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Attorneys for Plaintiff
ROBERT RAIMO and the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT RAIMO,)	No.
)	
Plaintiff,)	
)	
v.)	
)	
UWATEC, INC., UNDERSEA)	<u>COMPLAINT - CIVIL ACTION</u>
INDUSTRIES, INC., d/b/a/)	
SCUBAPRO, AND JOHNSON)	
OUTDOORS, INC.,)	JURY TRIAL DEMANDED
)	
Defendants.)	
)	
_____)	

Plaintiff Robert Raimo, individually and as a representative of the class defined herein, by his undersigned counsel, hereby sets forth his complaint against defendants Uwatec USA, Inc. (“Uwatec”), Under Sea Industries, Inc., d/b/a/ Scubapro, Inc. (“Scubapro”), and Johnson Outdoors, Inc. (“Johnson”), and alleges as follows:

NATURE OF THE ACTION

1. This is a product liability action in which Raimo seeks compensatory and punitive damages for injuries caused by using the defendants’ defective 1995 model Aladin Air X Nitrox dive computer on April 18, 2002, and equitable relief in the form of an order compelling defendants to issue a consumer warning and mandatory product recall of all Aladin Air X Nitrox dive computers manufactured and sold prior to February 1, 1996.

PARTIES

2. Plaintiff Robert Raimo is a 41 year old individual residing in Ronkonkoma, New York. Raimo has nearly 20 years of experience in the scuba diving industry. He is an accomplished scuba diver, scuba diving instructor, and former owner of two successful retail dive operations in New York that were authorized resellers of Uwatec products.

3. Defendant Johnson Outdoors, Inc. is a publicly traded Wisconsin corporation with its principal place of business located at 1326 Willow Road, Sturtevant, Wisconsin 53177. Johnson, formerly known as Johnson Worldwide Associates, Inc., and its subsidiaries, including Uwatec and Scubapro, design, manufacture and market outdoor recreation products in four businesses: diving, watercraft, outdoor equipment and motors. Johnson's net sales totaled \$342.5 million in 2002.

4. Defendant Uwatec USA, Inc. is a Maine corporation with its principal place of business located at 1166 Fesler Street, Suite A, El Cajon, California 92020. Uwatec manufactures, sells and services the "Aladin" line of electronic dive computers and diving instruments, including depth gauges, pressure gauges and compasses. From approximately 1994 until 1997, Uwatec was the United States subsidiary of a Swiss company, Uwatec. It became a wholly-owned subsidiary of Johnson in 1997.

5. Defendant Under Sea Industries, Inc., d/b/a Scubapro, Inc., is a Delaware corporation with its principal place of business located at 1166 Fesler Street, Suite A, El Cajon, California 92020. Scubapro is a wholly-owned subsidiary of Johnson which manufactures, sells and services dive computers and other electronic instruments sold under the Scubapro, Aladin and Uwatec brand names.

JURISDICTION AND VENUE

6. This court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, and subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338. The amount in controversy exceeds \$75,000, exclusive of interest and costs, the parties are citizens of different states, and this civil action arises, in part, under the laws of the United States.

7. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) and (c).

The defendants regularly conduct business in this district, the defective product at issue was introduced to the market in this district, members of the potential class reside or conduct business in this district, and four other related and consolidated civil actions alleging similar facts and circumstances are currently pending in this district (Civil Action Numbers C 01-03303 WDB, C 01-04839 WDB, C 02-1186 WDB and C 02-0993 WDB).

CLASS ACTION ALLEGATIONS

8. Plaintiff brings this action individually on his own behalf and as a class action, pursuant to Federal Rule of Civil Procedure 23(b)(2), on behalf of himself and a class of all persons similarly situated.

9. The class is defined herein as follows:

(a) all persons or entities in the United States who own Aladin Air X Nitrox dive computers manufactured and sold prior to February 1, 1996; and

(b) all persons or entities in the United States who acted as retailers, dealers, wholesalers or distributors of Aladin Air X Nitrox dive computers manufactured by Uwatec prior to February 1, 1996.

10. Excluded from the class is any person or other entity related to or affiliated with Uwatec, Scubapro or Johnson, or any person who has already commenced an action for personal injuries against Uwatec, Scubapro or Johnson resulting from an alleged defect in an Aladin Air X Nitrox dive computer manufactured and sold prior to February 1, 1996.

11. The members of the class are so numerous that joinder of all members is impracticable. Plaintiff believes that there are hundreds of members of the class, their exact numbers and identities being presently unknown to plaintiff, but easily ascertainable by the defendants upon review of their internal sales records, warranty registrations and/or dealer lists.

12. Plaintiff does not anticipate any difficulties in the management of this action as a class action.

13. There are questions of law and fact common to the class. These questions include, among others:

(a) whether the Aladin Air X Nitrox dive computers manufactured and sold by Uwaterc prior to February 1, 1996 have a design or manufacturing defect which prevents the computer from properly calculating “no decompression limits,” desaturation times, off-gassing of nitrogen from a diver’s body, and/or accurate “time to fly” intervals, which can expose users to an increased risk of suffering from decompression sickness (“DCS”) when they conduct their diving activities in reliance upon the faulty calculations produced by these computers;

(b) whether Aladin Air X Nitrox dive computers manufactured and sold prior to February 1, 1996 are defective;

(c) when defendants learned of the defect;

(d) whether defendants’ conduct as described herein constitutes a breach of warranty;

(e) whether defendants’ conduct as described herein constitutes negligence;

(f) whether defendants failed to adequately warn their retailers, dealers and customers regarding the hazards of the so-called “air-switching defect” in the Aladin Air X Nitrox dive computers manufactured and sold prior to February 1, 1996;

(g) whether defendants are liable to plaintiff and members of the class under section 402(a) of the Restatement (Second) of Torts;

(h) whether the defect can be remedied;

(i) whether defendants fraudulently or negligently omitted material facts about the safety of Aladin Air X Nitrox dive computers manufactured and sold prior to February 1, 1996 in communications, advertisements and marketing materials issued to plaintiff and members of the class;

(j) whether defendants have violated Section 43 of the Lanham Act, 15 U.S.C. § 1125(a);

(k) whether defendants have violated state consumer protection statutes, including, but not limited to, California’s Unfair Business Practices Act, California Business & Professions Code § 17200, *et seq.*;

(l) whether defendants' conduct as alleged herein has exposed plaintiff and members of the class to face irreparable injury in the form of liability to consumers under § 402(a) of the Restatement (Second) of Torts;

(m) whether Aladin Air X Nitrox dive computers manufactured and sold prior to February 1, 1996 should be the subject of a consumer warning and mandatory product recall; and

(n) whether plaintiff and members of the class are entitled to damages and/or injunctive relief.

14. The claims of the representative party are typical of the claims of the class.

15. Plaintiff will fairly and adequately protect the interests of the class. The interests of plaintiff are representative and coincident with, not antagonistic to, those of the remainder of the class.

16. In addition, the prosecution of separate actions by individual members of the class would create a risk of:

(a) inconsistent or varying adjudication with respect to individual members of the class that would establish incompatible standards of conduct for defendants; and/or

(b) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications, or would substantially impair or impede their ability to obtain compensatory or equitable relief.

17. Defendants have acted or refused to act on grounds generally applicable to the class, thereby warranting appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

18. Class treatment is a superior method for the fair and efficient adjudication of the issues in dispute because:

(a) the questions of law and fact common to the members of the class predominate over any questions affecting individual members;

(b) it permits a large number of injured parties, joinder of whom is impracticable, to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would engender.

(c) there are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as such, and no superior alternative exists whereby the relative rights of plaintiff, class members and defendants can be fairly managed; and

(d) class members have no interest in individually controlling the prosecution of separate actions, and no other litigation has been commenced by or against any class member concerning the controversy.

19. This forum is appropriate for the litigation of the claims of the entire class.

20. In view of the expense of the litigation, the separate claims of individual class members may be insufficient in amount to support separate actions.

21. It is unlikely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action so as to not justify a class action.

22. Plaintiff is a member of the class and he will fairly and adequately assert and protect the interests of the class. Plaintiff has retained attorneys who are experienced in class action litigation.

FACTS COMMON TO ALL COUNTS

The Relationship Between the Parties

23. Robert Raimo is the married father of two small children, a former member of the United States Marine Corps, and a self-employed building contractor.

24. After receiving an honorable discharge from the Marine Corps in 1983, Raimo began to pursue his life-long interest in scuba diving. In 1984, he was certified as an open water diver by the Professional Association of Dive Instructors (“PADI”) and he began working as an employee for Tiedemann’s Diving Center in New York, eventually being promoted to manager.

25. From 1988 to 1998, Raimo successfully completed more than 30 advanced and specialty scuba certification courses provided by at least six diving certification agencies. Among

other things, Raimo earned a SafeAir N2O2 Instructor certification from American Nitrox Divers, Inc. in 1990; a Nitrox Instructor certification from the International Association of Nitrox and Technical Divers (“IANTD”) in 1991; a Nitrox Instructor Trainer certification from IANTD in 1992; Instructor certifications for Gas Blending and Mixing, Technical and Deep Diving to 200 feet of sea water (“fsw”) on Air, Nitrox, Advanced Nitrox, Technical Deep Diving and Decompression Techniques, and Mixed Gas Diving to 300 fsw, from Technical Divers, Inc. in 1995; and a Master Instructor certification from PADI in 1995.

26. Raimo has completed more than 2500 scuba dives since 1984, including several successful dives to the *Andrea Doria* at a depth of 220 fsw, cave dives to 240 fsw, and dives to the *U.S.S. Kendrick* at a depth of 320 fsw. He is intimately familiar with the risks associated with scuba diving using a variety of breathing gasses, including air, oxygen, nitrox and mixed gasses. More importantly, Raimo is familiar with how to safely avoid these risks.

27. From 1988 to 1994, Raimo was the owner of a retail dive operation known as the Enchanted Diver Dive Center in Queens, New York. The Enchanted Diver Dive Center was an authorized reseller of Uwatec products.

28. From 1994 until 1999, Raimo was the owner of a retail dive operation known as the Scuba Depot in Mineola, New York. The Scuba Depot was an authorized reseller of Uwatec products.

29. From 1999 until today, Raimo has been a self-employed building contractor.

30. While Raimo was the owner of the Enchanted Diver Dive Center and the Scuba Depot, he sold to the public and United States military products manufactured and sold by the defendants, including, among other things, Aladin Air X Nitrox dive computers manufactured and sold by Uwatec prior to February 1, 1996. At one time, Raimo was one of the largest dealers by volume of Uwatec products in the United States.

31. On April 18, 2002, Raimo was stricken with Type II DCS after making a series of repetitive nitrox dives using an Aladin Air X Nitrox dive computer manufactured and sold by Uwatec in 1995.

32. Uwatec is the former wholly owned United States subsidiary of Uwatec AG, a Swiss company founded in the early 1980s by Heinz Ruchti and Carl Lehman. Uwatec AG started as an original equipment manufacturer of diving equipment for other companies in the diving industry, including Sherwood, U.S. Divers, Beauchat, and Parkway.

33. Uwatec AG was one of the first companies to build highly sophisticated dive computers that calculated a diver's uptake and release of nitrogen as a direct effect of scuba diving. These instruments, which were carried by a diver underwater, predicted decompression (or no decompression) profiles based on active measurement of depth, time and ascent rates experienced during the dive cycle.

34. In the early 1990s, Uwatec AG's computers were marketed under other manufacturer's names, although the computers featured the "Aladin" brand name regardless of the manufacturer.

35. In 1994, Ruchti and Lehman decided to utilize the Uwatec brand name on its own and sell directly to retailers and wholesale distributors through subsidiaries located in the United States, United Kingdom, Germany and other countries.

36. Uwatec's United States subsidiary, defendant Uwatec USA, Inc., was established in early 1994. Its headquarters was initially located in Greenville, South Carolina.

37. From early 1994 until April 13, 1996, Uwatec was managed by Sean Griffin, Frank Marshall and Patricia Daugherty.

38. On April 23, 1996, Griffin, Marshall, Daugherty and most of the staff of Uwatec in South Carolina were fired by Ruchti, and Bret Gilliam, a respected member of the technical diving community, was hired to replace them.

39. Gilliam was given the title of Vice President and CEO of Uwatec USA. Shortly after he was hired, Gilliam moved the company's headquarters from South Carolina to Maine.

40. In July 1997, Ruchti sold Uwatec to defendant Johnson, which at the time was called Worldwide Associates, Inc., for a total purchase price of \$33.5 million. Johnson consolidated the operations of Uwatec with its existing dive subsidiary, Scubapro, although Uwatec's staff initially remained in Maine.

41. When Uwaterc was sold to Johnson in 1997, Johnson agreed to assume Uwaterc's liability for product defects.

42. On November 13, 1998, Johnson moved the operations of Uwaterc from Maine to California. Gilliam and most of the staff left the company at this time.

43. According to Johnson's Form 10-K for its fiscal year ended September 27, 2002, Johnson is:

a leading manufacturer of dive computers and other electronics sold under the Aladin and Uwaterc brands. Scubapro, Aladin and Uwaterc products are marketed to the high quality, premium priced segment of the market via limited distribution to independent specialty dive stores worldwide. These specialty dive stores generally provide a wide range of services to divers, including sales, instruction, travel and repair service.

44. Johnson's 2002 Form 10-K describes its advertising strategy as follows:

The Company focuses on maintaining Scubapro, Aladin and Uwaterc as the market leaders in innovation and new products. . . Consumer advertising focuses on building the brand and communicating exclusive features and benefits of the Scubapro/Uwaterc product lines. The companies [sic] advertising and dealer network reinforce the Scubapro/Uwaterc brands position as the industry's high quality and innovation leader. The Company advertises its equipment in diving magazines, via website and through dive specialty stores.

45. From 1994 until 1999, Robert Raimo owned two of the "dive specialty stores" that helped the defendants achieve success and market penetration by reinforcing "the Scubapro/Uwaterc brands position as the industry's high quality and innovation leader." However, as set forth below, Raimo was repaid with lies, deceit, and a faulty product that nearly cost him his life and *did* cost him his livelihood.

46. Johnson's 2002 Form 10-K boasts:

The Company's primary focus is innovation - meeting consumer needs with breakthrough products that stand apart from the competition and advance the Company's strong brand names. Its subsidiaries are organized in a network that promotes entrepreneurialism and leverages best practices and synergies, following the strategic vision set by headquarters.

47. Johnson's Board of Directors includes some of the most prominent businessmen in the United States today, including, among others, John M. Fahey, Jr., the President and Chief

Executive Officer of the National Geographic Society, and Samuel C. Johnson, the founder of the S.C. Johnson & Son, Inc. It is inconceivable that, in this age of heightened public scrutiny of corporate ethics and fiduciary responsibilities, these men could allow Johnson to callously disregard the health and safety of its customers. Yet, given the egregious conduct of the defendants as set forth below, the conclusion that Johnson's Board of Directors is either asleep at the switch or simply does not care about its customers' safety because it is too busy "following the strategic vision set by headquarters" is inescapable.

Scuba Diving and Decompression Sickness

48. Recreational scuba diving is a sport enjoyed by millions worldwide. Before participating in the sport, however, men and women must complete an entry-level certification course from one of several dive certification agencies.

49. All entry-level certification courses contain an explanation of diving physiology and safety as part of their curriculum. Because the application of increased pressure on the body underwater can cause serious injuries, including DCS, entry-level divers are taught to recognize and avoid situations that can cause these injuries.

50. Decompression sickness, otherwise known as "the bends," is caused by the absorption of inert blood gas, mostly nitrogen, while a diver is underwater, and the expansion of this gas on ascent. The human body can absorb only so much nitrogen. Therefore, if a diver stays underwater too long, the nitrogen absorbed into the diver's body can come out of solution and form bubbles in the diver's tissues and bloodstream as the diver ascends and pressure decreases.

51. Bubbles forming in or near joints can cause extreme joint pain. When high levels of bubbles occur, complex reactions can take place in the body, usually in the spinal cord or brain. Numbness, dizziness, tingling, paralysis, congestive symptoms in the lung and circulatory shock can then occur.

52. The severity of DCS is measured by two classifications, Type I and Type II. Type I DCS symptoms include joint and/or muscle pain. Type II DCS symptoms, which are more severe, include neurological symptoms such as numbness, tingling and muscle weakness, as well as fatigue, headaches, chest pain, difficulty breathing and other cardiopulmonary problems. Type

II DCS symptoms can range from mild to serious and life threatening.

53. All divers are taught “no-decompression limits,” which are time limits the average diver can stay at a certain depth while absorbing nitrogen without having to stop to decompress on the way to the surface. These time limits are displayed in ten foot increments on tables, initially developed by the U.S. Navy, which quickly show a diver the no-decompression time limits for a certain depth level. If a diver exceeds the no-decompression limits for a given depth that he has reached, he must stop to “decompress,” or allow nitrogen to “off-gas” from his body, during his ascent.

54. The no-decompression limits for a given depth change if a diver makes “repetitive dives,” which is defined as making more than one dive in a 12 hour period with a minimum surface interval of 10 minutes between dives.

55. Because nitrogen takes time to off-gas on the surface, a diver re-entering the water within 12 hours of his first dive will have residual nitrogen built up in his body. This residual nitrogen must be measured and taken into account to accurately calculate no-decompression limits for each successive dive.

Dive Computers

56. One of the most difficult tasks facing all scuba divers is memorizing the no-decompression limits for each depth, recalculating them for multiple dives, and applying them underwater. Consequently, in the early 1980s, diving equipment manufacturers began developing dive computers that could be carried underwater which would calculate the diver’s nitrogen absorption and elimination, and “maximum bottom time,” on a continuous basis.

57. A dive computer models inert gas absorption by tracking the user's depth, time, ambient water temperature, breathing mixture, and work load. The computer then employs all this information to compute the user's resulting decompression obligations, or maximum dive time, by factoring these variables into a computer algorithm based on the "Buehlmann decompression model." The resulting calculation is continuously displayed on the face of the computer and, in an advantage over using tables, automatically adjusted as the diver’s depth and other variables change throughout the dive.

58. Upon reaching the surface after a dive, dive computers are designed to measure the elimination of nitrogen from a diver's body. If the diver makes a repetitive dive, the computer is designed to recalculate the diver's decompression obligations based on the diver's surface interval and the amount of residual nitrogen remaining in the diver's body.

59. Accurate calculation of a diver's decompression obligations is absolutely critical to avoiding DCS.

The Aladin Air X Nitrox

60. Uwatec introduced the Aladin Air X Nitrox dive computer to the market at the January 1995 DEMA show in San Francisco. DEMA is the diving industry's annual trade show for wholesale buyers, retailers and distributors.

61. Uwatec touted the Aladin Air X Nitrox dive computer as being designed to "maximize" the user's "diving pleasure" while minimizing the risk of decompression sickness.

62. The Aladin Air X Nitrox computer was advertised as an advancement on Uwatec's existing Aladin Air X computer, which calculated profiles for "air" based diving only. The Air X Nitrox featured a hoseless, wireless transmission of cylinder pressure data from a small transmitter mounted on the regulator first stage high pressure port to a wrist mounted display worn by the diver.

63. Unlike its competitors, the Aladin Air X Nitrox was designed to be "user-programmable;" it can be set for "norm-oxic diving," where the diver breathes ordinary compressed air composed of 21% oxygen and roughly 79% nitrogen, or it can be programmed for "enriched air diving," where the diver breathes an artificial mixture comprising up to 50% oxygen and as little as 50% nitrogen.

64. This "enriched air" is commonly known as "nitrox." Enriched air or nitrox diving is an advanced technique which dramatically reduces the amount of inert gas that a diver absorbs and thereby decreases the no-decompression limits a diver must adhere to as compared to air. The reduction in inert gas absorbed on each dive also increases the number of repetitive dives that a diver can make in a single day.

65. The Aladin Air X Nitrox was designed to help users take advantage of this advanced technique, and it was "aggressively marketed" to experienced divers like Raimo. As former Uwatec CEO Bret Gilliam testified in a related case, "our literature and our marketing and our ads touted these computers to be the most reliable piece of equipment that would meet the needs of all divers, from whatever range of entry-level training to the most sophisticated and demanding professional diver."

66. In fact, Uwatec even made a booklet available to its customers which explained the scientific premises behind the Aladin Air X Nitrox and the corresponding advantages of using it.

67. The Aladin Air X Nitrox was designed "to handle aggressive, multi-day, repetitive diving and to do it without unreasonably penalizing the diver" with long surface intervals or burdensome decompression obligations. According to Gilliam: "That had really never been done successfully before."

68. The Aladin Air X Nitrox, however, did not live up to its hype. In fact, the first year production runs of the Aladin Air X Nitrox contained a dangerous "air-switching" defect.

The Air-Switching Defect

69. Because of a design error, the 1995 edition of the Aladin Air X Nitrox, the first year off the assembly line, contained a programming defect which caused it to "model the user's cumulative decompression requirements as if he or she were always breathing enriched air even on the surface." *See* attached Exhibit A.

70. In other words, the computer did not switch back to "air" or "surface mode" between dives, during the user's surface interval, while he or she was out of the water and breathing ambient air. Instead of calculating the user's decompression obligations and off-gassing based on a breathing mixture of 79% nitrogen and 21% oxygen while the user was on the surface, the 1995 Aladin Air X Nitrox based its calculations of the diver's decompression obligations and off-gassing on the dangerous and erroneous assumption that the user was always breathing the mixture set for the dive, which could contain as little as 50% nitrogen, and not air while the user was on the surface.

71. This so-called “air-switching defect” not only caused the computers to *underestimate* residual nitrogen loads, it prompted the 1995 Aladin Air X Nitrox to *overestimate* the user’s safe repetitive bottom times.

72. This defect is both subtle and insidious. It reveals itself only during repetitive dive profiles that involve three or more dives separated by long surface intervals, and employ enriched air mixtures having high oxygen percentages. These dives are commonly undertaken by experienced divers making multiple nitrox dives in a single day to maximize bottom time, such as those conducted on increasingly popular “live aboard” dive vacations in exotic locations, far away from the nearest treatment centers capable of saving the life of a diver stricken with decompression sickness.

73. The air-switching defect in the Aladin Air X Nitrox was first documented in a surprisingly candid e-mail message dated January 30, 1996, which is attached hereto as Exhibit A. This message was written by Ernst Vollm of Dynatron AG, the company that developed Uwatec AG’s proprietary software for the Aladin Air X Nitrox, in response to this question from Rob Palmer, one of Uwatec’s test divers: “**If I reset the old Aladin Nitrox to Nitrox 21 at the surface, will it calculate the offgassing properly between dives?**” *See* Ex. A (emphasis in original).

74. In his response, Vollm warned Palmer about “the faulty” Aladin Nitrox and its miscalculations. *See* Ex. A. Vollm provided a method for Palmer “to correct the faulty calculations as good as possible,” including manually switching “the instrument to 21% O2 IMMEDIATELY as soon as it displays surface mode.” *Id.* Vollm added, “I hope this information helps you to perform safe repetitive dives as long as you cannot replace your old version through John Sinclair from Uwatec UK.” *Id.* Vollm concluded by asking Palmer: “Please keep this information CONFIDENTIAL. I will send a copy of this E-mail to John by fax.” *Id.*

75. True to his word, Vollm faxed a copy of his e-mail message to Palmer to John Sinclair, the head of Uwatec UK on January 30, 1996. *Id.* On the following day, January 31, 1996, Sinclair faxed both Vollm’s cover sheet and e-mail to Uwatec’s management in the United States, Sean Griffin and Frank Marshall, with the note “Over to you.” *Id.*

76. In the seven years since Vollm warned Palmer and Sinclair about the “faulty Aladin Nitrox,” and Sinclair delivered this message to Uwatec’s management in the United States, Uwatec, Scubapro and Johnson have *never* issued a warning to their customers, retailers, wholesalers or the public about the air-switching defect in Aladin Air X Nitrox dive computers manufactured and sold prior to the date of Vollm’s internal warning. To the contrary, the defendants have taken every available opportunity to reveal this critical information to the public and turned it into a conspiracy to conceal the product defect.

77. In fact, when Robert Raimo called Uwatec in January 2003 to inquire about the safety of his 1995 Aladin Air X Nitrox dive computer, he was told by company representatives that Scubapro/Uwatec was unaware of any defect in the Aladin Air X Nitrox and his computer was perfectly safe to use while diving. As alleged below, this devious misrepresentation could not possibly be true.

The Recall Notice

78. After Griffin and Marshall learned of the defect in the Aladin Air X Nitrox dive computer in January 1996, they tried to learn from Ruchti “when the surface interval calculation changes were made to the software of the Aladin Air X Nitrox computers.”

79. Significantly, in a letter to Ruchti dated April 22, 1996, Griffin and Marshall stated unequivocally:

We still recommend that it would be a good idea to replace these first generation units immediately as we feel an obligation to our customers’ safety.

80. In fact, in late April 1996, Marshall and Daugherty printed an urgent "RECALL NOTICE," which is attached hereto as Exhibit B. It read as follows:

Uwatec USA, Inc. announces the mandatory recall of all Aladin Air X Nitrox dive computers made on or before December of 1995. All owners of these computers are hereby advised to return these units immediately to their dive retailer or directly to Uwatec USA, Inc. Please call Uwatec USA for a Return Authorization Number and Call Tag to cover shipping costs. The unit will be replaced at no charge and returned within one week. Thank you for your kind cooperation.

81. However, before Marshall and Daugherty could send the recall notice to Uwatec's North American customers, they were summarily fired by Ruchti and replaced by the unsuspecting Gilliam.

82. When Gilliam discovered the recall notice and questioned Ruchti about it, he was told to ignore it because it was nothing more than a smear tactic devised by Marshall and Daugherty to destroy Uwatec's reputation in the United States. Since Gilliam was one of the product testers for the Aladin Air X Nitrox and he had dived using the early prototypes of the computer without problems, he followed Ruchti's instructions to discard the recall notice.

The Defendants' Conduct Since 1996

83. Uwatec, Scubapro and Johnson have *never* issued a warning to their customers, retailers, wholesalers or the public about the defect in Aladin Air X Nitrox dive computers manufactured and sold prior to February 1, 1996.

84. Instead, there is overwhelming evidence that, although the defendants knew or should have known about a dangerous defect in 1995 model Aladin Air X Nitrox dive computers as early as January 1996, they have intentionally and callously withheld this information from the public on several occasions.

85. As set forth above, Uwatec AG first learned of the air-switching defect in the 1995 Aladin Air X Nitrox dive computer no later than January 30, 1996, when Vollm faxed his e-mail message warning about the defect to Sinclair, Uwatec UK's manager. Nevertheless, Uwatec AG has never issued a warning or product recall.

86. Uwatec AG's American subsidiary first learned of the air-switching defect in the 1995 model in Aladin Air X Nitrox dive computer no later than January 31, 1996, when Sinclair faxed the Vollm e-mail to Griffin and Marshall, Uwatec's managers in the United States. *See Ex. A.* Nevertheless, Uwatec has never issued a warning or product recall.

87. Griffin and Marshall raised the issue of the air-switching defect and urged a product recall in a letter to Ruchti dated April 22, 1996. They even went to the trouble of printing an announcement of a "mandatory recall of all Aladin Air X Nitrox computers made on or before December of 1995." *See Ex. B* (emphasis in original). However, Ruchti fired Griffin and Marshall

the following day, April 23, 1996, before they could warn the public about the defective Aladin Air X Nitrox and issue a mandatory product recall.

88. Griffin and Marshall were replaced by the unsuspecting Gilliam, who was instructed by Ruchti to ignore his predecessors' recall announcement and throw it in the trash. Gilliam complied with his new employer's instructions.

89. In early 1997, Daugherty and Marshall filed a lawsuit against Uwatec AG and Uwatec in state court in Greenville, South Carolina complaining that they were improperly discharged because they attempted to "blow the whistle" on the defect in the Aladin Air X Nitrox dive computer. Despite these allegations, Uwatec did not make any effort to warn the public about a potential defect.

90. Although Uwatec did not inform the public of the plaintiffs' allegations, the South Carolina litigation was disclosed to Johnson during the takeover negotiations that concluded in July 1997. Accordingly, Johnson's senior management knew or should have known about the defect in 1995 Aladin Air X Nitrox dive computers no later than July 1997.

91. Indeed, Gilliam has testified that as soon as Johnson acquired Uwatec in July 1997, he started keeping Johnson's CEO, Ron Whitaker, its CFO, Carl Schmidt, and its comptroller, Rick Fiegel, informed of everything that was happening in the South Carolina litigation.

92. Gilliam also testified that, although he had not yet accepted the defect allegations himself, he made it clear to both Whitaker and Schmidt how such a defect could expose users to a "serious" and "insidious risk" of decompression sickness. He testified that he told Whitaker, Schmidt and Fiegel about the recall notice that Ruchti had suppressed in April 1996. Johnson did nothing. Instead, it vigorously defended the South Carolina lawsuit and it continued to suppress information about the existence of a defect.

93. In fact, after the South Carolina plaintiffs' expert witness identified the air-switching defect, in April 1998, Gilliam told Schmidt that he was going to "canvas our dealers" and "customers" for "exemplars" of the 1995 Air X Nitrox to test, and hopefully disprove, the defect that had been identified by the plaintiffs' expert witness. But Schmidt told him not to. As Gilliam

testified: "He told me that he thought it would be bad publicity for the company and reflect poorly on our product line"

94. When Gilliam told Schmidt that a former Uwatec employee, Cindy Greer Moore, was also going to testify about the existence of a defect, Schmidt's chilling response was: "Did you try to bribe her?" According to Gilliam, this was an instruction, not a question.

95. A trial was held in the "whistle blower" lawsuit in June 1998. Daugherty, Marshall, Griffin and Moore all testified that they became aware of a defect in the Aladin Air X Nitrox in 1995, but Lehman and Ruchti told them to keep quiet about it.

96. Plaintiffs' expert witness, Clemson University Mathematics Professor Robert Ling, identified the air-switching defect in his testimony. The plaintiffs even introduced one 1995 Air X Nitrox computer that had been tested and revealed an air-switching defect similar to the one described herein.

97. Despite this damning testimony, Ruchti testified that there was no defect of any kind in the 1995 model Air X Nitrox, and that the Air X Nitrox models Uwatec was selling in 1998 were exactly like those the company first introduced in 1995. Ruchti suggested that the single computer the plaintiffs presented had a failure of its time or depth sensor resulting in a singular failure, not something spread across the entire model line.

98. The jury, which apparently was not persuaded by Ruchti's testimony, returned a verdict for the plaintiffs in the amount of \$2 million.

99. Although Johnson and Uwatec later settled the South Carolina litigation quietly, out of court, they did not issue a warning or product recall at that time. Instead, they continued to conceal information about the existence of a defect.

100. In mid-November 1998, Johnson decided to consolidate Scubapro and Uwatec in a new distribution center in California. Gilliam and his staff in Maine left the company at that time. Although Gilliam continued to press for testing of the 1995 Air X Nitrox to disprove the allegations of a defect up until the date of his departure, his suggestions were always rejected.

101. In March 1999, Uwatec's former southeastern sales representative, Mitch Skaggs, and another diver, Rezvan Iazdi, were stricken with DCS after making a series of repetitive nitrox

dives off Miami, Florida. Skaggs and Iazdi were both relying on 1995 model Aladin Air X Nitrox computers to ensure their safety. Skaggs is the plaintiff in Civil Action No. C 01-03303 WDB. Iazdi is the plaintiff in Civil Action No. C 01-04839 WDB.

102. In September 2000, David Sipperly was stricken with DCS after making a series of repetitive nitrox dives off Rhode Island. Like Skaggs and Iazdi, Sipperly was relying on a 1995 model Aladin Air X Nitrox dive computer to ensure his safety. Sipperly is the plaintiff in Civil Action No. C 02-1186 WDB.

103. On October 12, 2001, Stewart Esposito was stricken with DCS after making a series of repetitive nitrox dives off the Cayman Islands. Like the others, Esposito was relying on a 1995 model Aladin Air X Nitrox dive computer to ensure his safety. Esposito is the plaintiff in Civil Action No. C 02-0993 WDB.

104. Although at least four serious cases of DCS were allegedly caused by divers relying on the 1995 model Aladin Air X Nitrox to ensure their safety, resulting in at least four lawsuits, Johnson, Scubapro and Uwatec have continued to suppress information about the existence of a defect.

105. Indeed, upon information and belief, at least six weeks prior to Raimo's accident, the defendants' trial counsel in the related cases, Trevor Will, Esquire, of the prestigious national law firm Foley & Lardner, was given all the information he needed to advise Johnson, Scubapro and Uwatec to immediately warn the public of the air-switching defect in the 1995 Aladin Air X Nitrox and to issue a mandatory product recall. It is not clear if Attorney Will ever provided this advice to his clients in time for Raimo's injuries to be avoided. It is clear, however, that if Attorney Will *did* provide this advice, Johnson, Scubapro and Uwatec did not follow it.

106. Ironically, after learning of the first four accidents, and finally receiving a copy of the Vollm e-mail about the "faulty Aladin Nitrox," former Uwatec CEO Bret Gilliam testified in the related cases that the 1995 Air X Nitrox's air-switching defect increased the chance of decompression sickness and posed "an unreasonable risk of harm to users who employed the computer for repetitive dives." Gilliam testified that he sincerely believes there is a defect in the

computers, and he also believes he was “very lucky” that he was not stricken with DCS while using his own 1995 Aladin Air X Nitrox dive computer.

107. Robert Raimo would not be so lucky.

Robert Raimo’s Injuries

108. On April 18, 2002, while vacationing in Bonaire, Netherland Antilles, Raimo made a series of four repetitive nitrox dives while relying on a 1995 model Aladin Air X Nitrox dive computer to safely and accurately calculate his decompression obligations.

109. All of the dives were made from the beach in calm conditions with little current. The maximum depth obtained on the first dive, which lasted for 50 minutes, was 106 fsw. This was followed by a surface interval of 58 minutes, and then a dive to a maximum depth of 70 fsw for a total of 67 minutes. Raimo’s second dive was followed by a surface interval of 114 minutes, and then a dive to a maximum depth of 86 fsw for a total of 55 minutes. After another surface interval of 68 minutes, Raimo made a final dive to 76 fsw for 54 minutes.

110. On each dive, Raimo was breathing an enriched air mixture containing 36% oxygen and 64% nitrogen. All of the dives were made within the safety limits displayed on Raimo’s 1995 Aladin Air X Nitrox dive computer. However, to be cautious, Raimo made safety stops on each dive.

111. As a direct and proximate result of his reliance upon the Aladin Air X Nitrox dive computer manufactured and sold to him by Uwatec in 1995, Raimo was stricken with serious Type II, central nervous systems DCS on or about April 18, 2002.

112. One hour after his last dive, Raimo began to develop symptoms of Type II DCS, including shoulder pain, tingling, nausea, dizziness and blurry vision. He was given immediate recompression treatment at the San Francisco Hospital in Bonaire. Although this treatment helped to alleviate the severity of his symptoms at the time, Raimo continues to suffer from lingering and debilitating injuries, which are expected to be permanent and perhaps worsen over time.

113. As a direct and proximate result of his injuries, Raimo has suffered from, and continues to suffer from, among other things: Insomnia, fatigue, radiating neuralgia and paresthesia, reduced grip strength in both hands, dizziness, decreased coordination, truncal

imbalance, significant memory loss, cognitive dysfunction, blurry vision, intermittent visual disturbances, persistent numbness in his extremities, difficulty learning names and decreased libido. He has feelings of being overwhelmed, forgetful and confused, and he suffers from depression, dark moods, anger and irritability.

114. As a direct and proximate result of his injuries, Raimo's life has been dramatically altered. He is no longer capable of performing many of the mental and physical tasks he could perform prior to April 18, 2002. His health has declined, his business has suffered, his earnings have dropped considerably, and his enjoyment of life has been severely impaired.

COUNT I

STRICT PRODUCTS LIABILITY

115. Paragraphs 1 through 114 are incorporated by reference as though fully set forth herein.

116. At all times material hereto, Uwatec designed, tested, manufactured, fabricated, compounded, constructed, packaged, distributed, described, recommended, merchandised, advertised, promoted, and sold the 1995 model Aladin Air X Nitrox dive computer, and placed it in the stream of commerce for use by divers in the manner alleged.

117. Uwatec knew that the 1995 model Aladin Air X Nitrox dive computer was to be purchased and used in the manner alleged without inspection for defects by divers, such as Raimo.

118. The 1995 model Aladin Air X Nitrox dive computer was unsafe and unfit for its intended use by reasons of defects in its design, manufacture, testing, description and packaging, so that Raimo's accident was foreseeable to defendants and occurred when the product was being used in the manner for which it was designed.

119. Raimo's 1995 Aladin Air X Nitrox dive computer was in the same condition at the time it was delivered to Raimo as it was when it left the control of Uwatec, and this 1995 Aladin Air X Nitrox dive computer was used by Raimo for the purposes and in the manner intended by defendants.

120. As a direct and proximate result of the conduct of Uwatec, as alleged above, Raimo was hurt and injured in his health, strength, and activity, sustaining severe, painful, and

permanently disabling systemic injuries arising from serious Type II, central nervous system decompression sickness. These injuries have caused, and will continue to cause Raimo great mental, physical, emotional, and nervous pain and suffering.

121. As a further direct and proximate result of the conduct of Uwaterc, as alleged above, Raimo was forced to incur, and will continue to be forced to incur, various medical expenses for the treatment of his injuries, all to his special damage in an amount to be determined at the time of trial.

122. As a further direct and proximate result of the conduct of Uwaterc, as alleged above, Raimo has lost, and will continue to lose, wages, earnings, and income, all to his further special damage in an amount to be determined at the time of trial herein.

123. Uwaterc is strictly liable to Raimo pursuant to Restatement (Second) of Torts § 402(a) for the harm, damages and injury to person complained of herein by reason of having sold and placed into the stream of commerce a defective product which was unreasonably dangerous to consumers.

124. When Uwaterc was sold to Johnson in 1997, Johnson agreed to assume Uwaterc's liability for product defects. Moreover, the management of Uwaterc reported to Johnson and Scubapro until Uwaterc was consolidated into Johnson's Scubapro division in 1998. Accordingly, Scubapro and Johnson are strictly liable to Raimo pursuant to Restatement (Second) of Torts § 402(a) for the harm, damages and injury to person complained of herein under the theory of successor liability.

WHEREFORE, Raimo prays for judgment against Uwaterc, Scubapro and Johnson, individually and collectively, as set forth below.

COUNT II

NEGLIGENT MANUFACTURE

125. Paragraphs 1 through 124 are incorporated by reference as though fully set forth herein.

126. At all times herein mentioned, Uwaterc was engaged in the business of designing, manufacturing, creating, distributing, testing, fabricating, analyzing, recommending, describing,

merchandising, advertising, promoting, and selling or otherwise placing 1995 model Aladin Air X Nitrox dive computers in the stream of commerce for consideration.

127. At all times herein mentioned, Uwatec designed, tested, manufactured, fabricated, compounded, constructed, packaged, distributed, described, recommended, merchandised, advertised, promoted, and sold to distributors, retail outlets, business entities, and/or divers 1995 model Aladin Air X Nitrox dive computers with full knowledge that they would be used by divers to compute depth time profiles and decompression debts.

128. At all times herein mentioned, Uwatec knew, or in the exercise of reasonable care should have known, that the 1995 model Aladin Air X Nitrox dive computer was of such a nature that, if it were not properly designed, tested, manufactured, fabricated, compounded, constructed, packaged, distributed, described, recommended, merchandised, advertised, promoted, and marketed for the use and purpose for which it was intended, it was likely to cause severe decompression injuries to any diver who used and relied upon it.

129. Uwatec negligently and carelessly designed, tested, manufactured, fabricated, compounded, constructed, packaged, distributed, described, recommended, merchandised, advertised, promoted, and marketed the 1995 model Aladin Air X Nitrox dive computer knowing that it was dangerous, defective and unsafe for the use and purpose for which it was intended, especially when used in the manner recommended by the defendant.

130. When Uwatec was sold to Johnson in 1997, Johnson agreed to assume Uwatec's liability for product defects. Moreover, the management of Uwatec reported to Johnson and Scubapro until Uwatec was consolidated into Johnson's Scubapro division in 1998.

131. The defective and dangerous character of the 1995 model Aladin Air X Nitrox dive computer was known to Uwatec as early as January 30, 1996, and to Johnson and Scubapro as early as July 1997 and no later than March 1, 2002.

132. If the defective and dangerous character of the 1995 model Aladin Air X Nitrox dive computer was not known to defendants, in the exercise of reasonable care should have been known and discovered by defendants between January 30, 1996 and April 18, 2002.

133. The defective and dangerous character of the 1995 model Aladin Air X Nitrox dive computer was not made known to Raimo by defendants, and the injuries and damages sustained and incurred by Raimo as alleged herein were proximately caused by said dangerous and defective product.

WHEREFORE, Raimo prays for judgment against Uwatec, Scubapro and Johnson, individually and collectively, as set forth below.

COUNT III

FRAUDULENT CONCEALMENT

134. Paragraphs 1 through 133 are incorporated by reference as though fully set forth herein.

135. On and before April 18, 2002, Uwatec, Scubapro and Johnson knew or should have known that, due to defects in its design, the 1995 model Aladin Air X Nitrox dive computer failed to calculate residual nitrogen loads accurately following surface intervals during which the user breathed surface air.

136. This known defect was a highly material piece of information in that it increased the risk of decompression sickness for the user and made the 1995 model Aladin Air X Nitrox dive computer extremely hazardous for use on repetitive dives where the user was breathing enriched air.

137. Uwatec, Scubapro and Johnson had a duty to inform Raimo truthfully and accurately about the safety of the 1995 Aladin Air X Nitrox dive computers, including the potential for the 1995 Aladin Air X Nitrox dive computer to accurately calculate decompression debts during surface mode.

138. Uwatec, Scubapro and Johnson nonetheless failed and refused to disclose this known defect to users, such as Raimo, from whom they specifically concealed it.

139. The failure and refusal to disclose said defect was perpetrated by Uwatec, Scubapro and Johnson with the intent to induce Raimo to act in reliance thereon in the manner herein alleged.

140. At all times material hereto, Raimo was ignorant of the existence of the facts which

defendants suppressed and refused to disclose. If Raimo had been aware of the existence of said facts, Raimo would have never used a 1995 model Aladin Air X Nitrox dive computer to calculate his decompression debt during the repetitive dives he made using nitrox on April 18, 2002. Moreover, if Raimo had been aware of the existence of said facts, Raimo would not have placed the defective product in the stream of commerce by selling it to consumers, the United States military and members of the diving community.

141. Raimo justifiably relied on the reputation and specific assurance of Uwatec, Scubapro and Johnson that the dive computer was safe and fit, in all material respects, for the uses for which it was intended, including the calculation of decompression debts during a series of repetitive dives using enriched air mixtures.

142. In failing and refusing to disclose said defect, and in suppressing and concealing material facts about the 1995 model Aladin Air X Nitrox dive computer, Uwatec, Scubapro and Johnson acted with fraud, malice, and oppression, entitling Raimo to an award of punitive or exemplary damages to be determined at the time of trial.

WHEREFORE, Raimo prays for judgment against Uwatec, Scubapro and Johnson, individually and collectively, as set forth below.

COUNT IV

BREACH OF WARRANTY

143. Paragraphs 1 through 142 are incorporated by reference as though fully set forth herein.

144. Uwatec impliedly warranted that the 1995 Aladin Air X Nitrox dive computers it sold to Raimo and members of the class were merchantable and fit and safe for use, and not otherwise injurious to consumers.

145. The 1995 Aladin Air X Nitrox dive computers purchased and used by Raimo and members of the class are unsafe, unmerchantable, unfit for use, and are otherwise injurious to the health of Raimo and members of the class.

146. Through the sale of 1995 Aladin Air X Nitrox dive computers, Uwatec was a merchant pursuant to § 2-314 of the Uniform Commercial Code ("UCC").

147. Uwatec breached the implied warranties of merchantability and fitness for a particular purpose in the sale of 1995 Aladin Air X Nitrox dive computers to Raimo and members of the class, in that said products were not fit for their ordinary purposes.

148. The dive computers at issue were designed and manufactured by Uwatec for use by divers in calculating the decompression debts they incurred during repetitive dives while breathing enriched air or nitrox. However, when used in this manner, they fail to accurately calculate a diver's decompression debts.

149. As the said dive computer had material defects which could cause the user harm or even death when used in the manner for which it was designed, it was not fit for its ordinary, intended purpose.

150. As a direct and proximate result of Uwatec's breach of the implied warranties of merchantability and fitness for a particular purpose, Raimo and other members of the class suffered harm, damages, and injury to person and property.

151. Because the 1995 Aladin Air X Nitrox dive computers purchased by Raimo and the class were, unbeknownst to them, not fit for use, merchantable, and reasonably safe for their intended use because of the risk of decompression sickness, they were not worth what Raimo and the class paid for them, and they suffered damages as herein alleged.

152. When Uwatec was sold to Johnson in 1997, Johnson agreed to assume Uwatec's liability for product defects. Moreover, the management of Uwatec reported to Johnson and Scubapro until Uwatec was consolidated into Johnson's Scubapro division in 1998. Accordingly, Scubapro and Johnson are also liable to Raimo and members of the class for the damages complained of herein under the theory of successor liability.

153. Uwatec, Scubapro and Johnson are liable for the damages caused by their conduct pursuant to the Restatement (Second) of Torts § 550.

WHEREFORE, Raimo, on behalf of himself and a class of all others similarly situated, prays for judgment against Uwatec, Scubapro and Johnson, individually and collectively, as set forth below.

COUNT V

NEGLIGENCE

154. Paragraphs 1 through 153 are incorporated by reference as though fully set forth herein.

155. Uwatec, Scubapro and Johnson, by their employees, agents and servants acting within the scope and course of their employment, breached their duty of reasonable conduct to Raimo and members of the class by reason of the following acts and omissions:

(a) failing to design and manufacture 1995 Aladin Air X Nitrox dive computers that would accurately calculate a diver's decompression debts;

(b) failing to inspect and test properly 1995 Aladin Air X Nitrox dive computers before placing them into the stream of commerce;

(c) failing to inspect and test properly 1995 Aladin Air X Nitrox dive computers after learning of the air-switching defect in January 1996;

(d) failing to inspect and test properly 1995 Aladin Air X Nitrox dive computers after the former managers of Uwatec alleged in litigation in South Carolina that the Aladin Air X Nitrox dive computers were defective and should be recalled;

(e) failing to inspect and test properly 1995 Aladin Air X Nitrox dive computers after the South Carolina jury returned a verdict of \$2 million against the defendants in the former managers' whistle-blower lawsuit;

(f) failing to inspect and test properly 1995 Aladin Air X Nitrox dive computers during and after an investigation by the Consumer Product Safety Commission concerning the safety of the computer;

(g) failing to warn owners of 1995 Aladin Air X Nitrox dive computers of the dangerous and defective condition of the 1995 Aladin Air X Nitrox dive computers when Uwatec, Scubapro and Johnson knew or should have known of the harmful effects of the air-switching defect of the 1995 Aladin Air X Nitrox dive computers;

(h) failing to recall 1995 Aladin Air X Nitrox dive computers from all possible sources, after Uwatec, Scubapro and Johnson knew or should have known of the harmful effects

of the air-switching defect of the 1995 Aladin Air X Nitrox dive computers;

(i) failing to notify owners of 1995 Aladin Air X Nitrox dive computers of the dangerous and defective condition of the 1995 Aladin Air X Nitrox dive computers when Uwatec, Scubapro and Johnson knew or should have known of the harmful effects of the air-switching defect of the 1995 Aladin Air X Nitrox dive computers; and

(j) otherwise failing to exercise due care under the circumstances.

156. Uwatec breached its duty of reasonable care to Raimo by selling the defective 1995 Aladin Air X Nitrox dive computer to him without warning of the dangerous and defective condition of the computer. Defendant Uwatec knew or should have known that the 1995 Aladin Air X Nitrox dive computer was defective.

157. As a direct and proximate result of the carelessness and negligence of Uwatec, Scubapro and Johnson, Raimo and members of the class were caused to suffer harm, damages and injury to person and property.

158. As a direct and proximate result of the carelessness and negligence of Uwatec, Scubapro and Johnson, Raimo was caused to suffer harm, damages, and injury to person and property.

159. At all times relevant hereto, defendants' conduct was intentional and/or outrageous and beyond the bounds of reasonableness and was in reckless disregard for the safety of Raimo and members of the class.

WHEREFORE, Raimo, on behalf of himself and a class of all others similarly situated, prays for judgment against defendants Uwatec, Scubapro and Johnson, individually and collectively, as set forth below.

COUNT VI

VIOLATION OF STATE CONSUMER PROTECTION LAWS

160. Paragraphs 1 through 159 are incorporated by reference as though fully set forth herein.

161. Uwatec, Johnson and Scubapro are each a "person," as that term is defined in California's Unfair Business Practices Act, California Business & Professions Code § 17021.

162. Uwatec, Johnson and Scubapro violated state consumer protection laws, including California's Unfair Business Practices Act, California Business & Professions Code §§ 17200 and 17500, by representing to Raimo and consumers that the 1995 model Aladin Air X Nitrox dive computers had characteristics, benefits, and uses they did not have, and by representing that the dive computers were of a particular standard, quality or grade when they were not.

163. These representations, and the defendants' other conduct as alleged herein, constitute deceptive, fraudulent, untrue and misleading conduct and communications because the defendants failed to disclose to Raimo and other consumers: (a) the dangerous and defective condition of the 1995 Aladin Air X Nitrox dive computers; (b) that 1995 Aladin Air X Nitrox dive computers were not safe when used to make repetitive dives while breathing enriched air mixtures; and (c) the danger of suffering from decompression sickness as a result of using the 1995 Aladin Air X Nitrox dive computers on repetitive dives while breathing enriched air mixtures.

164. By reason of defendants' violation of such consumer protection laws, Raimo and members of the class have suffered an ascertainable loss of money or property.

WHEREFORE, Raimo prays for judgment against Uwatec, Scubapro and Johnson, individually and collectively, as set forth below.

COUNT VII

VIOLATION OF SECTION 43 OF THE LANHAM ACT, 15 U.S.C. § 1125(A)

165. Paragraphs 1 through 164 are incorporated by reference as though fully set forth herein.

166. Uwatec, Johnson and Scubapro, in commercial advertising or promotion, have misrepresented the facts, nature, characteristics and qualities of its goods, in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

167. Specifically, Uwatec, Johnson and Scubapro have misrepresented the facts, nature, characteristics and qualities of its 1995 Aladin Air X Nitrox dive computers by misrepresenting: (a) the condition of the 1995 Aladin Air X Nitrox dive computers; (b) that 1995 model Aladin Air X Nitrox dive computers were safe when used to make repetitive dives while breathing enriched air mixtures; and (c) that users could safely avoid the risk of suffering from decompression

sickness as a result of using the 1995 Aladin Air X Nitrox dive computers on repetitive dives while breathing enriched air mixtures.

168. Raimo has suffered damage as a result of defendants' misrepresentations, and is likely to suffer additional damages as alleged herein due to defendants' misrepresentations, for which he seeks compensation in an amount to be determined at trial.

169. In the alternative to an award of his actual damages, Raimo seeks the disgorgement of defendants' illegal profits obtained through the sale of 1995 model Aladin Air X Nitrox dive computers, and successor models, based on the misrepresentations outlined above, pursuant to 15 U.S.C. § 1117.

170. Raimo also seeks an award of treble damages, attorneys' fees and costs of suit, pursuant to 15 U.S.C. § 1117.

WHEREFORE, Raimo prays for judgment against Uwatec, Scubapro and Johnson, individually and collectively, as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Raimo, individually and on behalf of the members of the class as defined herein, demands judgment in his favor and against Uwatec, Scubapro and Johnson, individually and collectively, and:

(a) declaring the action be maintained as a class action under Federal Rule of Civil Procedure 23(b)(2) against Uwatec, Scubapro and Johnson;

(b) for compensatory damages in an amount to be determined at trial, including damages to Raimo for pain and suffering and for past and future prevention from being able to attend to his usual and daily activities and occupation, past and future medical expenses for treatment of injuries and for injuries of which he has no present knowledge, together with punitive damages, treble damages, delay damages, pre-judgment and post-judgment interest thereon, for the cost of this action, including reasonable attorneys' fees;

(c) permanently enjoining and restraining defendants, their corporate subsidiaries, each of their successors, transferees and assigns and their respective officers, directors,

partners, agents and employees, and all other persons acting on their behalf from in any manner continuing, maintaining or reviving the unlawful conduct alleged herein;

(d) requiring defendants Uwatec, Scubapro and Johnson to notify members of the class of the dangerous and defective condition of the 1995 Aladin Air X Nitrox dive computers;

(e) requiring defendants Uwatec, Scubapro and Johnson to replace the defective 1995 Aladin Air X Nitrox dive computers; and

(f) awarding Raimo and members of the class such other, further and different relief as the cause may require and the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Raimo, on behalf of himself individually and on behalf of a class of all others similarly situated, hereby demands a trial by jury on all issues so triable.

Dated: _____

McGUINN, HILLSMAN & PALEFSKY
Attorneys for Plaintiff and the Class

By: _____
John R. Hillsman

