware Limited Liability Company, and has its business center in San Diego County, California. Plaintiff Cross is further informed and believes, and based thereon alleges that it is a franchisor to Defendants AMX and Steadfast, as hereinafter alleged.

5. Plaintiff Cross is informed and believes, and based thereon alleges that Defendant AMX Baja Holdings (AMX) is a business of unknown form; and is a franchisee of Defendant Wyndham. Plaintiff Cross is further informed and believes, and based thereon alleges that Defendant AMX is a wholly-owned subsidiary of Defendant Steadfast Companies. Plaintiff Cross is further informed and believes, and based thereon alleges that Defendants AMX and Steadfast Companies are located in Irvine, California. Plaintiff Cross is further informed and believes, and based thereon alleges that AMX and Steadfast Companies are franchisees of Wyndham, in that Wyndham controls and enforces the use of its name, logo, and brand, and AMX and Steadfast Companies uses that name, logo, and brand with the consent of Wyndham.

6. Plaintiff Cross is informed and believes, and based thereon alleges that Defendant Steadfast Companies, (Steadfast), a business of unknown form, is the owner of Defendant AMX. Plaintiff Cross is further informed and believes, and

1 based thereon alleges that Defendants AMX and Steadfast Companies are
2 located in Irvine, California.

3 7. Plaintiff Cross is informed and believes, and based thereon alleges that
4 Defendant Sunshine Dive and Charter (Sunshine) [also possibly known as “Dive
5 Cabo”] is a business of unknown form located in Cabo San Lucas, Baja
6 California Sur, Mexico, and is doing business in San Diego County, California.
7 Plaintiff Cross is further informed and believes, and based thereon alleges that
8 Sunshine has its office in San Juan Capistrano, California. Plaintiff Cross is
9 further informed and believes that at all relevant times, Defendant Sunshine held
10 itself out to be PADI certified as to diving tank filling and maintenance. Plaintiff
11 Cross is further informed and believes, and based thereon alleges that Sunshine
12 is American owned. Plaintiff Cross is further informed and believes, and based
13 thereon alleges that Sunshine is a franchisee of PADI, in that PADI controls and
14 enforces the use of its name, logo, and brand, and Sunshine uses that name,
15 logo, and brand with the consent of PADI.

16 8. Plaintiff is informed and believe, and based thereon allege that each of
17 the named Defendants sued herein were the agents, servants, and employees of
18 their named Co-Defendants, and in doing the things hereinafter alleged, were
19 acting within the scope of their authority as such servants, agents, and
20 employees, franchisor/franchisee with the permission and consent of their
21 named Co-Defendants.

22 **PRELIMINARY ALLEGATIONS**

23 9. At all relevant times mentioned herein, from its world headquarters in
24 Rancho Santa Margarita, California, Defendant PADI was the Professional
25 Association of Dive Instructors. Plaintiff Cross is informed and believes that
26 Defendant PADI promulgates, tests, and enforces rules and standards undersea
27 diving, diving equipment and maintenance thereof, and promulgates rules,
28 standards, and certification of divers (whether professional or recreational),

1 diving equipment, dive masters, dive instructors, and diving equipment
2 maintenance throughout the world. Plaintiff Cross is informed and believes, and
3 based thereon alleges that PADI certification of diving equipment means that the
4 dive equipment has been maintained to the highest standards, and is safe for a
5 diver to use. Moreover, through its training, advertising PADI specifically
6 asserts that PADI certified diving is safer than non-PADI certified diving.
7 Plaintiff is further informed and believes, and based thereon alleges that PADI is
8 a franchisor of its name, identity, and brand, in that it controls and enforces who
9 may use its name, logo, and brand.

10 10. At all relevant times mentioned herein, and from in or during 1987 to
11 the present, Plaintiff Cross has been a PADI nitrox-certified diver with over
12 200+ dives. Plaintiff received his PADI certification from PADI.

13 11. At all relevant times mentioned herein, and from in or during 2002 to
14 the present, Ronda Cross (Ronda) (born May 31, 1970), deceased wife of
15 Plaintiff Cross was a PADI nitrox-certified diver. Ronda Cross received her
16 PADI certification from PADI.

17 12. On or about March 3, 2012, Ronda Cross went diving with her cousin
18 Roxanne in Cabo San Lucas, Baja California Sur, Mexico. Plaintiff Cross is
19 informed and believes, and based thereon alleges that the divemaster engaged by
20 Ronda Cross was Jorge Duchampeau (phonetic) of Conquest Divers of Cabo
21 San Lucas, Baja California Sur, Mexico. Said business and divemaster
22 advertises themselves as PADI certified. Plaintiff Cross is informed and
23 believes, and based thereon alleges that the airtanks use by Ronda Cross were
24 filled by Defendant Sunshine upon the request of Conquest Divers. Sunshine
25 advertises itself as PADI certified.

26 13. On or about March 3, 2012 Ronda Cross went diving with her cousin
27 in Cabo San Lucas, Baja California Sur, Mexico. The divemaster from Conquest
28 Divers accompanied Ronda Cross and her cousin on this dive. The airtanks used

1 by Ronda Cross, her cousin, and the divemaster were filled by Defendant
2 Sunshine at the request of Conquest Divers. The dive was at a depth of no
3 greater than 40 feet below the surface at Cabo San Lucas, Baja California Sur,
4 Mexico.

5 14. On or about March 3, 2012, during the dive of Ronda Cross, her
6 cousin, and the divemaster, Roxanne Cross (Plaintiff's cousin) began to have
7 difficulties with her dive mask. The divemaster went to aid the cousin Roxanne.
8 The cousin Roxanne and the divemaster surfaced together, and left Ronda Cross
9 underwater. Concurrently, the divemaster suffered difficulties with his heart and
10 legs. Plaintiff is informed and believes, and based thereon alleges that the PADI
11 divemaster did not follow PADI protocol by leaving Ronda Cross alone and
12 submerged. Plaintiff is further informed and believes, and base thereon alleges
13 that the dive master and the tank filler did not get PADI training, or was exempt
14 from such training by PADI. This fact was unknown to Plaintiff and the
15 decedent. The divemaster was trained or should have been trained not to leave a
16 diver alone under water. Ronda, still underwater, asphyxiated and died on
17 March 3, 2012. Plaintiff Cross is informed and believes and based thereon
18 alleges that the airtank used by Ronda Cross, and filled and maintained by
19 Defendant Sunshine, at the request of Charter Divers was negligently and
20 carelessly filled and maintained so as to allow dangerous and toxic substances to
21 be in Ronda Cross' airtank.

22 15. Plaintiff Cross is informed and believes that Defendant Sunshine is a
23 tenant of Defendant Wyndham at the Cabo San Lucas, Baja California Sur,
24 Mexico resort, and that Defendant Wyndham recommended and advertised the
25 existence and services of Defendant Sunshine to the public and to Decedent in
26 particular.

27 **FIRST CLAIM FOR RELIEF**

28 Negligence

By Plaintiffs, as Against Defendant PADI

1
2
3 16. Plaintiff refers to and realleges Paragraphs 1 through 15, inclusive, of
4 this First Amended Complaint, and incorporate the same by reference as though
5 fully set forth at length herein.

6 17. Plaintiff Cross is informed and believe, and based thereon allege, that
7 at all relevant times mentioned herein, Defendant PADI was engaged in the
8 business of designing, promulgating rules and standards for the certification of
9 divers, dive equipment, and dive equipment maintenance, including the dive
10 equipment used by Ronda Cross on or about March 3, 2012. Plaintiff is
11 informed and believes, and based thereon alleges that said PADI rules and
12 standards can be accessed by all divers, dive equipment manufacturers, and dive
13 equipment maintenance persons and organizations throughout the world on the
14 PADI website, operated and maintained at PADI world headquarters in Rancho
15 Santa Margarita, California.

16 18. Plaintiff Cross is informed and believes, and based thereon alleges
17 that Defendant PADI had a duty to design, test, develop, market, supply,
18 modify, and/or provide the various PADI rules and standards and in a
19 reasonably safe and current condition. Plaintiff Cross is further informed and
20 believes, and based thereon alleges that Defendant PADI had a duty to
21 publically promulgate to its members, including Plaintiff Cross and Ronda
22 Cross, deceased, that the PADI rules and standards for dive equipment did not
23 apply in Mexico.

24 19. Plaintiff Cross is informed and believes, and based thereon alleges
25 that at all relevant times mentioned herein, Defendant PADI knew, or in the
26 exercise of reasonable care, PADI certifies dive equipment providers and
27 divemasters world-wide. In order to obtain and maintain certification, these
28 entities must follow PADI rules and regulations. PADI has exempted Mexico,
without explicitly informing or providing sufficient notice to their members,

1 including Plaintiff and Ronda Cross, of such exemption. Thus, unreasonably,
2 negligently, and carelessly resulting in the likelihood of severe injuries and/or
3 death to the users of Mexican provided and maintained dive equipment.

4 20. Plaintiff Cross is informed and believes, and based thereon alleges
5 that at all relevant times mentioned herein, that Defendant PADI negligently,
6 carelessly, and/or recklessly failed to notify Plaintiff Cross, Ronda Cross,
7 deceased, and its dive equipment providers named herein that PADI certification
8 of dive equipment and divemasters in Mexico may maintain and/or obtain PADI
9 certification despite the fact that Mexico is exempt from the PADI rules and
10 regulations.

11 21. As a direct and proximate result of the negligent, careless, or reckless
12 acts of Defendant PADI, as aforesaid, Plaintiffs' wife Ronda Cross was fatally
13 injured.

14 22. As a directly and proximate result of the negligent, careless, or
15 reckless acts of Defendant PADI, as aforesaid, said injuries have resulted in
16 general damages in an amount presently unknown, but according to proof at
17 trial.

18 23. As a further direct and proximate result of the above-described
19 conduct of Defendant PADI, which caused the death of Ronda Cross, Plaintiff
20 has sustained the loss of love, affection, society, service, comfort, support, right
21 of support, expectations of future support, counseling, companionship, solace,
22 and mental support, as well as other benefits and assistance of the decedent, all
23 to his general damage in an amount according to proof at trial.

24 24. As a further direct and proximate result of the above-described
25 conduct of Defendant PADI, which caused the death of Ronda Cross, said
26 injuries include, but are not limited to Ronda Cross' pain and suffering, lost
27 wages, medical costs, transportation, and funeral expenses in an amount
28 according to proof at trial.

1 30. Plaintiff Cross is informed and believes, and based thereon alleges
2 that Defendant Sunshine was negligent and careless when it maintained and
3 filled the diving tanks that contained fatally toxic substances which were used
4 by decedent on or about March 3, 2012, when decedent died while diving in
5 Cabo San Lucas, Baja California Sur, Mexico.

6 31. As a directly and proximate result of the negligent, careless, or
7 reckless acts of Defendant Sunshine, as aforesaid, said injuries have resulted in
8 general damages in an amount presently unknown, but according to proof at
9 trial.

10 32. As a further direct and proximate result of the above-described
11 conduct of Defendant Sunshine, which caused the death of Ronda Cross,
12 Plaintiff has sustained the loss of love, affection, society, service, comfort,
13 support, right of support, expectations of future support, counseling,
14 companionship, solace, and mental support, as well as other benefits and
15 assistance of the decedent, all to his general damage in an amount according to
16 proof at trial.

17 33. As a further direct and proximate result of the above-described
18 conduct of Defendant Sunshine, which caused the death of Ronda Cross, said
19 injuries include, but are not limited to Ronda Cross' pain and suffering, lost
20 wages, medical costs, transportation, and funeral expenses in an amount
21 according to proof at trial.

22 **FOURTH CLAIM FOR RELIEF**

23 Negligence

24 By Plaintiff as Successor in Interest as Against Defendant Wyndham, AMX,
25 Steadfast

26 34. Plaintiff refers to and realleges Paragraphs 1 through 33, inclusive, of
27 this First Amended Complaint, and incorporate the same by reference as though
28 fully set forth at length herein.

1 35. Plaintiff Cross is informed and believes, and based thereon alleges
2 that Defendants Wyndham, AMX, and Steadfast owns, operates, supervises, and
3 maintains the operation of the Wyndham Resort in Cabo San Lucas, Baja
4 California Sur, Mexico. Plaintiff is further informed and believes, and based
5 thereon alleges that there is a franchisor/franchisee relationship between
6 Wyndham, AMX, and Steadfast.

7 36. Plaintiff Cross is informed and believes, and based thereon alleges
8 that Defendant Sunshine is a tenant of Defendant Wyndham Resort in Cabo San
9 Lucas, Baja California Sur, Mexico.

10 37. Plaintiff Cross is informed and believes, and based thereon alleges
11 that Defendants Wyndham, AMX, and Steadfast recommend and refer
12 customers to Defendant Sunshine to the general public, and to Decedent in
13 particular.

14 38. Plaintiff Cross is informed and believes, and based thereon alleges
15 that Defendants Wyndham, AMX and Steadfast had a duty to supervise
16 Defendant Sunshine as Defendant Wyndham, AMX, and Steadfast recommend
17 and refer customers to Defendant Sunshine to the general public, and to
18 Decedent in particular.

19 39. Plaintiff Cross is informed and believes, and based thereon alleges
20 that Defendants Wyndham, AMX, and Steadfast negligently failed and refused
21 to supervise and/or vet Defendant Sunshine on or about March 3, 2012, when
22 Defendant Sunshine maintained and filled the diving tanks that contained fatally
23 toxic substances which were used by decedent on or about March 3, 2012, when
24 decedent died while diving in Cabo San Lucas, Baja California Sur, Mexico.

25 40. As a directly and proximate result of the negligent, careless, or
26 reckless acts of Defendants Wyndham, AMX, and Steadfast, as aforesaid, said
27 injuries have resulted in general damages in an amount presently unknown, but
28 according to proof at trial.

1 41. As a further direct and proximate result of the above-described
2 conduct of Defendant Wyndham, AMX, and Steadfast, which caused the death
3 of Ronda Cross, Plaintiff has sustained the loss of love, affection, society,
4 service, comfort, support, right of support, expectations of future support,
5 counseling, companionship, solace, and mental support, as well as other benefits
6 and assistance of the decedent, all to his general damage in an amount according
7 to proof at trial.

8 42. As a further direct and proximate result of the above-described
9 conduct of Defendant Wyndham, AMX, and Steadfast which caused the death
10 of Ronda Cross, said injuries include, but are not limited to Ronda Cross' pain
11 and suffering, lost wages, medical costs, transportation, and funeral expenses in
12 an amount according to proof at trial.

13 **FIFTH CLAIM FOR RELIEF**

14 Personal Injuries

15 By Plaintiff as Successor in Interest as Against All Defendants

16 43. Plaintiff refers to and realleges Paragraphs 1 through 42, inclusive, of
17 this First Amended Complaint, and incorporate the same by reference as though
18 fully set forth at length herein.

19 44. Plaintiff Cross is successor in interest of Ronda Cross, and succeeds
20 to this cause of action because there is no personal representative of the estate of
21 Ronda Cross. Plaintiff Cross brings this cause of action in this complaint in the
22 capacity of successors in interest. Plaintiff Cross has executed and filed the
23 declaration under penalty of perjury required by California Code of Civil
24 Procedure §377.32.

25 45. On or about March 3, 2012, after the foregoing causes of action arose
26 in her favor, Ronda Cross, now deceased, would have been the plaintiff in this
27 action if she had lived.

28

1 46. As a direct and proximate result of the above-described acts of
2 Defendants, and each of them, as aforesaid, decedent Ronda Cross was required
3 to and did employ physicians and surgeons to examine, treat, and care for her,
4 and did incur medical and related expenses, transportation and funeral and
5 related expenses, pain and suffering, all in an amount according to proof at trial.

6 47. At the time of the events described herein, the decedent Ronda Cross
7 was gainfully employed as a dental assistant. As a further direct and proximate
8 result of the acts of Defendant PADI, as aforesaid, decedent was prevented from
9 attending to her usual occupation, all to her damage in a loss of earnings in an
10 amount according to proof at trial.

11 **SIXTH CLAIM FOR RELIEF**

12 Unfair Business Practices, Business and Professions Code §17200, et.seq.
13 By Plaintiff as Successor in Interest as Against Defendant PADI

14 48. Plaintiff Cross refers to and realleges Paragraphs 1 through 47,
15 inclusive, of this First Amended Complaint, and incorporates the same by
16 reference as though fully set forth at length herein.

17 49. Plaintiff Cross is informed and believes, and based thereon alleges
18 that Defendant PADI falsely and fraudulently failed to advise its members,
19 Plaintiff and Decedent in particular, that the PADI certification of Defendant
20 Sunshine was paid for by Sunshine and not given to Sunshine by PADI as a
21 result of inspection and conforming with PADI standards. Plaintiff is informed
22 and believes, and based thereon alleges that said failure by PADI is false
23 advertising in violation of Business and Professions Code §17200, et.seq. and
24 California common law, which prohibits the dissemination of "false, misleading
25 or deceptive advertising."

26 50. Plaintiff Cross is informed and believes, and based thereon alleges
27 that the acts of PADI, as aforesaid, that the public, and Plaintiff and Decedent in
28

1 particular, were likely to be deceived by the failure of PADI to notify its
 2 members that the PADI certification of Defendant Sunshine was withdrawn.

3 **SEVENTH CLAIM FOR RELIEF**

4 Unfair Business Practices, Business and Professions Code §17200, et.seq.
 5 By Plaintiff as Successor in Interest as Against Defendant WYNDHAM

6 51. Plaintiff Cross refers to and realleges Paragraphs 1 through 50,
 7 inclusive, of this First Amended Complaint, and incorporates the same by
 8 reference as though fully set forth at length herein.

9 52. Plaintiff Cross is informed and believes, and based thereon alleges
 10 that Defendant PADI falsely and fraudulently failed to advise its members,
 11 Plaintiff and Decedent in particular, that the PADI certification of Defendant
 12 Sunshine was paid for by Sunshine and not given to Sunshine by PADI as a
 13 result of inspection and conforming with PADI standards. Plaintiff is informed
 14 and believes, and based thereon alleges that said failure by PADI is false
 15 advertising in violation of Business and Professions Code §17200, et.seq. and
 16 California common law, which prohibits the dissemination of "false, misleading
 17 or deceptive advertising." Plaintiff Cross is informed and believes, and based
 18 thereon that Defendant Wyndham referred and recommended Sunshine to its
 19 guests and others without knowing how Sunshine ran its business or whether the
 20 PADI certification of Sunshine was earned on merit or was paid for by Sunshine

21 53. Plaintiff Cross is informed and believes, and based thereon alleges
 22 that the acts of Wyndham, as aforesaid, that the public, and Plaintiff and
 23 Decedent in particular, were likely to be deceived by the failure of Wyndham to
 24 notify its guests and others that Wyndham employees recommended Sunshine
 25 because of its location within the Wyndham property, in order to protect its
 26 interest in keeping Sunshine as a tenant.

27 **WHEREFORE**, Plaintiff Cross prays judgment as follows:

- 28 1. For compensatory damages in an amount according to proof at trial;

Dated: May 10, 2013

13-cv-00837-L-MDD