

DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO 20th Judicial District 1777 6 th St. Boulder, Colorado 80306	DATE FILED: January 2, 2021 5:48 PM FILING ID: DCC4D6EC69B9E CASE NUMBER: 2021CV30000
<p>AMBER MARSHALL, a Disabled Minor Child, by and through her duly appointed Conservator, SARA MARSHALL,</p> <p>Plaintiffs,</p> <p>v.</p> <p>SILVERTON AVALANCHE SCHOOL, a Colorado non-profit corporation, SAN JUAN COUNTY SEARCH AND RESCUE, a Colorado non-profit corporation, ZACHARY J. LOVELL, an individual, BACKCOUNTRY ACCESS, INC., a Colorado corporation, BACKCOUNTRY ACCESS LLC, a Colorado limited liability company, K2 SPORTS, LLC, an Indiana limited liability company, K2-MDV HOLDINGS, LP, a Washington limited partnership, KOHLBERG & CO., L.P., a Delaware limited partnership, and KOHLBERG & CO., L.L.C., a Delaware limited liability company,</p> <p>Defendants.</p>	<p style="text-align: center;">COURT USE ONLY</p>
Attorneys for Plaintiffs: Paul J. Komyatte (No. 22750) David P. Mason (No. 41333) The Komyatte Law Firm LLC 1536 Cole Blvd., Suite 300 Lakewood, CO 80401 Ph: 720-975-8553 Fax: 720-528-8072 paul@komyattelawfirm.com dave@komyattelawfirm.com	Case No.: _____ Division: Courtroom:
COMPLAINT AND JURY DEMAND	

COME NOW, the Plaintiffs, by and through their counsel, The Komyatte Law Firm LLC, and as their Complaint against the Defendants and each of them, state and allege as follows:

INTRODUCTION

1. This is a wrongful death and product liability action to recover damages suffered by Plaintiff, Amber Marshall, arising from the wrongful death of her father, Peter Marshall, during a recreational avalanche safety course operated by Defendants Silverton Avalanche School, San Juan County Search and Rescue, and/or Zachary J. Lovell in Ouray County, Colorado, on January 5, 2019. Plaintiff alleges that the decedent, Peter Marshall, suffered fatal injuries due to the negligent and unlawful conduct of the aforementioned Defendants during the course and the failure of a defective “Float 32” avalanche airbag that was designed, manufactured, distributed, marketed, and sold by Defendants Backcountry Access, Inc., Backcountry Access LLC, K2 Sports, LLC, K2-MDV Holdings, LP, Kohlberg & Co., L.P., and Kohlberg & Co., L.L.C. Plaintiff, Amber Marshall, through her duly appointed conservator, Plaintiff, Sara Marshall, seeks damages for the wrongful death of the decedent, her father, Peter Marshall.

PARTIES

2. Plaintiff, Amber Marshall, is a disabled minor child and a citizen and resident of the State of Colorado, residing in Longmont, Boulder County, Colorado. She brings this action through her duly appointed conservator, Plaintiff, Sara Marshall.

3. Plaintiff, Amber Marshall, is the daughter and wrongful death heir of the decedent, Peter Marshall.

4. Plaintiff, Sara Marshall, is the duly appointed conservator and mother of the disabled minor child, Plaintiff, Amber Marshall. Plaintiff, Sara Marshall, brings this action solely in her capacity as conservator of Plaintiff, Amber Marshall.

5. Defendant Silverton Avalanche School, which may also be known as “San Juan County Search and Rescue,” is believed to be a Colorado non-profit corporation or other business entity headquartered and with its principal place of business in Silverton, San Juan County, Colorado.

6. Defendant San Juan County Search and Rescue is a Colorado non-profit corporation headquartered and with its principal place of business in Silverton, San Juan County, Colorado.

7. Defendants Silverton Avalanche School and San Juan County Search and Rescue may hereinafter be collectively referred to as “SAS” or “Defendant SAS.”

8. Defendant Zachary J. Lovell is believed to be a citizen and resident of the State of Colorado, residing in Parker, Arapahoe County, Colorado. Defendant Zachary J. Lovell may hereinafter be referred to as “Lovell” or “Defendant Lovell.”

9. Defendant Backcountry Access, Inc. is a Colorado corporation headquartered and with its principal place of business in Boulder, Boulder County, Colorado.

10. Defendant Backcountry Access LLC is a Colorado limited liability company headquartered and with its principal place of business in Loma, Mesa County, Colorado.

11. Defendant K2 Sports, LLC is believed to be an Indiana limited liability company headquartered and with its principal place of business in Seattle, Washington.

12. Defendant K2-MDV Holdings, LP is believed to be a New York limited partnership headquartered and with its principal place of business in Seattle, Washington.

13. Defendant Kohlberg & Co., L.P. is believed to be a Delaware limited partnership headquartered and with its principal place of business in Mt. Kisco, New York.

14. Defendant Kohlberg & Co., L.L.C. is believed to be a Delaware limited liability company headquartered and with its principal place of business in Mt. Kisco, New York.

15. Defendants Backcountry Access, Inc., Backcountry Access LLC, K2 Sports, LLC, K2-MDV Holdings, LP, Kohlberg & Co., L.P., and Kohlberg & Co., L.L.C. may hereinafter be collectively referred to as “the Manufacturer Defendants.”

JURISDICTION AND VENUE

16. This Court has jurisdiction over this action pursuant to C.R.S. § 13-1-124(1)(a), (b), and (c).

17. This Court has personal jurisdiction over the Defendants because the Defendants have transacted and continue to transact business in Colorado, because the Defendants have committed the tortious acts and omissions complained of herein in Colorado, and because the Defendants may own, use, and possess real property in Colorado.

18. Specifically, the Manufacturer Defendants have purposefully and actively availed themselves of the privileges and benefits of doing business in Colorado, both directly and through agents and subsidiary and related entities, including marketing, distributing, and selling products including the subject “Float 32” avalanche airbag throughout Colorado; maintaining ongoing and contractual warranty repair and recall responsibilities with respect to such products sold and used in Colorado; and marketing and selling defective products in Colorado, including but not limited to the subject “Float 32” avalanche airbag.

19. The Manufacturer Defendants have specifically and intentionally targeted Colorado for the sale of their products, including but not limited to the subject “Float 32” avalanche airbag.

20. The Manufacturer Defendants have specifically, intentionally, and routinely placed their products into the stream of commerce in Colorado and/or with the intent and expectation that their products, including the subject “Float 32” avalanche airbag device, will be purchased and used in Colorado.

21. The Manufacturer Defendants know their products, including the subject “Float 32” avalanche airbag device, will reach Colorado.

22. The Manufacturer Defendants purposefully serve the Colorado market and conduct business in Colorado.

23. The Manufacturer Defendants are believed to have employees who live and/or work in Colorado.

24. The Manufacturer Defendants are believed to have designed, tested (or failed to test), manufactured, fabricated, and distributed the subject “Float 32” avalanche airbag and/or one or more of its components in Colorado.

25. The Manufacturer Defendants advertise, market, distribute, and sell their products, including the subject “Float 32” avalanche airbag device, to Colorado consumers.

26. A substantial portion of the Manufacturer Defendants’ yearly revenues are generated by sales of products to Colorado consumers, including the subject “Float 32” avalanche airbag device.

27. The subject “Float 32” avalanche airbag device was marketed and sold by the Manufacturer Defendants in the State of Colorado.

28. Although Plaintiffs dispute that Defendants Silverton Avalanche School, San Juan County Search and Rescue, and/or Lovell are entitled to immunity under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* (“GIA”), written notice of claim was timely provided to these Defendants pursuant to the GIA on or about June 3, 2019, solely in an abundance of caution.

29. Venue is proper in this Court pursuant to C.R.C.P. 98(c) because one or more of the Defendants reside in Boulder County.

GENERAL ALLEGATIONS

30. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

The Subject “Recreational Avalanche 2” Avalanche Safety Course

31. The decedent, Peter Marshall, participated in an avalanche safety course – “Recreational Avalanche 2” – offered by Defendant SAS on January 4 and 5, 2019.

32. The purpose of Defendant’s avalanche safety course was to provide education and instruction to recreational participants on how to manage avalanche hazards and uncertainty in avalanche terrain, using backcountry coached mentorship provided by Defendant’s instructors.

33. At all relevant times, Defendant SAS represented to members of the public, including Peter Marshall, that its course instructors were rigorously trained and educated in avalanche safety education and possessed deep operational experience in avalanche terrain.

34. Defendant SAS assigned Defendant Lovell as an instructor and group leader for the Recreational Avalanche 2 avalanche safety course.

35. At all relevant times, Defendant Lovell was a 27-year-old mountain guide and former ski instructor who had, at most, a single season of experience in providing avalanche safety training in the North San Juan Mountains.

Avalanche Hazard in the North San Juan Mountains At the Time

36. Leading up to Defendants’ Recreational Avalanche 2 course, considerable snow fell in the North San Juan Mountains during the fall and winter of 2018. A series of storms in late November and early December built layers of wind-drifted snow over a weak and cohesionless foundation. These storms contributed to a significant increase in avalanche activity in the North San Juan zone. The Colorado Avalanche Information Center (“CAIC”) documented 87 avalanches in this area between November 22, 2018 and December 15, 2018.

37. Subsequent dry and cold weather during the second half of December, 2018 formed another layer of weak faceted snow near the snow surface. Significant snowfall began in late December, 2018 and continued into January, 2019. Up to three feet of snow accumulated in back to back storms during this period. Storm snow and strong winds formed thick, stiff slabs and overloaded facets buried in the upper snowpack.

38. An avalanche cycle followed. CAIC recorded 72 avalanches between December 24, 2018 and January 4, 2019 in the North San Juan zone.

39. From approximately November 14, 2018 through January 5, 2019, persistent “slab” avalanches posed the primary avalanche hazard in the North San Juan zone. A snow slab is a cohesive layer of snow sitting on a weaker layer. Snow slabs are very dangerous because a large slab of snow can break free off of a weaker layer and bury and/or kill a person.

40. On January 5, 2019, heightened avalanche conditions existed in the North San Juan zone, including the Upper Senator Beck Basin, including the possibility for large human-triggered slab avalanches on west, northwest, north, northeast, east, and southeast facing slopes above treeline with risks of wide propagation and remote triggering from adjacent and/or nearby slopes.

SAS Staff Elect Not to Lead SAS’s Classes Into Avalanche Terrain Due to the Avalanche Hazard in the North San Juan Zone

41. Peter Marshall arrived at Defendant SAS’s classroom facility in Silverton, Colorado, on January 4, 2019 for Defendant’s Recreational Avalanche 2 course, one of several courses being conducted by Defendant SAS that weekend.

42. At that time, Defendant SAS’s staff and instructors gathered and discussed what terrain would be used for SAS’s classes that weekend, including the Recreational Avalanche 2 course, in view of the persistent slab avalanche hazard in the North San Juan zone at the time.

43. At that time, Defendant SAS’s staff and instructors agreed that SAS’s classes,

including the subject Recreational Avalanche 2 course, would not travel in avalanche terrain that weekend in view of the persistent slab avalanche hazard in the North San Juan zone at the time.

44. During and/or following these discussions, SAS staff expressed concern that Defendant Lovell seemed inclined to travel in more complex and bigger terrain despite the fragile snowpack and concerning avalanche conditions.

**Defendant Lovell is Permitted to Lead His Class Into Avalanche Terrain
Despite the Hazardous Conditions**

45. At or about that time, Defendant Lovell inquired with Defendant SAS as to whether the area north of Red Mountain Pass was included within Defendant SAS's permit area.

46. Defendant Lovell spoke with Defendant SAS's director on January 4, 2019, and was authorized and directed to lead his Recreational Avalanche 2 group, including Peter Marshall, into the Upper Senator Beck Basin area north of Red Mountain Pass.

47. Defendant SAS approved, authorized, and directed Defendant Lovell to lead his Recreational Avalanche 2 group, including Peter Marshall, into the Upper Senator Beck Basin despite the persistent slab avalanche hazard in that area at the time, despite SAS instructors' and staff's agreement not to lead course groups into such areas that weekend, and despite Defendant Lovell's limited experience in providing avalanche safety training in the North San Juan zone and in high-risk conditions as existed at the time in the Upper Senator Beck Basin.

48. At all relevant times, the Upper Senator Beck Basin featured big and complex terrain, fragile snowpack, and heightened and/or considerable avalanche hazard under the circumstances, described more fully elsewhere herein.

**Defendants SAS and Lovell Lead the Recreational Avalanche 2 Class Into the
Upper Senator Beck Basin on January 5, 2019 Despite the Hazardous Conditions**

49. On January 5, 2019, Defendants SAS and Lovell led their Recreational Avalanche

2 group, including Peter Marshall and four other students, from the hut in which the group had spent the night, across Highway 550 and Red Mountain Pass, and into the Upper Senator Beck Basin.

50. Defendant Lovell was the group leader and instructor for the group.

51. On their way from the hut to Highway 550, the group was met by an SAS staff member, who verbally relayed portions of CAIC's Avalanche Forecast for January 5, 2019 to Defendant Lovell and/or to the group members.

52. Defendants SAS and Lovell did not share with any of the group members, including Peter Marshall, information from the Summary section of CAIC's Avalanche Forecast for January 5, 2019, which advised of "worrisome snowpack test results along the US 550 corridor," as well as hazards of wide avalanche propagation and remote triggers for large slab avalanches in the North San Juan zone and the Upper Senator Beck Basin.

53. Defendants SAS and Lovell did not share with any of the group members, including Peter Marshall, information from the Summary section of CAIC's Avalanche Forecast for January 5, 2019, which warned that "you can trigger an avalanche breaking on buried weak layers today," including "from the bottom of the slope, from adjacent slopes, or from a distance."

54. At all relevant times during the Recreational Avalanche 2 course, Defendants SAS and Lovell's role was to teach the group how to understand, observe, and analyze avalanche hazards and safely navigate avalanche terrain.

55. At all relevant times during the Recreational Avalanche 2 course, Defendants SAS and Lovell were responsible for safely and appropriately managing the group's safety and avalanche risks.

56. Defendants SAS and Lovell did not discuss any of the critical safety information

contained in the Summary section of CAIC's Avalanche Forecast for January 5, 2019 with any of the group members, including Peter Marshall, at any time on January 5, 2019.

57. Conditions at the time did not support travel in, under, or on avalanche terrain within the Upper Senator Beck Basin, as reflected by, *inter alia*, the Summary information, especially with a group of five students in a recreational avalanche safety course.

58. Defendants SAS and Lovell did not advise the course participants, including Peter Marshall, of any of this information.

59. Defendants SAS and Lovell led the group directly into, under, and below avalanche terrain in the Upper Senator Beck Basin during the subject avalanche safety course, despite the hazardous conditions and CAIC warning information, in blatant disregard of established principles of avalanche safety, and without apprising the group members, including Peter Marshall, of critical safety information directly pertaining to the nature and extent of the avalanche hazard in the area including their route of travel through the area.

60. At the time, Defendants SAS and Lovell were aware that their conduct created a substantial risk of serious injury or death for the group members, including Peter Marshall.

61. At the time, Defendants SAS and Lovell were aware that their conduct in leading a group of recreational avalanche students into the Upper Senator Beck Basin or comparable areas featuring comparably big and complex terrain created a substantial risk of serious injury or death for the group members, including Peter Marshall, given the avalanche hazards present across such areas at the time.

62. Nevertheless, Defendants SAS and Lovell led the Recreational Avalanche 2 group members, including Peter Marshall, into the Upper Senator Beck Basin on January 5, 2019, in conscious disregard of the danger created by their conduct.

**Defendants SAS and Lovell Guide Their Class Group On a Hazardous Descent
Through the Upper Senator Beck Basin**

63. Defendants SAS and Lovell led the Recreational Avalanche 2 group up through the Upper Senator Beck Basin to a point at approximately 13,100 feet.

64. At that time, Defendants SAS and Lovell selected the group's route of descent through the Upper Senator Beck Basin and back to Highway 550.

65. Alternatively, Defendants SAS and Lovell directed, supervised, and approved selection of the group's route of descent through the Upper Senator Beck Basin and back to Highway 550.

66. Defendants SAS and Lovell's selected route traveled from a point at approximately 13,100 feet down into and through a cirque below.

67. Defendants SAS and Lovell's selected route passed directly below steep, east-facing slopes with significant overhead avalanche hazard and threat from connected terrain, including overlapping runout areas from different sections of the cirque.

68. The specific avalanche conditions present in the Upper Senator Beck Basin on January 5, 2019, did not support traveling on snow connected to steep, east-facing slopes with runout areas that overlapped with a selected route of descent.

69. The specific avalanche conditions present in the Upper Senator Beck Basin on January 5, 2019, did not support traveling on Defendants SAS and Lovell's selected route of descent.

70. The specific avalanche conditions present in the Upper Senator Beck Basin on January 5, 2019, supported carefully avoiding such terrain.

71. Defendants SAS and Lovell failed to safely lead the group out of the Upper Senator Beck Basin by, *inter alia*, their route of ascent.

72. Defendants SAS and Lovell instead led the group down their selected route through the cirque in a reckless and grossly negligent fashion.

73. Defendants SAS and Lovell's selected route began in the southern octant but then traveled over terrain that rolled from due south to southeast, east, and eventually northeast, traveling very close to the southeastern octant and directly below southeast and east facing terrain.

74. The risk for triggering destructive slab avalanches on such southeastern and eastern facing terrain, including by remote triggering, was heightened and/or considerable in the Upper Senator Beck Basin at the time.

75. Defendants SAS and Lovell's selected route traveled down slopes with angles ranging from 32 to 34 degrees.

76. Destructive slab avalanches generally start on slopes with angles between 30 and 45 degrees.

77. A difference of a few degrees in slope angle is significant with respect to a persistent slab avalanche problem as existed in the Upper Senator Beck Basin on January 5, 2019 because destructive slab avalanches are much more likely to occur on slopes of 30 degrees or greater.

78. Such a difference can take on even greater significance in avalanche conditions that pose a risk of wide propagation and remotely triggering an avalanche from adjacent slopes, as existed in the Upper Senator Beck Basin on January 5, 2019.

79. A basic tenet of avalanche safety is to continuously assess whether any chosen slope is, or is adjacent to or below, slopes that can avalanche.

80. Defendants SAS and Lovell failed to properly measure the angle of the slope of the selected route or the slopes next to and above the route before beginning to lead the group down that route.

81. Defendants SAS and Lovell failed to properly direct and instruct the group members to properly measure the angle of the slope of the selected route or the slopes next to and above the route before beginning to lead the group down that route.

82. Defendants SAS and Lovell failed to properly assess whether their chosen route of descent traveled on, adjacent to, or below slopes that could avalanche.

83. Defendants SAS and Lovell failed to properly direct and instruct the group members to assess whether their chosen route of descent traveled on, adjacent to, or below slopes that could avalanche.

84. Defendants SAS and Lovell's decision to lead the group down their selected route in this dangerous fashion was in blatant disregard of established avalanche safety principles.

85. At that time, Defendants SAS and Lovell knew that their acts and omissions in this regard created a substantial risk of serious injury or death for group participants, including Peter Marshall, yet engaged in those acts and omissions anyway in conscious disregard of the danger.

86. Another basic tenet of avalanche safety is to travel one-at-a-time through avalanche prone areas so as to limit the exposure of the group to only one person at a time and to maintain the maximum number of rescuers in the event someone is caught in an avalanche.

87. Defendants SAS and Lovell instructed the group members, including Peter Marshall, to travel down the first section of the selected route in short succession, with the second skier starting when the first skier was part way down the slope, and so on.

88. Defendants SAS and Lovell's decision to lead the group down their selected route in this dangerous fashion was in blatant disregard of established avalanche safety principles.

89. At that time, Defendants SAS and Lovell knew that their acts and omissions in this regard created a substantial risk of serious injury or death for group participants, including Peter

Marshall, yet engaged in those acts and omissions anyway in conscious disregard of the danger.

90. Another basic tenet of avalanche safety is to select a descent route that allows members of the group to remain in constant communication and visual contact with each other.

91. Defendants SAS and Lovell's selected route traveled over a break in the terrain that required the waiting group members to sidestep over the break in order to maintain communication and visual contact with descending group members.

92. At that time, Defendants SAS and Lovell knew that their acts and omissions in this regard created a substantial risk of serious injury or death for group participants, including Peter Marshall, yet engaged in those acts and omissions anyway in conscious disregard of the danger.

93. It is believed that Defendant SAS authorized, approved, and ratified the conduct of Defendant Lovell described throughout this Complaint.

**The Group is Caught In An Avalanche Upon Descending
Into the Upper Senator Beck Basin**

94. Defendant Lovell began his descent down the selected route.

95. Per Defendants SAS and Lovell's instructions, Peter Marshall began his descent down the selected route when Defendant Lovell was part way down the route.

96. The remaining four skiers in the group sidestepped over the break so they could maintain communication and visual contact with Defendant Lovell and Peter Marshall as they descended.

97. At that time, a hard slab avalanche triggered across the slope where the group were located.

98. This avalanche likely broke on a buried layer of near-surface facets that developed between storms during the first few days of the year, and stepped down to deeper weak layers near the ground, entraining the entire season's snowpack.

99. This avalanche released on a south-southeast facing slope around 32 degrees in steepness.

100. This avalanche was medium sized relative to its path and had the destructive force to bury, injure, or kill a person.

101. All six members of the group, including Defendant Lovell and Peter Marshall, were caught in the avalanche.

102. Defendant Lovell later reported that his ski bindings released and he fell forward, traveling downhill on his belly.

103. Defendant Lovell later reported that he was carried to the bottom of the slope, rising to the surface as the avalanche debris stopped.

104. Peter Marshall was also carried to the bottom of the slope.

105. The other four group members were caught in the avalanche but were only carried 15 to 20 feet downhill.

106. The first avalanche remotely triggered a second avalanche from the connected east-facing slope.

107. This second avalanche was also a hard slab, medium sized relative to path, and had the destructive force to bury, injure, or kill a person.

108. Investigators later estimated the average depth of the crown face as 36 inches.

109. This second avalanche released on a slope around 35 degrees in steepness.

110. The debris from both slides overlapped at the bottom of the slope.

**The Subject Float 32 Avalanche Airbag Device Being Worn
by Peter Marshall Fails to Properly and Fully Deploy**

111. At the time of the subject Recreational Avalanche 2 course, Peter Marshall was properly wearing a Float 32 avalanche airbag designed, manufactured, distributed, marketed, and

sold by the Manufacturer Defendants.

112. The subject Float 32 avalanche airbag consisted of a specially-designed backpack housing an inflatable airbag connected to a cylinder of compressed gas and a triggering mechanism.

113. The subject Float 32 avalanche airbag was designed to rapidly deploy and inflate if the user was caught in an avalanche, such that the user would “float” at or near the top of the avalanche debris and snow rather than sinking into the debris and being buried under feet of heavy snow.

114. The subject Float 32 avalanche airbag was designed to prevent or minimize the user’s burial depth in an avalanche, so as to improve their chances of survival.

115. At all relevant times, the Manufacturing Defendants knew or should have known of actual defects with the subject Float 32 avalanche airbag. Shortly before the subject Float 32 avalanche airbag was manufactured, the Manufacturing Defendants recalled, participated in a recall, and/or approved and supported the recall of large numbers of substantially similar Float model avalanche airbags because of a flaw that could lead to failure of the trigger mechanism and failure of the airbag to properly, timely, and fully deploy and inflate. As such, the Manufacturing Defendants knew or should have known of defects in the subject Float 32 avalanche airbag that could lead to failures of deployment and/or inflation, and further knew or should have known that insufficient changes were made to the design of avalanche airbags manufactured after the recall to prevent such failures. As such, the Manufacturing Defendants knew or should have known of the actual defects in the subject avalanche airbag, which was manufactured and sold after this recall.

116. The subject Float 32 avalanche airbag being properly worn by Peter Marshall failed to properly, timely, and fully deploy and inflate during the subject avalanche.

117. As a result, Peter Marshall was buried under approximately eight to nine feet of snow.

118. Peter Marshall attempted to trigger his Float 32 avalanche airbag system but it did not fully deploy or inflate.

119. The coroner later concluded that Peter Marshall died of asphyxia secondary to being buried in eight to nine feet of snow for nearly one hour.

120. Some of the allegations herein have been made and/or may be perceived to have been made in the alternative. *Accord* C.R.C.P. 8(e)(2). Plaintiffs will elect which claims and allegations they intend to pursue before the time of trial.

**COUNTS AGAINST DEFENDANTS SILVERTON AVALANCHE SCHOOL AND
SAN JUAN COUNTY SEARCH AND RESCUE**

**COUNT I
Negligence**

121. Plaintiffs incorporates all other allegations in this complaint as if set forth herein.

122. At all relevant times, Defendant SAS was in the business of offering avalanche safety courses to members of the general public, including field sessions where Defendant SAS and its instructors would lead groups of recreational course participants into the backcountry of the North San Juan Mountains.

123. At all relevant times, Defendant SAS owed a duty to exercise reasonable care and protect participants in its recreational avalanche safety courses, including but not limited to Peter Marshall.

124. At all relevant times, Defendant SAS's duty in this regard extended to its selection of course content, its hiring, retention, and supervision of staff and instructors, its development,

implementation, and enforcement of policies and procedures to protect course participants, and its selection of appropriate backcountry areas to operate its avalanche safety courses, based on existing conditions and risks relating to terrain, weather patterns, snow conditions, and avalanche hazards.

125. At all relevant times, Defendant SAS breached its duty and was negligent, including by the following:

- a. Failing to exercise reasonable care with respect to its operation of recreational avalanche safety courses including but not limited to the subject Recreational Avalanche 2 course;
- b. Failing to act as a reasonable avalanche school would have acted under the circumstances;
- c. Acting in a fashion other than the fashion a reasonable avalanche school would have acted under the circumstances;
- d. Failing to exercise reasonable care with respect to its selection and/or application of course content for its recreational avalanche safety courses including but not limited to the subject Recreational Avalanche 2 course;
- e. Failing to exercise reasonable care with respect to selecting, hiring, retaining, and supervising staff and instructors for its recreational avalanche safety courses including but not limited to the subject Recreational Avalanche 2 course and including but not limited to Defendant Lovell;
- f. Failing to ensure that its staff and instructors adhered to basic tenets of avalanche safety at all times while providing instruction and support for its recreational avalanche safety courses, including but not limited to the subject Recreational

Avalanche 2 course;

- g. Failing to ensure that its staff and instructors adhered to principles and rules set forth in avalanche safety course content at all times while providing instruction and support for its recreational avalanche safety courses, including but not limited to the subject Recreational Avalanche 2 course;
- h. Failing to ensure clear and consistent channels of communication among its staff, instructors, and participants in its recreational avalanche safety courses including but not limited to the subject Recreational Avalanche 2 course, including with respect to the safe and appropriate selection of locations for field sessions (including based on the existing conditions and hazards in such areas), the communication of complete and accurate forecast information on avalanche conditions and hazards in such locations, appropriate rules for safely managing risk during field sessions, including when traveling through (or avoiding) avalanche terrain, the safe and appropriate use of radio, GPS, satellite communications, and other safety equipment, appropriate rescue procedures in the event of an avalanche, and so forth;
- i. Failing to ensure clear and consistent chain of command among its staff, instructors, and participants in its recreational avalanche safety courses including but not limited to the subject Recreational Avalanche 2 course, including with respect to the selection of locations for field sessions, the communication of complete and accurate information on avalanche conditions and hazards in such locations, appropriate rules for safely managing risk during field sessions, including when traveling through (or avoiding) avalanche terrain, and so forth;

- j. Failing to adopt and enforce appropriate safety policies, procedures, and protocols with respect to operation of its recreational avalanche safety courses and protecting of course participants, including but not limited to policies, procedures, and protocols ensuring that instructors appropriately managed risk at all times during its courses, appropriately led groups around avalanche terrain as warranted by existing conditions, appropriately planned for potential rescue procedures in the event of an avalanche, and did not recklessly or inappropriately lead course groups into, through, or below unreasonably dangerous avalanche terrain under conditions that did not support such travel;
- k. Failing to ensure that each of its recreational avalanche safety course field sessions and groups were led and supervised at all times by appropriately trained, qualified, skilled, and experienced instructors who possessed the judgment and experience necessary to safely lead such field sessions and groups in the backcountry;
- l. Failing to ensure that each of its instructors understood their appropriate role and responsibility to protect recreational avalanche course participants including by appropriately managing safety risks at all times during field sessions including the subject Recreational Avalanche 2 course;
- m. Failing to ensure that each of its instructors actually appropriately discharged their responsibility to protect recreational avalanche course participants including by appropriately managing safety risks at all times during field sessions including the subject Recreational Avalanche 2 course;
- n. Failing to ensure that accurate information was communicated, and inaccurate information not communicated, to members of the public and to course participants

- concerning the nature and quality of its avalanche school, its avalanche safety course offerings, and its instructors;
- o. Failing to ensure that course staff and instructors were provided with and appropriately used safety and communication equipment so as to avoid placing staff, instructors, and participants at unreasonable risk of harm during its avalanche safety courses;
 - p. Failing to ensure that course staff and instructors appropriately followed avalanche rescue procedures including by avoiding situations that could render them unable to appropriate follow or participate in such procedures;
 - q. Failing to ensure that its course staff and instructors communicated accurate avalanche forecast and hazard information to course participants at all times during its recreational avalanche safety courses, including the subject Recreational Avalanche 2 course, and including but not limited to summary information contained in applicable CAIC avalanche forecast documents;
 - r. Failing to ensure that its course staff and instructors understood, adhered to, and were competent in practicing established principles of avalanche safety at all times during its recreational avalanche safety course offerings including field sessions in the North San Juan Mountains;
 - s. Failing to ensure that its course staff and instructors acted at all times to protect course participants against risk of serious injury and death during recreational avalanche safety course offerings, including field sessions, and otherwise acted at all times so as to minimize the risk of serious injury or death for recreational avalanche course participants related to potential avalanche hazards including

persistent slab avalanches;

- t. Allowing its course instructors, including but not limited to Defendant Lovell, to lead and guide its course groups into, through, and below areas of the North San Juan Mountains where and when travel was not supported due to existing avalanche hazards, including but not limited to the subject Recreational Avalanche 2 group's route through the Upper Senator Beck Basin on January 5, 2019;
- u. Failing to ensure that its recreational avalanche course instructors and all recreational avalanche course participants appropriately adhered to and followed basic tenets of avalanche safety at all times during field sessions including during the subject Recreational Avalanche 2 course conducted in the Upper Senator Beck Basin on January 5, 2019;
- v. Failing to ensure that its recreational avalanche course instructors and all recreational avalanche course participants appropriately analyzed the hazards and risks of avalanche terrain at all times during field sessions, including but not limited to the Recreational Avalanche 2 course conducted in the Upper Senator Beck Basin on January 5, 2019;
- w. Failing to ensure that its recreational avalanche course instructors and all recreational avalanche course participants appropriately measured and relied on measurements of the angles of any and all slopes used to descend in, through, adjacent to, or below avalanche terrain at all times during field sessions, including but not limited to the Recreational Avalanche 2 course conducted in the Upper Senator Beck Basin on January 5, 2019;
- x. Failing to ensure that its recreational avalanche course instructors and all

recreational avalanche course participants appropriately adhered to and followed the basic tenet of traveling one-at-a-time through avalanche prone areas at all times while guiding recreational avalanche course groups through the North San Juan Mountains, including but not limited to the Recreational Avalanche 2 course conducted in the Upper Senator Beck Basin on January 5, 2019;

- y. Failing to ensure that its recreational avalanche course instructors and all recreational avalanche course participants appropriately adhered to and followed the basic tenet of selecting descent routes that allowed recreational avalanche group members to remain in constant communication and visual contact without the need to sidestep or downclimb a slope, including but not limited to during the Recreational Avalanche 2 course conducted in the Upper Senator Beck Basin on January 5, 2019;
- z. Leading and guiding the subject Recreational Avalanche 2 course group, including Peter Marshall, into and along routes within the Upper Senator Beck Basin where travel was not supported due to existing avalanche hazards in those areas at the time;
- aa. Leading and directing course group participants to utilize a dangerous descent route that exposed course group participants to unreasonable risk of serious injury or death from avalanches during the subject Recreational Avalanche 2 course; and
- bb. Leading and directing course group participants to travel in, through, and below avalanche terrain when conditions did not support such travel and in a manner that would have been inappropriate and unsafe even under less hazardous conditions;
- cc. Such other and further acts of negligence as may be revealed in discovery.

126. Certain of Defendant SAS's acts and omissions, or acts and omissions of Defendant SAS's employees, agents, instructors, and/or contractors, may additionally constitute gross negligence, willful and wanton conduct, and/or fraud, as further discussed below.

127. Defendant SAS is liable for its own acts of negligence and/or gross negligence, willful and wanton conduct, and/or fraud, and for acts of negligence and/or gross negligence, willful and wanton conduct, and/or fraud by its employees, agents, instructors, and/or contractors, including but not limited to Defendant Lovell.

128. As a direct and proximate result and consequence of the tortious acts and omissions of the Defendant and/or its employees, agents, instructors, and/or contractors described herein, Plaintiffs suffered injuries, damages, and losses including but not limited to the wrongful death of the decedent, Peter Marshall.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

COUNT II
Negligent Misrepresentation

129. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

130. At all relevant times, Defendant SAS owed a duty to provide accurate information and to avoid providing false or misleading information to members of the public and participants in its avalanche safety courses, including Peter Marshall.

131. At all relevant times, Defendant SAS breached its duty and was negligent, including by the following:

- a. Falsely representing that its avalanche school and recreational avalanche safety courses were superior to comparable offerings of others;
- b. Falsely representing that each of its recreational avalanche safety course staff

- and/or instructors possessed qualifications, training, skill, and/or experience that were superior to the qualifications, training, skill and/or experience of other avalanche safety course staff and/or instructors;
- c. Falsely representing that each of its recreational avalanche safety course staff and/or instructors had gone through a rigorous training and education process with respect to leading and providing recreational avalanche safety courses including field sessions;
 - d. Falsely representing that each of its recreational avalanche safety course staff and/or instructors possessed deep operational experience in avalanche terrain;
 - e. Falsely representing that each of its recreational avalanche staff and instructors took an evidence-based approach to avalanche safety in their recreational avalanche safety courses and field sessions;
 - f. Falsely representing that Defendant SAS's recreational avalanche safety courses offered the most up to date information to course participants;
 - g. Falsely representing that Defendant Lovell, in particular, possessed qualifications, training, skill, and/or experience that were superior to the qualifications, training, skill and/or experience of recreational avalanche safety course staff and/or instructors in other programs;
 - h. Falsely representing that Defendant Lovell, in particular, had gone through a rigorous training and education process with respect to leading, guiding, and providing recreational avalanche safety courses including field sessions;
 - i. Falsely representing that Defendant Lovell, in particular, possessed deep operational experience in avalanche terrain;

- j. Falsely representing that Defendant Lovell, in particular, took an evidence-based approach in safely leading recreational avalanche safety course groups and field sessions;
- k. Falsely representing that Defendant Lovell, in particular, offered recreational avalanche safety course participants the most up to date information in leading course groups and field sessions;
- l. Falsely representing that Defendant Lovell, in particular, possessed adequate qualifications, training, skill, knowledge, and experience to safely lead recreational avalanche safety course participants into the backcountry during the subject Recreational Avalanche 2 course including during field sessions and including with respect to travel through (or to avoid) avalanche terrain;
- m. Falsely representing that avalanche hazards and conditions in the Upper Senator Beck Basin on January 5, 2019, were other than what they actually were;
- n. Falsely representing that Recreational Avalanche 2 participants, including Peter Marshall, would be and were provided with complete CAIC avalanche forecast information for the Upper Senator Beck Basin on January 5, 2019 prior to entering that area when, in fact, certain critical forecast information was withheld and not provided to course participants, including Peter Marshall; and
- o. Making such other and further false representations as may be revealed in discovery.

132. Defendant SAS's false and misleading representations are believed to have been made verbally, in writing, and/or through marketing materials including print and internet marketing materials.

133. Peter Marshall relied on Defendant SAS's false and misleading representations by, *inter alia*, electing to register and participate in Defendant's Recreational Avalanche 2 course, by electing to enter the Upper Senator Beck Basin on January 5, 2019 when conditions did not support travel through areas in the Basin, by electing to descend down Defendant's selected descent route under conditions that did not support travel down that route, and by electing to descend down that route at the time and in the manner that he did, as instructed by Defendant SAS.

134. Peter Marshall's reliance on Defendant SAS's false and misleading representations was a cause of his death during Defendant's avalanche safety course.

135. Certain of Defendant SAS's acts and omissions may additionally constitute gross negligence, willful and wanton conduct, and/or fraud, as further discussed below.

136. As a direct and proximate result and consequence of the tortious acts and omissions of the Defendants described herein, Plaintiffs suffered injuries, damages, and losses including but not limited to the wrongful death of the decedent, Peter Marshall.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

COUNT III
Fraud

137. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

138. At all relevant times, Defendant SAS made multiple false and misleading representations of material fact to Peter Marshall.

139. At all relevant times, Defendant SAS's false and misleading representations of material fact included, but were not limited to:

- a. Falsely representing that its avalanche school and recreational avalanche safety courses were superior to comparable offerings of others;

- b. Falsely representing that each of its recreational avalanche safety course staff and/or instructors possessed qualifications, training, skill, and/or experience that were superior to the qualifications, training, skill and/or experience of other recreational avalanche safety course staff and/or instructors;
- c. Falsely representing that each of its recreational avalanche safety course staff and/or instructors had gone through a rigorous training and education process with respect to leading and providing recreational avalanche safety courses including field sessions;
- d. Falsely representing that each of its recreational avalanche safety course staff and/or instructors possessed deep operational experience in avalanche terrain;
- e. Falsely representing that each of its staff and instructors took an evidence-based approach to avalanche safety in their recreational avalanche safety courses and field sessions;
- f. Falsely representing that Defendant SAS's recreational avalanche safety courses offered the most up to date information to course participants;
- g. Falsely representing that Defendant Lovell, in particular, possessed qualifications, training, skill, and/or experience that were superior to the qualifications, training, skill and/or experience of recreational avalanche safety course staff and/or instructors in other programs;
- h. Falsely representing that Defendant Lovell, in particular, had gone through a rigorous training and education process with respect to leading and providing recreational avalanche safety courses including field sessions;
- i. Falsely representing that Defendant Lovell, in particular, possessed deep

operational experience in avalanche terrain;

- j. Falsely representing that Defendant Lovell, in particular, took an evidence-based approach in safely leading recreational avalanche safety course groups and field sessions;
- k. Falsely representing that Defendant Lovell, in particular, offered course participants the most up to date information in leading recreational avalanche safety course groups and field sessions;
- l. Falsely representing that Defendant Lovell, in particular, possessed adequate qualifications, training, skill, knowledge, and experience to safely lead course participants into the backcountry during the subject Recreational Avalanche 2 course including during field sessions and including with respect to travel through (or to avoid) avalanche terrain;
- m. Falsely representing that avalanche hazards and conditions in the Upper Senator Beck Basin on January 5, 2019, were other than what they actually were;
- n. Falsely representing that Recreational Avalanche 2 participants, including Peter Marshall, would be and were provided with complete CAIC avalanche forecast information for the Upper Senator Beck Basin on January 5, 2019 prior to entering that area when, in fact, certain critical forecast information was withheld and not provided to course participants, including Peter Marshall; and
- o. Such other and further false representations as may be revealed in discovery.

140. At all relevant times, Defendant SAS made the above-mentioned false and misleading representations of material fact with knowledge that its representations were false and misleading.

141. Alternatively, at all relevant times, Defendant SAS made the above-mentioned false and misleading representations of material fact with awareness that it did not know whether its representations were true or false.

142. At all relevant times, Defendant SAS made the above-mentioned false and misleading representations of material fact with the intention that its representations would be acted upon by potential consumers of its services like Peter Marshall.

143. At all relevant times, Peter Marshall was ignorant of the fact that Defendant SAS's representations were false and misleading.

144. At all relevant times, Peter Marshall justifiably relied on Defendant SAS's false and misleading representations of material fact by, *inter alia*, electing to register and participate in Defendant's Recreational Avalanche 2 course, by electing to enter the Upper Senator Beck Basin on January 5, 2019 when conditions did not support travel through areas in the Basin, by electing to descend down Defendant's selected descent route under conditions that did not support travel down that route, and by electing to descend down that route at the time and in the manner that he did, as instructed by Defendant SAS.

145. Peter Marshall's reliance on Defendant SAS's false and misleading representations was a cause of his death during Defendant's avalanche safety course.

146. Certain of Defendant SAS's acts and omissions may additionally constitute gross negligence, willful and wanton conduct, and/or fraud, as further discussed below.

147. As a direct and proximate result and consequence of the tortious acts and omissions of the Defendants described herein, Plaintiffs suffered injuries, damages, and losses including but not limited to the wrongful death of the decedent, Peter Marshall.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

COUNT IV
Fraudulent Concealment

148. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

149. At all relevant times, Defendant SAS concealed and/or failed to disclose one or more of the following facts to Peter Marshall that it had a duty to disclose:

- a. That its avalanche school and recreational avalanche safety courses were not, in fact, superior to comparable offerings of others;
- b. That each of its recreational avalanche safety course staff and/or instructors did not, in fact, possess qualifications, training, skill, and/or experience that were superior to the qualifications, training, skill and/or experience of other recreational avalanche safety course staff and/or instructors;
- c. That each of its recreational avalanche safety course staff and/or instructors had not, in fact, gone through a rigorous training and education process with respect to leading recreational avalanche safety courses including field sessions;
- d. That each of its recreational avalanche safety course staff and/or instructors did not, in fact, possess deep operational experience in avalanche terrain;
- e. That each of its staff and/or instructors did not, in fact, take an evidence-based approach to avalanche safety in their recreational avalanche safety courses and field sessions;
- f. That Defendant SAS's recreational avalanche safety courses did not, in fact, offer the most up to date information to course participants;
- g. That Defendant Lovell, in particular, did not possess qualifications, training, skill,

and/or experience that were superior to the qualifications, training, skill and/or experience of recreational avalanche safety course staff and/or instructors in other programs;

- h. That Defendant Lovell, in particular, had not gone through (or completed) a rigorous training and education process with respect to leading recreational avalanche safety courses including field sessions;
- i. That Defendant Lovell, in particular, did not possess deep operational experience in avalanche terrain;
- j. That Defendant Lovell, in particular, did not take an evidence-based approach in safely leading recreational avalanche safety course groups and field sessions;
- k. That Defendant Lovell, in particular, did not offer or ensure that recreational avalanche safety course participants were provided with the most up to date information during his course groups and field sessions;
- l. That Defendant Lovell, in particular, lacked adequate qualifications, training, skill, knowledge, and experience to safely lead recreational avalanche safety course participants in field sessions for the Recreational Avalanche 2 course under hazards and conditions in the Upper Senator Beck Basin as they existed on January 5, 2019;
- m. That avalanche hazards and conditions in the Upper Senator Beck Basin on January 5, 2019, were not as they were represented to be by Defendant SAS staff and/or instructors;
- n. That Recreational Avalanche 2 participants, including Peter Marshall, would not be and were not provided with complete CAIC avalanche forecast information for the Upper Senator Beck Basin on January 5, 2019 prior to entering that area, and

that, in fact, certain critical forecast information was withheld and not provided to course participants, including Peter Marshall, by Defendant SAS and its staff and instructors; and

- o. Such other and further material omissions as may be revealed in discovery.

150. At all relevant times, Defendant SAS fraudulently concealed and/or failed to disclose one or more of these facts with the intent to create a false impression of the actual facts in the mind of course participants including Peter Marshall.

151. At all relevant times, Defendant SAS fraudulently concealed and/or failed to disclose one or more of these facts with the intent to induce course participants, including Peter Marshall, to take a course of action that they would not otherwise have taken but for Defendant's nondisclosure, including, *inter alia*, electing to register and participate in Defendant's Recreational Avalanche 2 course, electing to enter the Upper Senator Beck Basin on January 5, 2019 when conditions did not support travel through areas in the Basin, electing to descend down Defendant's selected descent route under conditions that did not support travel down that route, and electing to descend down that route at the time and in the manner that they did, as instructed by Defendant SAS.

152. At all relevant times, Peter Marshall justifiably took such action relying on the assumption that these concealed and/or undisclosed facts did not exist or were different from what they actually were.

153. Alternatively, at all relevant times, Peter Marshall justifiably decided not to take action in reliance on the assumption that these concealed and/or undisclosed facts did not exist or were different from what they actually were, including by, *inter alia*, electing not to register and participate in a different avalanche safety course offered by SAS or another provider, electing not

to complete such avalanche safety training through organizations other than SAS or instructors other than Lovell, or in areas other than the Upper Senator Beck Basin on January 5, 2019, and electing not to complete travel through such areas by routes that were supported by the avalanche conditions present (or not present) in such areas or by a manner otherwise consistent with basic tenets of avalanche safety, contrary to the route selected and instruction provided by Defendant.

154. Peter Marshall's reliance engendered by Defendant SAS's nondisclosure and/or concealment of material facts was a cause of his death during Defendant's avalanche safety course.

155. Certain of Defendant SAS's acts and omissions may additionally constitute gross negligence, willful and wanton conduct, and/or fraud, as further discussed below.

156. As a direct and proximate result and consequence of the tortious acts and omissions of the Defendants described herein, Plaintiffs suffered injuries, damages, and losses including but not limited to the wrongful death of the decedent, Peter Marshall.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

COUNT V
Violation of Colorado Consumer Protection Act

157. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

158. At all relevant times, the provisions of the Colorado Consumer Protection Act, C.R.S. § 6-1-101, *et seq.* ("CCPA") were in effect.

159. At all relevant times, the CCPA protected the public as consumers in situations where consumers do not have and cannot reasonably gain access to truthful information relevant to a contemplated transaction unless it comes from the persons or entities offering the good or service.

160. At all relevant times, Defendant SAS's recreational avalanche safety courses

constituted services pursuant to C.R.S. § 6-1-113(1)(a).

161. At all relevant times, Peter Marshall was an actual consumer of Defendant SAS's services.

162. At all relevant times, Defendant SAS engaged in deceptive trade practices in the course of its business, vocation, or occupation by making false representations of fact and/or concealing and failing to disclose facts within its knowledge, knowingly and/or recklessly and willfully, without regard to the consequences, with the intent to deceive and mislead Peter Marshall and other potential and/or actual consumers of its services, including but not limited to its recreational avalanche safety courses, and which had the capacity to deceive.

163. Defendant SAS's deceptive trade practices actually induced Peter Marshall to act and to refrain from acting by purchasing and using Defendant's recreational avalanche safety course services and by using them in the manner that he did, rather than not purchasing or using those services or using them in a different manner than he did or purchasing and using different avalanche safety course services offered by others rather than by SAS and its instructors.

164. As described in more detail elsewhere herein, the deceptive trade practices engaged in by Defendant SAS include, but are not limited to, knowingly and/or recklessly making false representations concerning its services, including its avalanche school, recreational avalanche safety courses, and recreational avalanche safety course staff and/or instructors, including but not limited to the subject Recreational Avalanche 2 course and instructors for the course such as Defendant Lovell, and including the characteristics, uses, and benefits of those services in violation of C.R.S. § 6-1-105(1)(e); false representations that its services were of a certain standard or quality when it knew or should have known they were of another in violation of C.R.S. § 6-1-105(1)(g); advertising its services with the intent not to sell them as advertised in violation of

C.R.S. § 6-1-105(1)(i); failing to disclose material information that it knew at the time concerning its services with the intent to induce consumers to purchase those services in violation of C.R.S. § 6-1-105(1)(u); and/or knowingly and recklessly engaging in unfair, deceptive, deliberately misleading, false, and/or fraudulent practices as described elsewhere herein in violation of C.R.S. § 6-1-105(kkk).

165. The deceptive trade practices engaged in by Defendant SAS include but are not limited to the false representations, misleading statements of material fact, and material omissions identified elsewhere in this Complaint.

166. Defendant SAS's deceptive trade practices as described herein constituted bad faith conduct as defined in C.R.S. § 6-1-113(2.3).

167. At all relevant times, the marketing and sale of recreational avalanche safety training services like Defendant SAS's services to large numbers of consumers verbally and/or in writing, including over the internet and social media, was a matter of public interest and concern in the State of Colorado insofar as Defendant SAS's deceptive trade practices were intended to and did actually induce large numbers of consumers to purchase and use such services, including the subject Recreational Avalanche 2 course, and thus to become exposed to substantial risks of serious injury and/or death associated with ordinary and foreseeable use of such services.

168. At all relevant times, Defendant SAS's unfair and deceptive trade practices significantly impacted the public as actual and potential consumers of its services.

169. At all relevant times, Defendant SAS's false advertising, misleading claims, and material omissions were directed to and reached large numbers of actual and potential consumers of its services, including but not limited to the subject Recreational Avalanche 2 avalanche safety course, and including actual consumers who purchased such services through its interactive

internet website and actual and potential consumers who encountered such websites and social media and/or who interacted with such false, deceptive, and/or misleading claims and omissions through Defendant SAS's print materials, websites, and social media platforms including Facebook, Twitter, Linked In, and Instagram.

170. At all relevant times, the actual and potential consumers who were reached by Defendant SAS's deceptive trade practices were relatively unsophisticated in comparison with Defendant SAS, which was the provider of recreational avalanche safety training services marketed and sold to consumers and users across Colorado, the United States, and internationally, including because such consumers lacked comparable specialized expertise in providing avalanche safety training, in employing, retaining, supervising, and directing recreational avalanche safety course staff and instructors, and in operating recreational avalanche safety training courses via an avalanche school.

171. At all relevant times, such actual and potential consumers also lacked bargaining power in comparison to Defendant SAS insofar as these consumers lacked any independent means of evaluating or verifying Defendant SAS's claims concerning the nature, quality, and safety of its services, which claims Defendant SAS made to induce such consumers to purchase and use its services.

172. At all relevant times, like most members of the public targeted by the advertising, misrepresentations, and omissions of Defendant SAS, Peter Marshall lacked comparable specialized training and expertise in providing recreational avalanche safety training, in employing, retaining, supervising, and directing recreational avalanche safety course instructors, and in operating recreational avalanche safety training courses via an avalanche school, and therefore lacked the sophistication to gauge the truth of and the ability to verify the representations

of Defendant SAS concerning the nature, quality, and safety of its services.

173. At all relevant times, Defendant SAS's deceptive trade practices, which are understood to be ongoing, impacted other consumers, and have significant potential to do so in the future insofar as those deceptive trade practices have induced large numbers of other consumers to purchase and use Defendant SAS's services, including but not limited to its Recreational Avalanche 2 avalanche safety training course, and have the potential to induce large numbers of consumers to purchase and use such services in the future.

174. But for Defendant SAS's deceptive trade practices, including its false representations and omissions described herein, Peter Marshall would not have purchased and used Defendant SAS's services or used them in the manner that he did.

175. Had Peter Marshall known the true nature of the material facts misrepresented and omitted by Defendant SAS, he would not have purchased and used those services or used them in the manner that he did.

176. Upon information and belief, the deceptive trade practices of Defendant SAS are ongoing to date, and continue to have significant potential to harm future consumers of its services, including but not limited to the subject services and substantially similar services, as Defendant SAS has continued to widely disseminate the same or substantially similar false, misleading, and/or deceptive representations and omissions concerning its services, including via print materials, internet websites, and social media advertising, since the time of the subject incident in which Peter Marshall was killed.

177. Defendant SAS's deceptive trade practices in violation of the CCPA caused the wrongful death of Peter Marshall as described more fully elsewhere herein.

178. Plaintiffs are entitled to recover damages pursuant to the CCPA, including treble

damages, attorney fees, and costs pursuant to C.R.S. § 6-1-113(2)(III) based on Defendant SAS's statutory violations of the CCPA and its bad faith conduct pursuant to C.R.S. § 6-1-113(2.3), described more fully elsewhere herein.

179. As a direct and proximate result and consequence of the statutory violations and the tortious acts and omissions of the Defendant described herein, Plaintiffs suffered injuries, damages, and losses including but not limited to the wrongful death of the decedent, Peter Marshall.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

COUNTS AGAINST DEFENDANT ZACHARY J. LOVELL

COUNT VI Negligence

180. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

181. At all relevant times, Defendant Lovell held himself out as a provider of and undertook to provide services in recreational avalanche safety training to members of the general public, including field sessions where he would lead groups of course participants into the backcountry including the backcountry of the North San Juan Mountains.

182. At all relevant times, Defendant Lovell owed a duty to exercise reasonable care and protect individuals to whom he undertook to provide recreational avalanche safety training, including but not limited to Peter Marshall.

183. At all relevant times, Defendant Lovell breached his duty and was negligent, including by the following:

- a. Failing to exercise reasonable care in providing recreational avalanche safety

training and instruction services with respect to the subject Recreational Avalanche 2 course;

- b. Failing to act as a reasonable recreational avalanche safety instructor and/or group leader would have acted under the circumstances;
- c. Acting in a fashion other than a reasonable recreational avalanche safety instructor and/or group leader would have acted under the circumstances;
- d. Failing to appropriately guide, instruct, direct, mentor, supervise, oversee, and protect participants in the subject Recreational Avalanche 2 course including but not limited to Peter Marshall;
- e. Failing to appropriately protect course participants and manage safety risk in the subject Recreational Avalanche 2 course including but not limited to Peter Marshall;
- f. Failing to exercise reasonable care with respect to understanding, teaching, applying, and following course content for the subject Recreational Avalanche 2 course;
- g. Failing to exercise reasonable care with respect to guiding and supervising members of the subject Recreational Avalanche 2 course at all times including during field sessions in the Upper Senator Beck Basin;
- h. Failing to ensure clear and consistent communication with, between, and among other SAS staff and instructors and participants in the subject Recreational Avalanche 2 course, including with respect to updated avalanche forecast information, route planning and selection, evaluation of snow conditions, terrain, and avalanche hazards in the field, and avalanche rescue procedures and operations;

- i. Failing to follow safety policies, procedures, protocols, guidelines, and standards of Defendant SAS with respect to the selection of appropriate areas for conducting field sessions during the subject Recreational Avalanche 2 course, including in view of snowpack conditions and avalanche hazards at the time;
- j. Following unreasonable directions, authorizations, and/or instructions provided by Defendant SAS, including Defendant SAS's director's directions, authorizations, and/or instructions to lead the Recreational Avalanche 2 course into the Upper Senator Beck Basin at a time when conditions did not support travel in, through, adjacent to, or below avalanche terrain in that area;
- k. Failing to exercise, provide for, and ensure conservative, sound, and coherent decision-making and risk management at all times during the subject Recreational Avalanche 2 course, including with respect to field sessions in the Upper Senator Beck Basin, for the safety of course participants under his supervision, direction, and guidance;
- l. Failing to heed the safety information and warnings contained in the applicable daily CAIC avalanche forecast materials, including the summary information;
- m. Failing to follow the safety guidance set forth in the applicable daily CAIC avalanche forecast materials, including the summary information;
- n. Failing to ensure that all recreational avalanche safety course participants were provided with all available updated avalanche forecast information, including information contained in all sections of applicable daily CAIC avalanche forecast materials, prior to venturing into backcountry areas that posed a potential avalanche risk, including all course participants in the subject Recreational Avalanche 2

course;

- o. Failing to ensure that no information set forth in an applicable daily CAIC avalanche forecast was withheld from or not transmitted to all course participants in the subject Recreational Avalanche 2 course before such participants were led into backcountry areas posing a potential avalanche risk;
- p. Failing to ensure that all course participants were provided with all available avalanche forecast information pertaining to a particular area scheduled for field sessions in the subject Recreational Avalanche 2 course, including but not limited to CAIC summary information and information pertaining to the risk of persistent and/or hard slab avalanches, remote triggering, and wide propagation in the North San Juan zone including the Upper Senator Beck Basin on January 5, 2019;
- q. Failing to timely and appropriately act at all times to protect course participants against risk of serious injury and death during avalanche safety course offerings, including field sessions, and including the subject Recreational Avalanche 2 course, and to otherwise act at all times so as to minimize the risk of serious injury or death for course participants related to potential avalanche hazards including persistent slab avalanches, including at all times during the subject course;
- r. Leading and guiding the subject Recreational Avalanche 2 course group, including Peter Marshall, into and along routes within the Upper Senator Beck Basin where travel was not supported due to existing avalanche hazards in those areas at the time;
- s. Failing to understand, adhere to, and competently practice and follow basic tenets and established principles of avalanche safety at all times during field sessions

- including the subject Recreational Avalanche 2 course;
- t. Failing to understand, adhere to, and competently practice and follow SAS's selected course content for the subject Recreational Avalanche 2 course at all times during that course including but not limited to field sessions;
 - u. Failing to appropriately analyze, appreciate and avoid the avalanche hazards present in the Upper Senator Beck Basin during the January 5, 2019 field session for the subject Recreational Avalanche 2 course, as they existed given the snowpack conditions at the time, the terrain in the area, and the nature of the group's travel through the area;
 - v. Failing to appropriately analyze, appreciate, and avoid unreasonably dangerous and hazardous avalanche terrain and conditions during field sessions at all times during field sessions including the subject Recreational Avalanche 2 course;
 - w. Leading and directing course group participants to utilize a dangerous descent route that exposed course group participants to unreasonable risk of serious injury or death from avalanches during the subject Recreational Avalanche 2 course;
 - x. Failing to lead and direct participants in the subject Recreational Avalanche 2 course to utilize safer available descent routes at all times during that course, including such routes actually known to and traveled by Defendant Lovell on that date;
 - y. Failing to appropriately measure and rely on appropriate measurements of the angles of the slopes used to descend in, through, adjacent to, or below avalanche terrain at all times during field sessions, including but not limited to the Recreational Avalanche 2 course;

- z. Failing to direct, instruct, and ensure that course group members appropriately measured and relied on appropriate measurements of the angles of the slopes used to descend in, through, adjacent to, or below avalanche terrain at all times during field sessions, including but not limited to the Recreational Avalanche 2 course;
- aa. Failing to appropriately implement and follow the basic tenet of traveling one-at-a-time through avalanche prone areas at all times during the subject Recreational Avalanche 2 course so as to minimize course group participants' exposure to risks of serious injury or death from avalanches;
- bb. Failing to direct, instruct, and ensure that course group participants followed the basic tenet of traveling one-at-a-time through avalanche prone areas at all times during the subject Recreational Avalanche 2 course so as to minimize participants' exposure to risks of serious injury or death from avalanches;
- cc. Failing to appropriately implement and follow the basic tenet of selecting descent routes that allowed group members to remain in constant communication and visual contact without the need to sidestep or downclimb a slope, including but not limited to the Recreational Avalanche 2 course;
- dd. Failing to direct, instruct, and ensure that course group participants followed the basic tenet of using descent routes that allowed group members to remain in constant communication and visual contact without the need to sidestep or downclimb a slope, including but not limited to the Recreational Avalanche 2 course;
- ee. Failing to heed warnings, safety information, and conditions indicative of an unacceptable slab avalanche risk in the Upper Senator Beck Basin during the

Recreational Avalanche 2 course on January 5, 2019;

ff. Failing to heed warnings, safety information, and conditions indicative of unacceptable risks of wide propagation and remote triggering of large slab avalanches in the Upper Senator Beck Basin during the Recreational Avalanche 2 course on January 5, 2019;

gg. Failing to appropriately implement and follow avalanche rescue procedures including but not limited to avoiding conduct that could render one unable to appropriately implement and participate in avalanche rescue operations; and

hh. Such other and further acts of negligence as may be revealed in discovery.

184. Certain of Defendant Lovell's acts and omissions may additionally constitute gross negligence, willful and wanton conduct, and/or fraud, as further discussed below.

185. It is believed that Defendant SAS approved and ratified certain of Defendant Lovell's acts and omissions as described elsewhere herein.

186. As a direct and proximate result and consequence of the tortious acts and omissions of the Defendants described herein, Plaintiffs suffered injuries, damages, and losses including but not limited to the wrongful death of the decedent, Peter Marshall.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

COUNT VII
Negligent Misrepresentation

187. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

188. At all relevant times, Defendant Lovell owed a duty to provide accurate information and avoid providing false information to members of the public and participants in connection with recreational avalanche safety courses in which he was an instructor.

189. At all relevant times, Defendant Lovell breached his duty and was negligent, including by the following:

- a. Falsely representing that he possessed qualifications, training, skill, and/or experience that were superior to the qualifications, training, skill and/or experience of other recreational avalanche safety course staff and/or instructors;
- b. Allowing others to falsely represent that he possessed qualifications, training, skill, and/or experience that were superior to the qualifications, training, skill and/or experience of other recreational avalanche safety course staff and/or instructors;
- c. Falsely representing that he had gone through a rigorous training and education process with respect to leading and providing recreational avalanche safety courses including field sessions;
- d. Allowing others to falsely represent that he had gone through a rigorous training and education process with respect to safely leading and providing recreational avalanche safety courses including field sessions;
- e. Falsely representing that he possessed deep operational experience in avalanche terrain;
- f. Allowing others to falsely represent that he possessed deep operational experience in avalanche terrain;
- g. Falsely representing that he took an evidence-based approach to providing recreational avalanche safety training and to leading and teaching recreational avalanche safety courses and field sessions;
- h. Allowing others to falsely represent that he took an evidence-based approach to providing recreational avalanche safety training and to leading and teaching

recreational avalanche safety courses and field sessions;

- i. Falsely representing that participants in Defendant SAS's recreational avalanche safety courses were offered the most up to date information;
- j. Falsely representing to Recreational Avalanche 2 participants including Peter Marshall that he possessed adequate qualifications, training, skill, knowledge, and experience to safely lead recreational avalanche safety course participants into the backcountry during that course including during field sessions and including with respect to travel through (and avoidance of) avalanche terrain;
- k. Falsely representing to Recreational Avalanche 2 participants including Peter Marshall that avalanche hazards and conditions in the Upper Senator Beck Basin on January 5, 2019, were other than what they actually were;
- l. Falsely representing that Recreational Avalanche 2 participants including Peter Marshall would be and were provided with complete CAIC avalanche forecast information for the Upper Senator Beck Basin on January 5, 2019 prior to entering that area when, in fact, certain critical forecast information was withheld and not provided to course participants, including Peter Marshall;
- m. Falsely representing to Recreational Avalanche 2 participants including Peter Marshall that his selected route of descent through the Upper Senator Beck Basin on January 5, 2019 was a safe and reasonable route under the circumstances and that it was safe to descend that route in the manner and fashion he directed under those circumstances;
- n. Falsely representing to Recreational Avalanche 2 participants including Peter Marshall that it was not necessary to strictly follow and adhere to certain basic

tenets of avalanche safety in order to safely travel down Defendant's selected route of descent through the Upper Senator Beck Basin on January 5, 2019 under the circumstances;

- o. Falsely representing to Recreational Avalanche 2 participants including Peter Marshall that it was not necessary to strictly follow and adhere to SAS's selected course content in order to safely travel down Defendant's selected route of descent through the Upper Senator Beck Basin on January 5, 2019 under the circumstances; and
- p. Making such other and further false representations as may be revealed in discovery.

190. Peter Marshall relied on Defendant Lovell's false representations by, *inter alia*, electing to participate in Defendant's Recreational Avalanche 2 course, by electing to enter the Upper Senator Beck Basin on January 5, 2019 when conditions did not support travel through areas in the Basin, by electing to descend down Defendant's selected descent route under conditions that did not support travel down that route, and by electing to descend down that route at the time and in the manner that he did, as instructed by Defendant.

191. Peter Marshall's reliance on Defendant Lovell's false representations was a cause of his physical injuries and death during Defendant's avalanche safety course.

192. Certain of Defendant Lovell's acts and omissions may additionally constitute gross negligence, willful and wanton conduct, and/or fraud, as further discussed below.

193. It is believed that Defendant SAS approved and ratified certain of Defendant Lovell's acts and omissions as described elsewhere herein.

194. As a direct and proximate result and consequence of the tortious acts and omissions

of the Defendants described herein, Plaintiffs suffered injuries, damages, and losses including but not limited to the wrongful death of the decedent, Peter Marshall.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

COUNT VIII
Fraud

195. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

196. At all relevant times, Defendant Lovell made multiple false and misleading representations of material fact to Peter Marshall.

197. At all relevant times, Defendant Lovell's false and misleading representations of material fact included, but were not limited to:

- a. Falsely representing that he possessed qualifications, training, skill, and/or experience that were superior to the qualifications, training, skill and/or experience of other recreational avalanche safety course staff and/or instructors;
- b. Allowing others to falsely represent that he possessed qualifications, training, skill, and/or experience that were superior to the qualifications, training, skill and/or experience of other recreational avalanche safety course staff and/or instructors;
- c. Falsely representing that he had gone through a rigorous training and education process with respect to leading and providing recreational avalanche safety courses including field sessions;
- d. Allowing others to falsely represent that he had gone through a rigorous training and education process with respect to leading and providing recreational avalanche safety courses including field sessions;
- e. Falsely representing that he possessed deep operational experience in avalanche

terrain;

- f. Allowing others to falsely represent that he possessed deep operational experience in avalanche terrain;
- g. Falsely representing that he took an evidence-based approach to providing recreational avalanche safety training and to leading and teaching recreational avalanche safety courses and field sessions;
- h. Allowing others to falsely represent that he took an evidence-based approach to providing recreational avalanche safety training and to leading and teaching recreational avalanche safety courses and field sessions;
- i. Falsely representing that participants in Defendant SAS's recreational avalanche safety courses were offered the most up to date information;
- j. Falsely representing to Recreational Avalanche 2 participants including Peter Marshall that he possessed adequate qualifications, training, skill, knowledge, and experience to safely lead course participants into the backcountry during that course including during field sessions and including with respect to travel through (and avoidance of) avalanche terrain;
- k. Falsely representing to Recreational Avalanche 2 participants including Peter Marshall that avalanche hazards and conditions in the Upper Senator Beck Basin on January 5, 2019, were other than what they actually were;
- l. Falsely representing that Recreational Avalanche 2 participants including Peter Marshall would be and were provided with complete CAIC avalanche forecast information for the Upper Senator Beck Basin on January 5, 2019 prior to entering that area when, in fact, certain critical forecast information was withheld and not

provided to course participants, including Peter Marshall;

- m. Falsely representing to Recreational Avalanche 2 participants including Peter Marshall that his selected route of descent through the Upper Senator Beck Basin on January 5, 2019 was a safe and reasonable route under the circumstances and that it was safe to descend that route in the manner and fashion he directed under those circumstances;
- n. Falsely representing to Recreational Avalanche 2 participants including Peter Marshall that it was not necessary to follow and adhere to certain basic tenets of avalanche safety in order to safely travel down Defendant's selected route of descent through the Upper Senator Beck Basin on January 5, 2019 under the circumstances;
- o. Falsely representing to Recreational Avalanche 2 participants including Peter Marshall that it was not necessary to strictly follow and adhere to SAS's selected course content in order to safely travel down Defendant's selected route of descent through the Upper Senator Beck Basin on January 5, 2019 under the circumstances; and
- p. Making such other and further false representations as may be revealed in discovery.

198. At all relevant times, Defendant Lovell made the above-mentioned false and misleading representations of material fact with knowledge that his representations were false and misleading.

199. Alternatively, at all relevant times, Defendant Lovell made the above-mentioned false and misleading representations of material fact with awareness that he did not know whether

his representations were true or false.

200. At all relevant times, Defendant Lovell made the above-mentioned false and misleading representations of material fact with the intention that his representations would be acted upon by potential consumers of his services like Peter Marshall.

201. At all relevant times, Peter Marshall was ignorant of the fact that Defendant Lovell's representations were false.

202. At all relevant times, Peter Marshall justifiably relied on Defendant Lovell's false and misleading representations of material fact by, *inter alia*, electing to participate in Defendant's Recreational Avalanche 2 course, by electing to enter the Upper Senator Beck Basin on January 5, 2019 when conditions did not support travel through areas in the Basin, by electing to descend down Defendant's selected descent route under conditions that did not support travel down that route, and by electing to descend down that route at the time and in the manner that he did, as instructed by Defendant.

203. Peter Marshall's reliance on Defendant Lovell's false and misleading representations was a cause of his physical injuries and death during Defendant's avalanche safety course.

204. Certain of Defendant Lovell's acts and omissions may additionally constitute gross negligence, willful and wanton conduct, and/or fraud, as further discussed below.

205. It is believed that Defendant SAS approved and ratified certain of Defendant Lovell's acts and omissions as described elsewhere herein.

206. As a direct and proximate result and consequence of the tortious acts and omissions of the Defendants described herein, Plaintiffs suffered injuries, damages, and losses including but not limited to the wrongful death of the decedent, Peter Marshall.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

COUNT IX
Fraudulent Concealment

207. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

208. At all relevant times, Defendant Lovell concealed and/or failed to disclose one or more of the following facts to Peter Marshall that he had a duty to disclose:

- a. That that he did not, in fact, possess qualifications, training, skill, and/or experience that were superior to the qualifications, training, skill and/or experience of other recreational avalanche safety course staff and/or instructors;
- b. Allowing others to conceal and/or fail to disclose that he did not, in fact, possess qualifications, training, skill, and/or experience that were superior to the qualifications, training, skill and/or experience of other recreational avalanche safety course staff and/or instructors;
- c. That he had not, in fact, gone through a rigorous training and education process with respect to leading and providing recreational avalanche safety courses including field sessions;
- d. Allowing others to conceal and/or fail to disclose that he had not, in fact, gone through a rigorous training and education process with respect to leading and providing recreational avalanche safety courses including field sessions;
- e. That he did not, in fact, possess deep operational experience in avalanche terrain;
- f. Allowing others to conceal and/or fail to disclose that he did not, in fact, possess deep operational experience in avalanche terrain;
- g. That he did not, in fact, take an evidence-based approach to providing recreational

avalanche safety training and leading and teaching recreational avalanche safety courses and field sessions;

- h. Allowing others to conceal and/or fail to disclose that he did not, in fact, take an evidence-based approach to providing recreational avalanche safety training and leading and teaching recreational avalanche safety courses and field sessions;
- i. That participants in Defendant SAS's recreational avalanche safety courses were not, in fact, offered the most up to date information;
- j. That he did not, in fact, possess adequate qualifications, training, skill, knowledge, and experience to safely lead participants in the Recreational Avalanche 2 course into the backcountry during that course including during field sessions and including with respect to travel through (and avoidance of) avalanche terrain;
- k. That avalanche hazards and conditions in the Upper Senator Beck Basin on January 5, 2019, were not as they were represented to be by Defendant Lovell and others;
- l. That Recreational Avalanche 2 participants including Peter Marshall would not be and were not provided with complete CAIC avalanche forecast information for the Upper Senator Beck Basin on January 5, 2019 prior to entering that area and that, in fact, certain critical forecast information was withheld and not provided to course participants, including Peter Marshall;
- m. That Defendant's selected route of descent through the Upper Senator Beck Basin on January 5, 2019 was not a safe and reasonable route under the circumstances but was in fact extremely hazardous and not supported under conditions in the area at the time;
- n. That it was necessary for course participants including Defendant, Peter Marshall,

and others to follow and adhere to certain basic tenets of avalanche safety in order to safely travel down Defendant's selected route of descent through the Upper Senator Beck Basin on January 5, 2019 under the circumstances, and that, in fact, disregarding, violating, or failing to follow those basic safety practices at all times exposed all course participants to substantial risk of serious injury or death;

- o. That it was necessary to strictly follow and adhere to SAS's selected course content in order to safely travel down Defendant's selected route of descent through the Upper Senator Beck Basin on January 5, 2019 under the circumstances, and that, in fact, disregarding, violating, or failing to follow that course content at all times exposed all course participants to substantial risk of serious injury or death; and
- p. Such other and further material omissions as may be revealed in discovery.

209. At all relevant times, Defendant Lovell fraudulently concealed and/or failed to disclose one or more of these facts with the intent to create a false impression of the actual facts in the mind of Peter Marshall.

210. At all relevant times, Defendant Lovell fraudulently concealed and/or failed to disclose one or more of these facts with the intent to induce Peter Marshall to take a course of action that he would not otherwise have taken but for Defendant's nondisclosure, including, *inter alia*, electing to participate in Defendant's Recreational Avalanche 2 course, electing to enter the Upper Senator Beck Basin on January 5, 2019 when conditions did not support travel through areas in the Basin, electing to descend down Defendant's selected descent route under conditions that did not support travel down that route, and electing to descend down that route at the time and in the manner that he did, as instructed by Defendant SAS.

211. At all relevant times, Peter Marshall justifiably took such action relying on the

assumption that these concealed and/or undisclosed facts did not exist or were different from what they actually were.

212. Alternatively, at all relevant times, Peter Marshall justifiably decided not to take action in reliance on the assumption that these concealed and/or undisclosed facts did not exist or were different from what they actually were, including by, *inter alia*, electing not to participate in a different avalanche safety course offered by SAS or another provider, electing not to complete such avalanche safety training through organizations other than SAS or instructors other than Lovell, or in areas other than the Upper Senator Beck Basin on January 5, 2019, and electing not to complete travel through such areas by routes that were supported by the avalanche conditions present (or not present) in such areas or by a manner otherwise consistent with basic tenets of avalanche safety.

213. Peter Marshall's reliance engendered by Defendant Lovell's concealment and/or nondisclosure of material facts was a cause of his physical injuries and death during Defendant's avalanche safety course.

214. Certain of Defendant Lovell's acts and omissions may additionally constitute gross negligence, willful and wanton conduct, and/or fraud, as further discussed below.

215. It is believed that Defendant SAS approved and ratified certain of Defendant Lovell's acts and omissions as described elsewhere herein.

216. As a direct and proximate result and consequence of the tortious acts and omissions of the Defendants described herein, Plaintiffs suffered injuries, damages, and losses including but not limited to the wrongful death of the decedent, Peter Marshall.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

COUNTS AGAINST MANUFACTURER DEFENDANTS

COUNT X Strict Products Liability

217. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

218. The subject Float 32 avalanche airbag was defectively designed, manufactured, fabricated, distributed, sold, recommended, tested, inspected, supplied, marketed, and placed into the stream of commerce by the Manufacturing Defendants.

219. The Manufacturing Defendants designed, tested, failed to test, assembled, specified, fabricated, distributed, marketed, and sold the subject avalanche airbag and its components, and placed the subject avalanche airbag and its components into the stream of commerce knowing that the subject avalanche airbag and its components would be used in their intended manner.

220. At the time of the subject incident described above, the subject avalanche airbag and its components were being used in a manner and fashion that were foreseeable to the Manufacturer Defendants and in which they were intended to be used.

221. At the time the subject avalanche airbag and its components left the control of the Manufacturing Defendants, they were defective and unreasonably dangerous to a person who might reasonably be expected to use them. These defects include but are not limited to the conditions described in this cause of action and also described elsewhere in this Complaint.

222. The subject avalanche airbag was unreasonably susceptible to non-deployment and non-inflation or under-inflation in its design and manufacture. The subject avalanche airbag failed to provide reasonable protection to users in foreseeable avalanche conditions.

223. Specifically, the subject avalanche airbag lacked adequate inflation and triggering systems and also lacked sufficient warnings on the risks of non-deployment and non-inflation or

under-inflation.

224. The subject avalanche airbag was unreasonably dangerous in that it failed to provide reasonable protection to users when being used in its intended and foreseeable manner.

225. The subject avalanche airbag contained a manual triggering mechanism that was deficient and that failed to provide reasonable protection to users during foreseeable use, including in foreseeable avalanche conditions. Despite his proper use or attempted proper use of the subject avalanche airbag, the user of the subject avalanche airbag was buried and killed in an avalanche after the avalanche airbag failed to properly and fully deploy and inflate. The avalanche airbag and its components failed to adequately protect Peter Marshall and protect him from being buried and killed.

226. The subject avalanche airbag contained an inflation system that was inadequate to reasonably protect users when exposed to foreseeable avalanche conditions, including the avalanches described herein.

227. The subject avalanche airbag had a dangerous propensity to fail to timely, properly, and fully deploy and inflate in foreseeable avalanche conditions, subjecting the user to unreasonable risk of serious injury or death from being buried in an avalanche. Peter Marshall was buried and killed after the avalanche airbag failed to timely, properly, and fully deploy and inflate.

228. The subject avalanche airbag lacked adequate and sufficient warnings and instructions about the risks, dangers, and harms presented by the subject avalanche airbag as described in detail herein and the reasonable means to reduce or prevent such risks, dangers, and harms. In particular, the subject avalanche airbag lacked a warning that it could fail to timely, properly, and fully deploy and inflate so as to provide adequate protection during foreseeable avalanche conditions, including the avalanche conditions described herein, and that its triggering

and inflation mechanisms were prone to failure in such conditions.

229. The subject avalanche airbag lacked an automatic or remote triggering mechanism which would have provided additional protection to the user in avalanche conditions such as those described herein.

230. The subject avalanche airbag lacked an alternative or backup inflation mechanism which would also have provided additional protection to the user in the event the avalanche airbag failed to timely, properly, and fully deploy and inflate in avalanche conditions such as those described herein.

231. The subject avalanche airbag's design failed to incorporate other designs and technologies which could protect users from foreseeable dangers in foreseeable avalanche conditions. The Manufacturer Defendants were aware of some such designs and technologies, including but not limited to superior designs and technologies used by other manufacturers and by the Manufacturer Defendants in other products.

232. The subject avalanche airbag's various systems and components failed to work in conjunction with one another to provide proper and appropriate protection to Peter Marshall. Despite properly maintaining, assembling, wearing, and using the subject avalanche airbag, the subject avalanche airbag failed to timely, properly, and fully deploy and inflate, resulting in Peter Marshall being buried and killed. The subject avalanche airbag's various systems and components, including but not limited to its triggering and inflation systems, failed to work together and in unison to provide Peter Marshall with effective protection and to prevent injurious impacts including being buried under eight to nine feet of snow.

233. For all the reasons set forth in this Count and throughout this Complaint, the subject avalanche airbag was defective and unreasonably dangerous to a person who might reasonably be

expected to use it.

234. The subject avalanche airbag was expected by the Manufacturer Defendants to reach, and did reach, the user without substantial change in the condition in which it was placed on the market.

235. Peter Marshall was a person who would reasonably be expected to use the subject avalanche airbag.

236. The defects in the subject avalanche airbag and its components were a proximate cause of the death of Peter Marshall.

237. The Manufacturer Defendants are strictly liable for the wrongful death of Peter Marshall.

238. As a direct and proximate result and consequence of the defective and unreasonably dangerous condition of the subject avalanche airbag, Plaintiffs suffered injuries, damages, and losses including but not limited to the wrongful death of the decedent, Peter Marshall.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

COUNT XI
Negligence

239. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

240. At all relevant times, the Manufacturer Defendants were engaged in the business of designing, manufacturing, testing, selling, and placing into the stream of commerce the subject Float 32 avalanche airbag and other similar avalanche airbags throughout the United States and throughout Colorado.

241. The Manufacturer Defendants had a legal duty to conform their conduct to the law and to that of a reasonable corporation, which includes adequately and properly manufacturing,

designing, testing, and selling their products, including the subject avalanche airbag, and providing adequate warnings and instructions to users of the subject avalanche airbag and acting without negligence or other wrongful conduct in so doing.

242. The Manufacturer Defendants negligently designed, tested or failed to test, approved, manufactured, fabricated, specified, marketed, distributed, and sold the subject avalanche airbag and its components in that they failed to exercise reasonable care to prevent the subject avalanche airbag and its components from creating an unreasonable risk of harm to a person who might reasonably be expected to use it in an expected or reasonably foreseeable manner.

243. The Manufacturer Defendants breached their duties and failed to conform their conduct to the law and to that of a reasonable person, causing the wrongful death of Peter Marshall.

244. At the time of the design and manufacture of the subject avalanche airbag, the Manufacturer Defendants were aware or should have been aware of the defects in the subject avalanche airbag but inserted the subject avalanche airbag into the stream of commerce anyway, without seeking to design out the defects, guard against them, use a safer alternative design, and/or provide reasonable or adequate warnings to consumers such as purchasers and users of the subject avalanche airbag including Peter Marshall.

245. At the time of the design and manufacture of the subject avalanche airbag, the Manufacturer Defendants were aware or should have been aware of safer alternative designs that were technologically and economically feasible, but the Manufacturer Defendants chose not to incorporate these alternative designs in the subject avalanche airbag. Such designs included but are not limited to remote, automatic, and other triggering and inflation mechanisms that would have resulted in the subject avalanche airbag properly and fully deploying and inflating on the date

that Peter Marshall was killed.

246. At the time of the design and manufacture of the subject avalanche airbag, the Manufacturer Defendants knew that it was critical from a safety standpoint to provide proper and adequate triggering and inflation mechanisms to users of their avalanche airbag products so as to avoid serious injuries and death of foreseeable users due to failures of their products to properly and fully deploy and inflate in foreseeable avalanche conditions. The Manufacturer Defendants knew that their avalanche airbag systems and components, including the triggering and inflation mechanisms, needed to work together and in conjunction to achieve this purpose. The Manufacturer Defendants also knew there were available safety technologies that could effectively protect foreseeable users from such dangers, risks, and harms during foreseeable avalanche conditions.

247. At the time of the design and manufacture of the subject avalanche airbag, the Manufacturer Defendants were aware or should have been aware of the susceptibility of the triggering and inflation mechanisms in the subject avalanche airbag to fail to provide reasonable protection to foreseeable users in foreseeable avalanche conditions, and that such failures would subject such users to risk of catastrophic injuries or death. Specifically, the Manufacturer Defendants were aware or should have been aware that the triggering and inflation mechanisms in the subject avalanche airbag would permit a user to suffer injuries or death resulting from being buried under feet of snow during foreseeable avalanche conditions.

248. At the time the subject avalanche airbag was designed and manufactured, the Manufacturer Defendants had only just recently issued a recall of substantially similar avalanche airbags for defects that could lead to a failure of the airbag to properly, timely, and fully deploy and inflate in an avalanche. The experience of this recall should have heightened the Manufacturer

Defendants' awareness of the need to ensure a proper design and the employment of proper manufacturing processes to minimize the potential for such failures.

249. The Manufacturing Defendants failed to take reasonable and appropriate steps after the Float avalanche airbag recall to ensure that the post-recall avalanche airbags they designed and manufactured were reasonably safe and reasonably resistant to such failures.

250. The Manufacturing Defendants failed to take reasonable and appropriate steps after the Float avalanche airbag recall to ensure that the post-recall avalanche airbags they designed and manufactured were designed and manufactured in a way and manner that would render them reasonably safe and reasonably resistant to such failures.

251. The Manufacturer Defendants' knowledge as described in this Complaint is believed to be reflected in internal communications, meeting minutes, and/or testing performed by or known to the Manufacturer Defendants.

252. The Manufacturer Defendants' knowledge as described in this Complaint is believed to be reflected in reports of other incidents involving Defendants' other avalanche airbag products.

253. The Manufacturer Defendants' knowledge as described in this Complaint is believed to be reflected in the results of tests, studies, and analyses conducted by the Defendants and by others.

254. The Manufacturer Defendants acted unreasonably and were negligent in designing, manufacturing, marketing, and selling an avalanche airbag that presented a substantial and unreasonable risk of injury and death to users of the avalanche airbag, including Peter Marshall.

255. The Manufacturer Defendants knew or should have known that their actions in designing, manufacturing, marketing, and selling the subject avalanche airbag not only created an

unreasonable risk of harm to consumers, but involved a high probability that such harm would actually result.

256. In engaging in the design, manufacture, and sale of the subject avalanche airbag, the Manufacturer Defendants undertook a conscious choice of a course of action with knowledge of the serious danger to others and/or with knowledge of facts which would disclose this danger to any reasonable person or corporation.

257. The Manufacturer Defendants breached their duties and obligations as set forth in this Count and elsewhere in this Complaint by designing, manufacturing, and selling the subject avalanche airbag with the defects set forth in this Count and elsewhere in this Complaint, which defects were known to or should have been known to the Manufacturer Defendants.

258. As a direct and proximate result and consequence of the tortious acts and omissions of the Defendants described herein, Plaintiffs and the heirs of Peter Marshall suffered injuries, damages, and losses including but not limited to the wrongful death of the decedent, Peter Marshall.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

COUNT XII
Breach of Express and Implied Warranties

259. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

260. At all relevant times, the Manufacturer Defendants knew the particular purposes for which the subject avalanche airbag and its components were required and were to be used, and that users such as Peter Marshall would rely on their skill and judgment in designing, engineering, testing, manufacturing, fabricating, inspecting, and maintaining goods suitable for such purposes and uses.

261. At all relevant times, the subject avalanche airbag and its components were not fit for the particular purposes for which they were intended and for which they were used.

262. At all relevant times, the subject avalanche airbag and its components did not conform to the warranties, affirmations, and representations made by the Manufacturer Defendants.

263. The defective and unreasonably dangerous condition of the subject avalanche airbag and its components constitute breaches by the Manufacturer Defendants of their express and/or implied warranties, rendering them liable for the wrongful death of Peter Marshall due to the defects and inadequacies in the design, engineering, testing, manufacture, fabrication, inspection, and maintenance of the subject avalanche airbag and its components.

264. The Manufacturer Defendants' breach of express and implied warranties was a cause of the wrongful death of Peter Marshall, as set forth elsewhere herein.

WHEREFORE, Plaintiffs pray for judgment against the Defendant in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

COUNTS AGAINST ALL DEFENDANTS

COUNT XIII Gross Negligence

265. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

266. In engaging in one or more of the acts and omissions set forth herein causing the wrongful death of Peter Marshall, the Defendants, and each of them, acted willfully, wantonly, and recklessly, without regard for the consequences or the rights and safety of Peter Marshall or of others, including Plaintiffs and the heirs of Peter Marshall.

267. In engaging in such acts and omissions set forth elsewhere herein, the Defendants,

and each of them, created substantial and unreasonable risks of serious injury and death to participants in the subject Recreational Avalanche 2 course, including but not limited to Peter Marshall.

268. In so doing, Defendants created those substantial and unreasonable risks in conscious disregard of the danger created by their acts and omissions.

269. As such, Defendants were grossly negligent and that gross negligence was a cause of the injuries, damages, and losses suffered by Plaintiffs and the heirs of Peter Marshall, including but not limited to the wrongful death of Peter Marshall.

270. Defendants' acts of gross negligence include but are not limited to the acts and omissions set forth elsewhere herein and engaged in with conscious disregard of the rights and safety of others, including Peter Marshall.

271. Defendants' gross negligence was a proximate cause of the wrongful death of Peter Marshall and of the injuries, damages, and losses suffered by Plaintiffs and the heirs of Peter Marshall, described elsewhere herein.¹

WHEREFORE, Plaintiffs pray for judgment against the Defendants in an amount to be determined at trial and for such other and further relief as the Court deems just and proper.

**COUNT XIV
WRONGFUL DEATH**

272. Plaintiffs incorporate all other allegations in this complaint as if set forth herein.

273. As a direct and proximate result of the negligent and unlawful conduct of the Defendants as described herein, Plaintiffs have suffered and in the future will suffer the following

¹ Plaintiffs are precluded from asserting a claim for exemplary damages "in any initial claim for relief." C.R.S. §§ 13-21-102(1.5)(a), -302(3)(c)(I). Plaintiffs hereby reserve right to seek amendment of their Complaint to assert a claim for exemplary damages against one or more of the Defendants based on prima facie proof of a triable issue after the exchange of initial disclosures as provided by Colorado statute.

general and special damages resulting from the wrongful death of Peter Marshall:

- a. Grief, past and future;
- b. Loss of affection, society, companionship, guidance, and counseling, past and future;
- c. Pain and suffering, mental anguish, and emotional distress, past and future;
- d. Funeral and burial expenses;
- e. Loss of financial and pecuniary support of Peter Marshall;
- f. Loss of inheritance from or by Peter Marshall; and
- g. Any and all other losses and damages sustained by Plaintiffs and/or the heirs of Peter Marshall and to which Plaintiffs and/or the heirs of Peter Marshall may be legally entitled either pursuant to statute or the common law.

274. Additionally, certain acts and omissions of the Defendants may support a finding that the wrongful death of Peter Marshall was a “felonious killing” as that term is defined in law, such that statutory limitations on certain categories of available wrongful death damages are inapplicable in this case. *See* C.R.S. § 13-21-203(1)(a).

WHEREFORE, Plaintiff, Amber Marshall, a disabled minor child, by and through her duly appointed conservator, Plaintiff, Sara Marshall, prays for and demands an award of damages to be fixed by the trier of fact in a reasonable amount. Additionally, Plaintiffs ask for the costs of this action, reasonable attorney fees, all pre-judgment and post-judgment interest as provided by law, and for all such other relief to which they are or may be legally entitled and as the Court deems appropriate.

PLAINTIFFS DEMAND A TRIAL BY JURY.

Dated this 2nd day of January, 2021.

Respectfully submitted,

By: s/ David P. Mason
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David P. Mason #41333
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