

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No: 07-CV-01885 (WDM/KLM)

DAVID J. PFAHLER and  
MARLENE AMBROGIO

Plaintiffs,

v.

ROBB SWIMM, Custodian for Scott Swimm and  
SCOTT SWIMM individually

Defendants

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ANSWER AND JURY DEMAND

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Robb Swimm, Custodian for Scott Swimm and Scott Swimm individually,  
(hereinafter referred to as "Defendants") by and through their attorneys, Ray Lego &  
Associates, hereby submit their Answer to Plaintiffs David J. Pfahler and Marlene  
Ambrogio's Complaint as follows:

1. Defendants are without sufficient information to form a belief as to the truth of Paragraph 1 of Plaintiffs' Complaint and, therefore deny the same.
2. Defendants are without sufficient information to form a belief as to the truth of Paragraph 2 of Plaintiffs' Complaint and, therefore deny the same.
3. Defendants admit the allegations contained in Paragraph 3 of Plaintiffs' Complaint.
4. Defendants are without sufficient information to form a belief as to the truth of Paragraph 4 of Plaintiffs' Complaint and, therefore deny the same.

5. Defendants admit that Scott was skiing as set forth in Paragraph 5 of Plaintiffs' Complaint but is without sufficient information regarding the identity of Plaintiff.

6. Defendants admit the allegations contained in Paragraph 6 of Plaintiffs' Complaint.

7. Defendants deny that Mr. Pfahler was maintaining a proper lookout and in control and do not know what Plaintiff means by "at a slow pace".

8. Defendants deny the allegations contained in Paragraph 8 of Plaintiffs' Complaint.

9. Defendants deny the allegations contained in Paragraph 9 of Plaintiffs' Complaint.

10. Regarding Paragraph 10 of Plaintiffs' Complaint, the duties of Mr. Scott Swimm, a minor, are legal conclusions to be made by the Court and is without sufficient information regarding the applicability of the Ski Safety Act to him.

11. Regarding Paragraph 11 of Plaintiffs' Complaint, the duties of Mr. Scott Swimm, a minor, are legal conclusions to be made by the Court and are without sufficient information regarding the applicability of the Ski Safety Act to him.

12. Regarding Paragraph 12 of Plaintiffs' Complaint, the duties of Mr. Scott Swimm, a minor, are legal conclusions to be made by the Court and is without sufficient regarding the applicability of the Ski Safety Act to him.

13. Defendants deny the allegations contained in Paragraph 13 of Plaintiffs' Complaint.

14. Defendants admit the allegations contained in Paragraph 14 of Plaintiffs' Complaint, although the duties of Mr. Scott Swimm, a minor, are legal conclusions to be

made by the Court and is without sufficient regarding the applicability of the Ski Safety Act to him.

15. Defendants deny the allegations contained in Paragraph 15 of Plaintiffs' Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of Plaintiffs' Complaint.

17. Defendants are without sufficient information to form a belief as to the truth of Paragraph 17 of Plaintiffs' Complaint and, therefore deny the same.

18. Defendants are without sufficient information to form a belief as to the truth of Paragraph 18 of Plaintiffs' Complaint and, therefore deny the same.

19. Regarding the allegations contained in Paragraph 19 of Plaintiffs' Complaint, Defendants deny that Scott Swimm was negligent, negligent per se or that he was a cause of the losses alleged by Plaintiffs. Defendants are without sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 19 and therefore deny the remainder of said paragraph.

20. Defendants are without sufficient information to form a belief as to the truth of Paragraph 20 of Plaintiffs' Complaint and, therefore deny the same.

21. Defendants are without sufficient information to form a belief as to the truth of Paragraph 21 of Plaintiffs' Complaint and, therefore deny the same.

22. Defendants are without sufficient information to form a belief as to the truth of Paragraph 22 of Plaintiffs' Complaint and, therefore deny the same.

23. Defendants are without sufficient information to form a belief as to the truth of Paragraph 23 of Plaintiffs' Complaint and, therefore deny the same.

24. Defendants are without sufficient information to form a belief as to the truth of Paragraph 24 of Plaintiffs' Complaint and, therefore deny the same.

25. Any allegation not specifically admitted is denied.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff has failed to state a claim upon which relief can be granted to Robb Swimm.

2. Defendant was faced with a sudden emergency and is therefore not negligent or liable for the Plaintiffs' alleged injuries and damages.

3. Plaintiff assumed the risk of the damages alleged.

4. Plaintiffs' alleged injuries and damages, if any, may have existed before the occurrence complained of and recovery therefor shall be precluded or diminished as required by law.

5. Plaintiffs' recovery of damages, if any exist, must be reduced or precluded by the negligence or fault of Plaintiff including without limitation, his violation of C.R.S. 33-44-101 et seq.

6. Plaintiffs' recovery of damages and losses, if any exist, must be reduced by the amounts received from collateral sources, if any, pursuant to C.R.S. § 13-21-111.6, and by any applicable set-offs.

7. Plaintiffs' claims against Defendants are substantially frivolous and groundless.

8. Defendants reserve the right to add such other affirmative defenses as may be appropriate based on information received during the course of discovery.

DEFENDANTS DEMAND A JURY TRIAL ON ALL TRIABLE ISSUES

Dated this 31<sup>st</sup> day of October, 2007.

Respectfully submitted,

/s/ Michael C. Wathen

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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER AND JURY DEMAND was electronically filed with the Clerk of the Court on October 31, 2007, using the CM/ECF system which will send the notification of such filing to the following:

Russell R. Hatten, Esq.  
Chalat Hatten Law Offices, P.C.  
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Denver, CO 80203  
Attorney for Plaintiffs

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Karen A. Taylor