

STATE OF INDIANA        )       IN THE MARION COUNTY SUPERIOR COURT  
                                  )SS:  
COUNTY OF MARION     )       CAUSE NO. 49D06-2012-CT-042405

GREG KISHBAUGH, Individually and as        )  
Personal Representative of the                )  
ESTATE OF DONNA KISHBAUGH,                )  
Deceased                                        )

Plaintiff,                                        )

BOTTOMS UP SCUBA INDY LLC,                )  
BOTTOMS UP SCUBA, LLC, and                )  
HARVEST TIME, INC. d/b/a                    )  
HIDDEN PARADISE CAMPGROUND,                )

Defendants.                                        )

**DEFENDANT HARVEST TIME, INC.'S ANSWER AND AFFIRMATIVE  
DEFENSES TO COMPLAINT FOR WRONGFUL DEATH DAMAGES**

**ANSWER**

Defendant Harvest Time, Inc. (d/b/a Hidden Paradise Campground) (“Harvest Time”) answers the Complaint and states:

1. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 1.

2. Harvest Time lacks knowledge or information sufficient to form a belief as to the averments of paragraph 2, except that it admits that decedent died on October 12, 2020.

3. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 3.

4. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 4.

5. Admit.
6. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 6.
7. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 7.
8. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 8.
9. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 9.
10. Admit
11. Admit.
12. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 12.
13. Admit.
14. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 14, except admit that decedent was at Dream Lake on October 12, 2020.
15. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 15, except admit that decedent paid the \$20 diving fee to Harvest Time.
16. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 16.

17. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 17.

18. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 18.

19. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 19.

20. Neither admit nor deny as paragraph 20 states a legal conclusion or argument and not an averment of fact. To the extent that an answer is deemed required, Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 20.

21. Neither admit nor deny as paragraph 21 states a legal conclusion or argument and not an averment of fact. To the extent that an answer is deemed required Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 21.

22. Neither admit nor deny as paragraph 22 states a legal conclusion or argument and not an averment of fact. To the extent that an answer is required, Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 22.

23. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 23.

24. Neither admit nor deny as paragraph 24 states a legal conclusion or argument and not an averment of fact. To the extent that an answer is deemed required, Harvest Time lacks knowledge or information sufficient to form a belief as to

the truth of the averments in paragraph 24. Harvest Time explicitly denies that it was negligent.

25. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 25. Harvest Time explicitly denies that it was negligent.

26. Neither admit nor deny as to the allegations of legal conclusions. As to the remaining averments of paragraph 26, no answer is necessary because the allegations characterize the nature of this action and describes the relief Plaintiff seeks. To the extent that an answer is deemed required, Harvest Time explicitly denies that it was negligent and that Plaintiff is entitled to any monetary relief.

27. Neither admit nor deny to the extent that paragraph 27 states legal conclusions. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the averments of paragraph 27. Harvest Time explicitly denies that it was negligent.

28. Neither admit nor deny to the extent that paragraph 28 states legal conclusions. Harvest Time lacks knowledge or information sufficient to form a belief as to the truth of remainder of the averments of paragraph 28. Harvest Time explicitly denies that it was negligent.

FOR THESE REASONS, Harvest Time requests that the Court dismiss the Complaint with prejudice and award it it's costs and attorney fees.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim in whole or in part upon which relief may be granted.

### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's damages were caused by a superseding cause.

### **THIRD AFFIRMATIVE DEFENSE**

Decedent knew that scuba diving necessarily involves risk and assumed the risk.

### **FOURTH AFFIRMATIVE DEFENSE**

Any injuries, loss, or damages were caused by decedent's own acts or omissions.

### **FIFTH AFFIRMATIVE DEFENSE**

Decedent released Harvest Time from all liability or all claims for personal injury and/or death arising from decedent's use of Harvest Time's property for scuba diving activities.

### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged damages were proximately caused by the acts or omissions of others for which Harvest Time is not responsible.

### **SEVENTH AFFIRMATIVE DEFENSE**

Clay St. John is named as a nonparty defendant for purposes of fault allocation pursuant to Indiana's Comparative Fault Act.

#### EIGHTH AFFIRMATIVE DEFENSE

Decedent was an invitee on Harvest Time's property, and her death was not caused by a dangerous condition of the property, no condition of the property created an unreasonable danger to decedent, decedent knew or should have known of any dangerous condition of the property in the area where she was scuba diving that might cause injury or death.

#### NINTH AFFIRMATIVE DEFENSE

Pursuant to Indiana's Comparative Fault Act, any fault for decedent's death must be allocated among any party or identified non-party found to be at fault.

FOR THESE REASONS, Harvest Time requests that the Court dismiss the Complaint with prejudice and award it its costs and attorney fees.

*s/ John M. Ketcham*

Attorneys for Harvest Time, Inc. d/b/a Harvest  
Time Campground

John M. Ketcham (Atty No. 20747-02)  
Aaron J. Brock (Atty. No. 34996-49)  
**PLEWS SHADLEY RACHER & BRAUN LLP**  
1346 North Delaware Street  
Indianapolis, IN 46202-2415  
(317) 637-0700

**CERTIFICATE OF SERVICE**

I hereby certify that on January 29, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ John M. Ketcham