

NO. 81764

IN THE SUPREME COURT OF NEVADA

Electronically Filed
Jan 13 2021 11:48 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

JOHN BORGER and SHERRI BORGER
Appellants

v.

POLARIS INDUSTRIES, INC.
Respondent

SANDBAR POWERSPORTS, LLC, DOES I through X;
and ROE CORPORATIONS XI through XX, inclusive
Defendants

On Appeal from the Eighth Judicial District
Clark County, Nevada, Dept. No. XXV
No. A-17-751896-C

APPELLANTS' APPENDIX
VOLUME 1

Chad A. Bowers
Nevada Bar No. 007283
CHAD A. BOWERS, LTD
3202 W. Charleston Blvd.
Las Vegas, NV 89102
702-457-1001

Kyle W. Farrar
(*Pro Hac Vice*)
Kaster, Lynch, Farrar & Ball, LLP
1117 Herkimer
Houston, TX 77008
713-221-8300

INDEX OF APPENDIX

Affidavit of Blake Anderson (02-01-2019).....	Vol. 2 p. 246
Affidavit of Service (03-16-2017)	Vol. 1 p. 28
Affidavit of Service (11-29-2017)	Vol. 1 p. 89
Amended Order Setting Jury Trial (07-16-2018).....	Vol. 1 p. 183
Amended Order Setting Jury Trial (02-08-2019).....	Vol. 2 p. 275
District Court Docket Sheet.....	Vol. 1 p. 1
Hearing Transcript (02-19-2019)	Vol. 2 p. 281
Notice of Appeal (09-04-2020)	Vol. 2 p. 349
Order granting Polaris’ Motion to Dismiss (08-09-2020)	Vol. 2 p. 344
Order granting Sandbar’s Motion to Determine Good Faith Settlement (03-13-2019).....	Vol. 2 p. 341
Order Setting Jury Trial (08-24-2017)	Vol. 1 p. 80
Order Setting Jury Trial (11-06-2018).....	Vol. 1 p. 244
Order to Extend Discovery Deadlines (06-25-2018)	Vol. 1 p. 171
Polaris’ Answer to the Borgers’ Amended Complaint (12-12-2017)....	Vol. 1 p. 91
Polaris Fifth Supplemental Disclosure (02-04-2019).....	Vol. 2 p. 248
Polaris Motion for Protective Order (07-19-2018)	Vol. 1 p. 185
Sandbar’s Answer and Counterclaim (05-19-2017)	Vol. 1 p. 30
Sandbar’s Answer to the Borgers’ Amended Complaint (02-02-2018).....	Vol. 1 p. 101

Sandbar’s Answer, Counter-Claim, and Amended Cross-Claim to the Borgers’ Amended Complaint (02-14-2018)	Vol. 1 p. 135
Sandbar’s Twelfth Supplemental Disclosure (11-02-2018)	Vol. 1 p. 221
Scheduling Order (08-23-2017)	Vol. 1 p. 77
Subpoena Duces Tecum to Foster Borger (02-13-2019)	Vol. 2 p. 276
The Borgers’ Amended Complaint (11-14-2017)	Vol. 1 p. 82
The Borgers’ Answer to Sandbar’s Counterclaim (07-07-2017)	Vol. 1 p. 61
The Borgers’ Complaint (03-03-2017)	Vol. 1 p. 23

Case Information

A-17-751896-C | John Borger, Plaintiff(s) vs. Sandbar Powersports LLC, Defendant(s)

Case Number	Court	Judicial Officer
A-17-751896-C	Department 25	Delaney, Kathleen E.
File Date	Case Type	Case Status
03/03/2017	Negligence - Auto	Dismissed

Disposition Events

03/18/2019 Judgment ▼

Judicial Officer
Delaney, Kathleen E.

Judgment Type
Voluntary Dismissal

Monetary Judgment

Debtors: Foster Borger (Third Party Defendant)

Creditors: Sandbar Powersports LLC (Third Party Plaintiff)

Judgment: 03/18/2019 Docketed: 03/25/2019

04/16/2019 Judgment ▼

Judicial Officer
Delaney, Kathleen E.

Judgment Type
Order of Dismissal With Prejudice

Monetary Judgment

Debtors: Polaris Industries Inc (Cross Defendant)

Creditors: Sandbar Powersports LLC (Cross Claimant)

04/16/2019 Judgment ▼

Judicial Officer

Delaney, Kathleen E.

Judgment Type

Order of Dismissal With Prejudice

Monetary Judgment

Debtors: John Borger (Plaintiff), Sherri Borger (Plaintiff)

Creditors: Sandbar Powersports LLC (Defendant)

Judgment: 04/16/2019 Docketed: 04/16/2019

Monetary Judgment

Debtors: John Borger (Counter Defendant), Sherri Borger (Counter Defendant)

Creditors: Sandbar Powersports LLC (Counter Claimant)

Judgment: 04/16/2019 Docketed: 04/16/2019

08/09/2020 Judgment ▼

Judicial Officer

Delaney, Kathleen E.

Judgment Type

Order of Dismissal

Monetary Judgment

Debtors: John Borger (Plaintiff), Sherri Borger (Plaintiff)

Creditors: Polaris Industries Inc (Defendant)

Judgment: 08/09/2020 Docketed: 08/10/2020

Comment: Certain Claims

Events and Hearings

03/03/2017 Complaint ▼

Comment

Complaint

03/03/2017 Initial Appearance Fee Disclosure ▼

Comment

Initial Appearance Fee Disclosure

03/16/2017 Affidavit of Service ▼

Comment

Affidavit Of Service

04/20/2017 Motion ▼

Comment

Motion To Associate Counsel

05/19/2017 Demand for Jury Trial ▼

Comment

Demand for Jury Trial by Defendant/Counter-Claimant Sandbar Powersports, LLC

05/19/2017 Answer and Counterclaim ▼

Comment

Answer of Sandbar Powersports, LLC to Complaint and Counterclaim

05/19/2017 Initial Appearance Fee Disclosure ▼

Comment

Initial Appearance Fee Disclosure

05/23/2017 Motion to Associate Counsel ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Granted

Comment

Plaintiffs' Motion to Associate Counsel (Kyle Wayne Farrar, Esq.)

Parties Present ▲

Plaintiff

Attorney: Bowers, Chad A.

Plaintiff

Attorney: Bowers, Chad A.

06/02/2017 Order Admitting to Practice ▼

Comment

Order Admitting To Practice

06/05/2017 Notice of Order ▼

Comment

Notice Of Entry Of Order

07/07/2017 Answer to Counterclaim ▼

Comment

Counter-Defendant's Answer To Claimant's Counterclaim

07/10/2017 Commissioners Decision on Request for Exemption - Granted ▼

Comment

Commissioner's Decision on Request for Exemption - Granted

07/10/2017 Arbitration File ▼

Comment

Arbitration File

07/10/2017 Arbitration File ▼

Comment

Arbitration File

07/31/2017 Notice of Change of Address ▼

Comment

Notice of Change of Address

08/08/2017 Joint Case Conference Report ▼

Comment

Joint Case Conference Report

08/23/2017 Scheduling Order ▼

Comment

Scheduling Order

08/24/2017 Order Setting Civil Jury Trial and Calendar Call ▼

Comment

Order Setting Civil Jury Trial and Pretrial/Calendar Call

09/06/2017 Early Case Conference List of Witnesses & Production of Docs ▼

<p>Comment</p> <p>Plaintiffa Case Conference List Of Witnesses And Documents</p>
<p>11/09/2017 Stipulation and Order to Amend ▼</p> <p>Comment</p> <p>Stipulation and Order to Amend Complaint</p>
<p>11/14/2017 Amended Complaint ▼</p> <p>Comment</p> <p>Plaintiffs' Amended Complaint</p>
<p>11/29/2017 Affidavit of Service ▼</p> <p>Comment</p> <p>Affidavit of Service of Polaris Industries Inc</p>
<p>12/12/2017 Answer to Amended Complaint ▼</p> <p>Comment</p> <p>Defendant Polaris Industries, Inc.'s Answer to Plaintiffs' Amended Complaint</p>
<p>12/12/2017 Demand for Jury Trial ▼</p> <p>Comment</p> <p>Defendant Polaris Industries, Inc.'s Demand for Jury Trial</p>
<p>12/12/2017 Initial Appearance Fee Disclosure ▼</p> <p>Comment</p> <p>Defendant Polaris Industries, Inc.'s Initial Appearance Fee Disclosure</p>
<p>12/12/2017 Disclosure Statement ▼</p> <p>Comment</p> <p>Defendant Polaris Industries, Inc.'s Notice of Required Disclosure Statement (NRCF 7.1)</p>
<p>12/13/2017 Application ▼</p> <p>Comment</p> <p>Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42</p>
<p>12/18/2017 Application ▼</p> <p>Comment</p> <p>Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42</p>
<p>01/19/2018 Supplement to List of Witnesses & Documents ▼</p> <p>Comment</p> <p>Plaintiff's First Supplement To Case Conference List of Witnesses and Documents</p>

02/02/2018 Answer and Counterclaim ▼

Comment

Answer of Sandbar Powersports, LLC to Plaintiffs' Amended Complaint and Counterclaim and Crossclaim

02/14/2018 Answer and Counterclaim ▼

Comment

Answer, Counter-Claim and Amended Cross-Claim of Sandbar Powersports, LLC to Plaintiffs' Amended Complaint

03/09/2018 Answer to Crossclaim ▼

Comment

Cross-Defendant Polaris Industries, Inc.'s Answer to Sandbar Powersports, LLC's Amended Cross-Claim

03/13/2018 Motion to Associate Counsel ▼

Comment

Motion to Associate Counsel David J. Baluck, Esq. on Order Shortening Time

03/13/2018 Motion to Associate Counsel ▼

Comment

Motion to Associate Counsel Thomas Christopher Trent, Esq. on Order Shortening Time

03/15/2018 Amended Joint Case Conference Report ▼

Comment

Amended Joint Case Conference Report

03/15/2018 Motion to Associate Counsel ▼

Comment

Motion To Associate Counsel

03/27/2018 Motion to Associate Counsel ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Motion Granted

Comment

Defendant Polaris Industries Inc's Motion to Associate Counsel David J. Baluck, Esq. on Order Shortening Time

03/27/2018 Motion to Associate Counsel ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Motion Granted

Comment

Defendant Polaris Industries Inc's Motion to Associate Counsel Thomas Christopher Trent, Esq. on Order Shortening Time

03/27/2018 All Pending Motions ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Matter Heard

03/27/2018 Order Admitting to Practice ▼

Comment

Order Admitting to Practice [David J. Baluk]

03/27/2018 Order Admitting to Practice ▼

Comment

Order Admitting to Practice [Thomas Christopher Trent]

03/27/2018 Notice of Entry of Order ▼

Comment

Notice of Entry of Order Admitting to Practice [Thomas Christopher Trent, Esq.]

03/27/2018 Notice of Entry of Order ▼

Comment

Notice of Entry of Order Admitting to Practice [David J. Baluk, Esq.]

04/17/2018 Motion to Associate Counsel ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Motion Granted

Comment

Plaintiffs' Motion to Associate Counsel - Skip Edward Lynch, Esq.

04/26/2018 Motion to Associate Counsel ▼

<p>Comment</p> <p>Motion To Associate Counsel William Rey Ogden</p>
<p>05/01/2018 Order Admitting to Practice ▼</p> <p>Comment</p> <p>Order Admitting To Practice</p>
<p>05/02/2018 Notice of Order ▼</p> <p>Comment</p> <p>Notice of Entry Of Order</p>
<p>05/29/2018 Motion to Associate Counsel ▼</p> <p>Judicial Officer</p> <p>Delaney, Kathleen E.</p> <p>Hearing Time</p> <p>9:00 AM</p> <p>Result</p> <p>Motion Granted</p> <p>Comment</p> <p>Plaintiffs' Motion to Associate Counsel Re: William Rey Ogden, Esq.</p>
<p>06/14/2018 Stipulation and Order ▼</p> <p>Comment</p> <p>Stipulation and Order to Extend Discovery Deadlines</p>
<p>06/25/2018 Notice of Entry of Stipulation and Order ▼</p> <p>Comment</p> <p>Notice of Entry of Stipulation and Order to Extend Discovery Deadlines</p>
<p>07/13/2018 Notice ▼</p> <p>Comment</p> <p>Notice of Disassociation of Counsel</p>
<p>07/16/2018 Order Setting Civil Jury Trial ▼</p> <p>Comment</p> <p>Amended Order Setting Civil Jury Trial and Pretrial/Calendar Call</p>
<p>07/19/2018 Motion for Protective Order ▼</p> <p>Comment</p> <p>Defendant Polaris Industries, Inc.'s Motion for Protective Order on Order Shortening Time</p>
<p>07/20/2018 Certificate of Service ▼</p> <p>Comment</p> <p>Certificate of Service</p>

07/25/2018 Motion to Associate Counsel ▼

Comment

Motion to Associate Counsel James F. Sanders, Esq. on Order Shortening Time

07/27/2018 Motion ▼

Judicial Officer

Bulla, Bonnie

Hearing Time

9:30 AM

Cancel Reason

Vacated

Comment

Defendant Polaris Industries, Inc's Motion for Protective Order on Order Shortening Time

07/27/2018 Motion to Associate Counsel ▼

Comment

Motion to Associate Counsel Andrew Scott Ross, Esq. on Order Shortening Time

07/31/2018 Motion to Associate Counsel ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Motion Granted

Comment

Defendant's Motion to Associate Counsel James F. Sanders, Esq. On Order Shortening Time

07/31/2018 Motion to Associate Counsel ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Motion Granted

Comment

Defendant's Motion to Associate Counsel Andrew Scott Ross, Esq. on Order Shortening Time

07/31/2018 All Pending Motions ▼

Judicial Officer
Delaney, Kathleen E.

Hearing Time
9:00 AM

Result
Matter Heard

07/31/2018 Order Admitting to Practice ▼

Comment
Order Admitting to Practice (Andrew Scott Ross, Esq.)

07/31/2018 Order Admitting to Practice ▼

Comment
Order Admitting to Practice (James F. Sanders, Esq.)

08/01/2018 Notice of Entry ▼

Comment
Notice of Entry of Order Admitting to Practice (Andrew Scott Ross, Esq.)

08/01/2018 Notice of Entry ▼

Comment
Notice of Entry of Order Admitting to Practice (James F. Sanders, Esq.)

08/07/2018 Motion for Leave to File ▼

Comment
Motion for Leave to File Third-Party Complaint by Sandbar Powersports, LLC

09/11/2018 Motion for Leave ▼

Judicial Officer
Delaney, Kathleen E.

Hearing Time
9:00 AM

Result
Motion Granted

Comment
Defendant / Counter-Claimant / Cross-Claimant Sandbar Powersports, LLC's Motion for Leave to File Third-Party Complaint by Sandbar Powersports, LLC

Parties Present ▲
Defendant

Attorney: Roebuck, Keivan A.

09/11/2018 Order ▼

Comment
Order Granting Motion for Leave to File Third-Party Complaint by Sandbar Powersports, LLC

09/12/2018 Amended Notice of Entry of Order ▼

<p>Comment</p> <p>Notice of Entry of Order</p>
<p>09/12/2018 Third Party Complaint ▼</p> <p>Comment</p> <p>Third-Party Complaint</p>
<p>09/12/2018 Summons Electronically Issued - Service Pending ▼</p> <p>Comment</p> <p>Summons - Civil</p>
<p>09/25/2018 Affidavit of Due Diligence ▼</p> <p>Comment</p> <p>Affidavit of Due Diligence</p>
<p>09/26/2018 Affidavit of Due Diligence ▼</p> <p>Comment</p> <p>Affidavit of Due Diligence</p>
<p>10/02/2018 Pretrial/Calendar Call ▼</p> <p>Judicial Officer</p> <p>Delaney, Kathleen E.</p> <p>Hearing Time</p> <p>10:30 AM</p> <p>Cancel Reason</p> <p>Vacated - per Stipulation and Order</p>
<p>10/05/2018 Summons ▼</p> <p>Comment</p> <p>Summons - Civil</p>
<p>10/08/2018 Jury Trial ▼</p> <p>Judicial Officer</p> <p>Delaney, Kathleen E.</p> <p>Hearing Time</p> <p>10:30 AM</p> <p>Cancel Reason</p> <p>Vacated - per Stipulation and Order</p>
<p>10/23/2018 Stipulation and Order ▼</p> <p>Comment</p> <p>Stipulation and Order to Extend Discovery Deadlines (Second Request)</p>
<p>10/26/2018 Amended Affidavit of Service ▼</p>

<p>Comment</p> <p>Amended Affidavit of Service</p>
<p>10/26/2018 Amended ▼</p> <p>Comment</p> <p>Amended Affidavit of Due Diligence</p>
<p>11/06/2018 Order Setting Civil Jury Trial ▼</p> <p>Comment</p> <p>Order Setting Civil Jury Trial and Pretrial/Calendar Call</p>
<p>12/05/2018 Motion for Protective Order ▼</p> <p>Comment</p> <p>Joint Motion for Entry of Protective Order on Order Shortening Time</p>
<p>12/19/2018 Motion for Protective Order ▼</p> <p>Judicial Officer</p> <p>Bulla, Bonnie</p> <p>Hearing Time</p> <p>9:30 AM</p> <p>Result</p> <p>Granted</p> <p>Comment</p> <p>COURT CALL - Joint Motion for Entry of Protective Order on OST</p> <p>Parties Present ▲</p> <p>Plaintiff</p> <p>Attorney: Bowers, Chad A.</p> <p>Plaintiff</p> <p>Attorney: Bowers, Chad A.</p> <p>Defendant</p> <p>Attorney: Arledge, Jennifer Willis</p>
<p>01/22/2019 Discovery Commissioners Report and Recommendations ▼</p> <p>Comment</p> <p>Discovery Commissioner's Report and Recommendations</p>
<p>01/22/2019 Notice of Entry ▼</p> <p>Comment</p> <p>Notice of Entry of Discovery Commissioner's Report and Recommendations</p>
<p>01/24/2019 Stipulation and Order ▼</p> <p>Comment</p> <p>Stipulation and Order to Extend Discovery Deadlines (Third Request)</p>
<p>01/24/2019 Motion to Associate Counsel ▼</p>

<p>Comment</p> <p>Motion to Associate Counsel Lexi C. Fuson, Esq. on Order Shortening Time</p>
<p>01/29/2019 Notice of Entry of Stipulation and Order ▼</p> <p>Comment</p> <p>Notice of Entry of Stipulation and Order to Extend Discovery Deadlines</p>
<p>01/29/2019 Application for Issuance of Commission to Take Deposition ▼</p> <p>Comment</p> <p>Application for Issuance of Commission to Take the Deposition of Jade Borger Out Of the State of Nevada</p>
<p>01/29/2019 Application for Issuance of Commission to Take Deposition ▼</p> <p>Comment</p> <p>Application for Issuance of Commission to Take the Deposition of Foster Borger Out Of the State of Nevada</p>
<p>01/30/2019 Notice ▼</p> <p>Comment</p> <p>Notice of Disassociation of Counsel</p>
<p>01/30/2019 Commission to Take Deposition Outside the State of Nevada ▼</p> <p>Comment</p> <p>Commision to Take the Deposition of Foster Borger Outside the State of Nevada</p>
<p>01/30/2019 Commission to Take Deposition Outside the State of Nevada ▼</p> <p>Comment</p> <p>Commision to Take the Deposition of Jade Borger Outside the State of Nevada</p>
<p>01/30/2019 Motion to Associate Counsel ▼</p> <p>Comment</p> <p>Motion to Associate Counsel Matthew T. Albaugh, Esq. on OST</p>
<p>02/01/2019 Motion for Leave to File ▼</p> <p>Comment</p> <p>Defendant Polaris Industries, Inc.'s Motion for Leave to File Third-Party Complaint</p>
<p>02/01/2019 Motion to Dismiss ▼</p> <p>Comment</p> <p>Defendant Polaris Industries, Inc.'s Motion to Dismiss for Forum Non Conveniens on Order Shortening Time</p>
<p>02/05/2019 Motion to Associate Counsel ▼</p> <p>Judicial Officer</p> <p>Delaney, Kathleen E.</p>

Hearing Time

9:00 AM

Result

Motion Granted

Comment

Motion to Associate Counsel Lexi C. Fuson, Esq. on Order Shortening Time

02/05/2019 Motion to Associate Counsel ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Motion Granted

Comment

Motion to Associate Counsel Matthew T. Albaugh, Esq. on OST

02/05/2019 All Pending Motions ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Matter Heard

02/07/2019 Status Check: Compliance ▼

Judicial Officer

Truman, Erin

Hearing Time

3:00 AM

Cancel Reason

Vacated - per Commissioner

02/07/2019 Motion to Seal/Redact Records ▼

Comment

Motion to File Motion for Determination of Good Faith Settlement Under Seal by Sandbar Powersports, LLC on Order Shortening Time

02/08/2019 Response ▼

Comment

Plaintiffs' Response to Polaris' Motion to Dismiss for Forum Non Conveniens

02/08/2019 Order Setting Civil Jury Trial ▼

Comment

Third Amended Order Setting Civil Jury Trial

02/11/2019 Response ▼

Comment

Plaintiffs' Response to Polaris' Motion for Leave to File Third Party Complaint

02/11/2019 Response ▼

Comment

Defendant Polaris Industries, Inc.'s Reponse to Defendant Sandbar Powersports, LLC's Motion to File Motion for Determination of Good Faith Settlement Under Seal

02/12/2019 Motion to Seal/Redact Records ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Granted in Part

Comment

Motion to File Motion for Determination of Good Faith Settlement Under Seal by Sandbar Powersports, LLC on Order Shortening Time

Parties Present ▲

Plaintiff

Attorney: Bowers, Chad A.

Defendant

Attorney: Pocci, Marisa A

Plaintiff

Attorney: Bowers, Chad A.

Defendant

Attorney: Arledge, Jennifer Willis

02/12/2019 Response ▼

Comment

Plaintiffs' Response to Sanbar's Motion to Determine Good Faith Settlement

02/12/2019 Reply to Motion ▼

Comment

Defendant Polaris Industries, Inc.'s Response to Defendant Sandbar Powersports, LLC's Motion for Determination of Good Faith Settlement on Order Shortening Time

02/12/2019 Motion for Leave to File ▼

Comment

Plaintiffs' Motion for Leave to File Second Amended Complaint

02/12/2019 Motion for Determination of Good Faith Settlement ▼

Comment

Motion for Determination of Good Faith Settlement by Sandbar Powersports, LLC on Order Shortening Time

02/13/2019 Order ▼

Comment

Order Admitting to Practice - Matthew T. Albaugh, Esq.

02/13/2019 Order ▼

Comment

Order Admitting to Practice - Lexi C. Fuson, Esq.

02/14/2019 Reply in Support ▼

Comment

Defendant Polaris Industries, Inc.'s Reply in Support of Motion to Dismiss for Forum Non Conveniens

02/15/2019 Reply in Support ▼

Comment

Reply in Support of Motion for Determination of Good Faith Settlement of Sandbar Powersports, LLC on Order Shortening Time

02/15/2019 Notice of Entry of Order ▼

Comment

Notice of Entry of Order Admitting to Practice (Matthew T. Albaugh, Esq.)

02/15/2019 Notice of Entry of Order ▼

Comment

Notice of Entry of Order Admitting to Practice (Lexi C. Fuson, Esq.)

02/19/2019 Motion to Dismiss ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Motion Granted

Comment

Defendant Polaris Industries, Inc.'s Motion to Dismiss of Forum Non Conveniens on Order Shortening Time

02/19/2019 Motion for Determination of Good Faith Settlement ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Motion Granted

Comment

Motion for Determination of Good Faith Settlement by Sandbar Powersports, LLC on Order Shortening Time

02/19/2019 All Pending Motions ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Matter Continued

Parties Present ▲

Plaintiff

Attorney: Bowers, Chad A.

Attorney: Farrar, Kyle W.

Defendant

Attorney: Hayes, Griffith H.

Plaintiff

Attorney: Bowers, Chad A.

Attorney: Farrar, Kyle W.

Defendant

Attorney: Arledge, Jennifer Willis

02/20/2019 Order ▼

Comment

Order Granting in Part and Denying in Part the Motion to Seal Sandbar Powersports' Motion for Determination of Good Faith Settlement on Order Shortening Time

03/08/2019 Electronic Service and Filing Order ▼

Comment

Letter and Proposed Order on Polaris' Motion to Dismiss for FNC

03/12/2019 Motion for Leave ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Moot

Comment

Defendant Polaris Industries Inc's Motion for Leave to File Third Party Complaint

03/12/2019 Order ▼

Comment

Order Granting Motion of Sandbar Powersports LLC for Determination of Good Faith Settlement

03/13/2019 Notice of Entry of Order ▼

Comment

Notice of Entry of Order

03/18/2019 Voluntary Dismissal ▼

Comment

Voluntary Dismissal with Prejudice of Third-Party Defendant Foster Borger

03/19/2019 Motion for Leave ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Cancel Reason

Vacated - per Judge

Comment

Plaintiffs' Motion for Leave to File It's Second Amended Complaint

04/09/2019 Status Check ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Cancel Reason

Vacated

Comment

Status Check: 02/19/19 Hearing Order

04/16/2019 Stipulation and Order ▼

Comment

Stipulation and Order for Dismissal of Sandbar Powersports, LLC's Claims Only Against Polaris Industries, Inc.

04/16/2019 Stipulation and Order for Dismissal With Prejudice ▼

Comment

Stipulation and Order for Dismissal of Defendant/Counter-Claimant/Cross-Claimant and Third-Party Plaintiff Sandbar Powersports, LLC

04/17/2019 Notice of Entry of Stipulation & Order for Dismissal ▼

Comment

Notice of Entry of Stipulation and Order for Dismissal of Sandbar Powersports, LLC's Claims Only Against Polaris Industries, Inc.

04/17/2019 Notice of Entry of Stipulation & Order for Dismissal ▼

Comment

Notice of Entry of Stipulation and Order for Dismissal of Sandbar Powersports, LLC

05/14/2019 Pretrial/Calendar Call ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

10:30 AM

Cancel Reason

Vacated - per Stipulation and Order

05/20/2019 Jury Trial ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

10:30 AM

Cancel Reason

Vacated - per Stipulation and Order

06/21/2019 Notice of Association of Counsel ▼

Comment

Notice of Disassociation of Counsel and Notice of Association of Counsel

06/27/2019 Notice of Association of Counsel ▼

Comment

Notice of Disassociation of Counsel and Notice of Association of Counsel

07/12/2019 Order to Statistically Close Case ▼

Comment

Order to Close Case

07/23/2019 Pretrial/Calendar Call ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

10:30 AM

Cancel Reason

Vacated - per Stipulation and Order

07/29/2019 Jury Trial ▼

Judicial Officer
Delaney, Kathleen E.

Hearing Time
10:30 AM

Cancel Reason
Vacated - per Stipulation and Order

09/11/2019 Substitution of Attorney ▼

Comment
Substitution of Attorney

10/01/2019 Pretrial/Calendar Call ▼

Judicial Officer
Delaney, Kathleen E.

Hearing Time
10:30 AM

Cancel Reason
Vacated - per Judge

10/07/2019 Jury Trial ▼

Judicial Officer
Delaney, Kathleen E.

Hearing Time
10:30 AM

Cancel Reason
Vacated - per Judge

12/10/2019 Status Check: Status of Case ▼

Judicial Officer
Delaney, Kathleen E.

Hearing Time
9:00 AM

Result
Off Calendar

04/06/2020 Motion ▼

Comment
Motion to Sign Order

04/27/2020 Withdrawal of Attorney ▼

Comment
Notice of Withdrawal of Attorney

05/12/2020 Motion ▼

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Motion Granted

Comment

Plaintiff's Motion to Sign Order

Parties Present ▲

Plaintiff

Attorney: Bowers, Chad A.

Attorney: Farrar, Kyle W.

Plaintiff

Attorney: Bowers, Chad A.

Attorney: Farrar, Kyle W.

Defendant

Attorney: Arledge, Jennifer Willis

07/31/2020 Notice of Withdrawal ▼

Comment

Notice of withdrawal/dissassociation of counsel

08/03/2020 Certificate of Mailing ▼

Comment

Certificate of Mailing

08/07/2020 Motion for Order ▼

Comment

Plaintiff's Second Motion to Sign Order

08/09/2020 Order Granting Motion ▼

Comment

Order Granting Polaris Industries, Inc.'s Motion to Dismiss for Forum Non Conveniens

08/10/2020 Clerk's Notice of Hearing ▼

Comment

Notice of Hearing

08/10/2020 Notice of Entry ▼

Comment

Notice of Entry of Order

09/04/2020 Motion ▼

Judicial Officer
Delaney, Kathleen E.

Hearing Time
3:00 AM

Result
Moot

Comment
Plaintiff's Second Motion to Sign Order

09/04/2020 Notice of Withdrawal of Motion ▼

Comment
Withdrawal of Second Motion to Sign Order

09/04/2020 Notice of Appeal ▼

Comment
Notice of Appeal

09/04/2020 Case Appeal Statement ▼

Comment
case appeal statement

09/08/2020 Minute Order ▼

Judicial Officer
Delaney, Kathleen E.

Hearing Time
3:00 AM

Cancel Reason
Vacated - On In Error

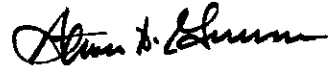
Comment
Minute Order Vacating Hearing

09/08/2020 Amended Notice of Appeal ▼

Comment
first amended notice of appeal

10/29/2020 Reporters Transcript ▼

Comment
Transcript Request From



CLERK OF THE COURT

1 CHAD A. BOWERS, Esq.
2 CHAD A. BOWERS, LTD.
3 NEVADA BAR NO. 007283
4 3202 W. CHARLESTON BLVD.
5 LAS VEGAS, NEVADA 89102
6 TEL: (702) 457-1001
7 FAX: (702) 878-9350

8 *Attorneys for Plaintiffs*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 JOHN BORGER and SHERRI BORGER,

12 Plaintiffs,

13 v.

14 SANBAR POWERSPORTS LLC., DOES I
15 through X; and ROE CORPORATIONS
16 XI through XX, inclusive,

17 Defendants.

Case No.: A- 17 - 751896 - C
Dept.: XXV

COMPLAINT

18 Come now the Plaintiffs, John Borger and Sherri Borger, by and through counsel, and
19 hereby file this Complaint for Damages and respectfully state their causes of action against
20 Defendants Sandbar Powersports, LLC as follows:

21 **PARTIES**

22 1. Plaintiffs John Borger and Sherri Borger are a married couple who are residents
23 of Owatonna, Minnesota.

24 2. Defendant Sandbar Powersports LLC ("Sandbar") is a domestic business entity
25 with its principal place of business located at 5135 Camino Al Norte, Suite 250, Las Vegas,
26 Nevada, 89031. It may be served via its registered agent, Tax Management Group, LLC at at
27 5135 Camino Al Norte, Suite 250, Las Vegas, Nevada, 89031.
28

1 3. Plaintiff is unaware of the true names and legal capacities, whether individual,
2 corporate, associate, or otherwise, of the Defendants sued herein as DOES I-X, and ROE
3 CORPORATIONS, XI-XX, inclusive, and therefore sue said Defendants by such fictitious
4 names. Plaintiffs, pray leave to insert said Defendants' true names and legal capacities when
5 ascertained. Plaintiffs, are informed, believe and thereon allege, that each of the Defendants
6 designated herein as a DOE and ROE are in some way legally responsible and liable for the
7 events referred to herein, and proximately caused the damages alleged herein.
8

9 4. At all times relevant, and in doing the acts and omissions alleged herein, the
10 Defendants, and each of them, including the DOE Defendants, and ROE Defendants, acted by
11 and through their officers, agents, employees, and co-conspirators, including the fictitious
12 Defendants named herein, each of whom was acting within the purpose and scope of that agency,
13 employment and conspiracy, and said acts and omissions were known to, and authorized and
14 ratified by, each of the other Defendants.
15

16 FACTS

17 5. On October 18, 2016, Plaintiffs John and Sherri Borger rented a Polaris RZR
18 from Defendants Sandbar Powersports, LLC near Lake Havasu, Arizona. While driving on areas
19 designated by Sandbar, the vehicle unexpectedly rolled onto its right side. Sherri Borger was the
20 properly belted right front passenger at the time. Sherri's arm was trapped underneath the
21 vehicle and sustain significant injuries, ultimately leading to an amputation of her right arm.
22

23 6. At the time of the incident, the UTV was being operated in a foreseeable and
24 prudent manner. Further, the UTV was being used for the purpose for which it was reasonably
25 and foreseeably intended and in a manner reasonably foreseeable to Defendants.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT I - NEGLIGENCE

7. At all relevant times, Sandbar was engaged in the business of renting recreational vehicles including the UTV at issue for use by members of the general public. As such, Sandbar owed a duty to its renters as well as the general public to ensure the vehicles were safe for foreseeable operation. Sandbar breached its duty by, among other things:

- a. Failing to install or offer proper equipment and safeguards to protect occupants during normal foreseeable driving conditions including tip-overs and/or rollovers;
- b. Failure to adopt known and feasible safety measures, including, but not limited to, an adequate cage, structure, netting, and/or Occupant Containment System to prevent occupants and/or their extremities from being ejected from the UTV during a tip-over and/or rollover;
- c. Failing to conduct a proper inspection of the UTV;
- d. Failing to properly train all occupants on the use of the UTV;
- e. Failure to warn about the propensity of the UTV to tip-overs or rollover;
- e. Failure to warn about the propensity of partial ejection during tip-overs or rollovers;
- f. Failure to provide a safe UTV.

8. Sandbar's breach of its duties, including but not limited to the breaches enumerated above, were the direct and proximate cause of the permanent and significant damages to Plaintiffs John and Sherri Borger.

DAMAGES

9. As a direct and proximate result of Sandbar's conduct, Sherri Borger suffered serious and severe injuries including, but not limited to the loss of her right arm. Due to her injuries, she has suffered in the past, and will continue to suffer in the future the following damages: medical expenses, loss of earnings and/or earning capacity, loss of household services,

1 mental anguish, pain and suffering, disability and disfigurement. As a direct and proximate result
2 of Sandbar's conduct, John Borger suffered loss of consortium damages, including but not
3 limited to, loss of love and emotional support, companionship and the mutual benefits which
4 existed in their marriage.

5
6 10. Plaintiffs seek exemplary damages caused by Defendant's malice, gross
7 negligence and willful acts, omissions and gross negligence.

8 11. Plaintiffs are entitled to recovery of pre-judgment and post-judgment
9 interest in accordance with law and equity as part of their damages herein, and Plaintiffs
10 here and now sue for recovery of pre-judgment and post-judgment interest as provided by
11 law and equity, under the applicable provision of the laws of the State of Nevada.
12

13 12. Plaintiffs would additionally say and show that they are entitled to recovery
14 of court costs, reasonable and necessary attorneys' fees incurred in this action.
15

16 **PRAYER**

17 WHEREFORE, Plaintiffs prays as follows:

- 18 1. For compensatory damages according to proof;
19 2. For punitive damages;
20 3. For costs of suit;
21

22 ///

23 ///

24 ///

25 ///

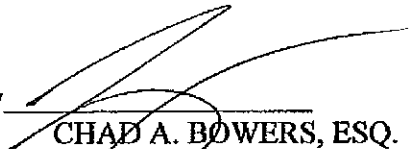
26 ///

27 ///

1 4. Reasonable and necessary attorneys' fees; and

2 5. For such other and further relief as is proper.

3
4 DATED this 21st day of February, 2017.

5
6
7
8 By 
9 CHAD A. BOWERS, ESQ.
10 Nevada Bar #: 007283
11 **CHAD A. BOWERS, LTD.**
12 3202 West Charleston Blvd
13 Las Vegas, NV 89102
14 702-457-1001


CLERK OF THE COURT

1 CHAD A. BOWERS, ESQ.
2 Nevada Bar #: 007283
3 CHAD A. BOWERS, LTD.
4 3202 West Charleston Blvd.
5 Las Vegas, Nevada 89102
6 Telephone(702) 457-1001
7 Facsimile(702) 946-5048
8 Attorney for Plaintiff

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN BORGER and SHERRI BORGER,

Plaintiffs,

vs.

Case No. : A-17-751896-C
Dept No. : XXV

SANBAR POWERSPORTS, LLC., and
DOES I through X; and ROE CORPORATIONS
XI through XX, inclusive,

Defendants.

AFFIDAVIT OF SERVICE

NOTICE IS HEREBY GIVEN that service of the Summons and Complaint was served on March 10, 2017, by leaving a true copy with Minnaya Wilson, Administrative Assistant to Registered Agent Tas Management Group, LLC., at 5135 Camino Al Norte, Suite 250, North Las Vegas, Nevada 89031-2389.

The Affidavit of Service is attached hereto.

DATED this 15th day of March 2017.

CHAD A. BOWERS, LTD.

/s/ Chad A. Bowers

CHAD A. BOWERS, ESQ.
3202 West Charleston Blvd.
Las Vegas, Nevada 89102
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN BORGER and SHERRI BORGER,
Plaintiff(s),

VS.

SANBAR POWERSPORTS, LLC,
Defendant(s),

CASE NO: A-17-751896-C

DEPT NO: XXV

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CLARK

} ss.

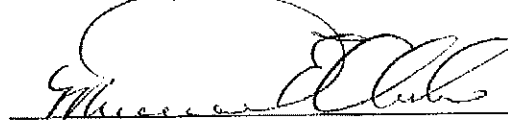
Michael E. Clarke, being duly sworn, states that at all times herein Affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. Affiant is a licensed process server whose license number is stated below. That Affiant received a copy of the SUMMONS; COMPLAINT on March 08, 2017. That Affiant personally served SANBAR POWERSPORTS, LLC with a copy of the above stated documents on March 10, 2017 at 12:34 PM.

Served upon registered agent personally or by leaving a true copy with Minnaya Wilson - Administrative Assistant to Registered Agent Tax Management Group, LLC, a person of suitable age and discretion at the most recent street address of the registered agent shown on the information filed with the Secretary of State at 5135 Camino Al Norte Ste 250, North Las Vegas, NV 89031-2389.

That the description of the person actually served is as follows: Gender: Female Skin: Cau Age: 25ish Height: 5'6 Weight: 140 Hair: Dark Eyes: Marks:

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

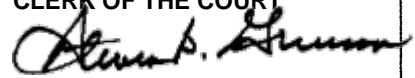
Dated March 10, 2017.



Michael E. Clarke
Signature of Affiant
State License# #R-003972
Clark County Process Service LLC
720 E Charleston Blvd, Suite 135
Las Vegas, NV 89104
State License# 2031C



Order #:CC13263
Their File



AACC
GRIFFITH H. HAYES, ESQ.
Nevada Bar No. 7374
MELANIE BERNSTEIN CHAPMAN, ESQ.
Nevada Bar No. 6223
MARISA A. POCCI, ESQ.
Nevada Bar No. 10720
LITCHFIELD CAVO LLP
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Telephone: (702) 949-3100
Facsimile: (702) 879-9175
Email: hayes@litchfieldcavo.com
chapman@litchfieldcavo.com
pocci@litchfieldcavo.com

Attorneys for Defendant/Counter-Claimant, Sandbar Powersports, LLC

DISTRICT COURT

CLARK COUNTY NEVADA

JOHN BORGER and SHERRI BORGER,

Plaintiffs,

v.

SANBAR POWERSPORTS, LLC, DOES I
through X, ROE CORPORATIONS XI through
XX, inclusive,

Defendants.

SANDBAR POWERSPORTS, LLC.

Counter-Claimant,

v.

JOHN BORGER and SHERRI BORGER,

Counter-Defendants.

Case No.: A-17-751896-C

Dept.: XXV

**ANSWER OF SANDBAR
POWERSPORTS, LLC TO COMPLAINT
AND COUNTERCLAIM**

COME NOW Defendant, SANDBAR POWERSPORTS, LLC, erroneously sued and served
herein as SANBAR POWERSPORTS, LLC (hereinafter "SANDBAR") by and through its counsel
of record, the law firm of Litchfield Cavo LLP, and hereby files its Answer to Plaintiffs' Complaint

1 and admits, denies and alleges as follows:

2 **THE PARTIES**

3 1. Answering Paragraph 1 Plaintiffs' Complaint, SANDBAR is without knowledge or
4 information sufficient to form a belief as to the truth of these allegations, and therefore generally and
5 specifically denies the same.

6 2. Answering Paragraph 2 Plaintiffs' Complaint, SANDBAR admits that it is a domestic
7 business entity with its principal place of business located at 5135 Camino Al Norte, Suite 250, Las
8 Vegas, Nevada 89031. SANDBAR further admits that it may be served via its registered agent, Tax
9 Management Group, LLC at 5135 Camino Al Norte, Suite 250, Las Vegas, Nevada 89031. Except as
10 admitted, SANDBAR generally and specifically denies the remaining allegations contained therein.

11 3. Answering Paragraph 3 Plaintiffs' Complaint, SANDBAR states that this paragraph
12 contains a legal conclusion/statement and therefore no response is required thereto. To the extent a
13 response is required, SANDBAR generally and specifically denies all of the allegations contained
14 therein.

15 4. Answering Paragraph 4 Plaintiffs' Complaint, SANDBAR states that this paragraph
16 contains a legal conclusion/statement and therefore no response is required thereto. To the extent a
17 response is required, SANDBAR generally and specifically denies all of the allegations contained
18 therein.

19 **FACTS**

20 5. Answering Paragraph 5 of Plaintiffs' Complaint, SANDBAR admits that a Polaris RZR
21 was rented from SANDBAR on or about October 18, 2016. SANDBAR further admits that Ms.
22 Borger was injured on or about this date. Except as admitted, SANDBAR generally and specifically
23 denies the remaining allegations contained therein.

24 6. Answering Paragraph 6 of Plaintiffs' Complaint, SANDBAR states that this paragraph
25 contains a legal conclusion/statement and therefore no response is required thereto. To the extent a
26 response is required, SANDBAR generally and specifically denies all of the allegations contained
27 therein.

28 ///

1 **COUNT 1 - NEGLIGENCE**

2 7. Answering Paragraph 7 of Plaintiffs' Complaint, SANDBAR states that this paragraph
3 contains a legal conclusion/statement and therefore no response is required thereto. To the extent a
4 response is required, SANDBAR generally and specifically denies all of the allegations contained
5 therein.

6 8. Answering Paragraph 8 of Plaintiffs' Complaint, SANDBAR generally and specifically
7 denies all of the allegations contained therein.

8 9. Answering Paragraph 9 of Plaintiffs' Complaint, SANDBAR admits Ms. Borger was
9 injured on or about October 18, 2016. Except as admitted, SANDBAR generally and specifically
10 denies the remaining allegations contained therein.

11 10. Answering Paragraph 10 of Plaintiffs' Complaint, SANDBAR states that this
12 paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the
13 extent a response is required, SANDBAR generally and specifically denies all of the allegations
14 contained therein.

15 11. Answering Paragraph 11 of Plaintiffs' Complaint, SANDBAR generally and
16 specifically denies all of the allegations contained therein.

17 12. Answering Paragraph 12 of Plaintiffs' Complaint, SANDBAR generally and
18 specifically denies all of the allegations contained therein.

19 **FIRST AFFIRMATIVE DEFENSE**

20 **(Failure to State a Claim)**

21 SANDBAR alleges that Plaintiffs' Complaint, and each and every cause of action therein,
22 fails to state a claim against SANDBAR upon which relief can be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 **(Open and Obvious)**

25 SANDBAR is informed and believes and thereon alleges that the condition which allegedly
26 caused the injuries and damages alleged in Plaintiffs' Complaint was open and obvious, and Plaintiffs'
27 recovery against SANDBAR should therefore be barred.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD AFFIRMATIVE DEFENSE

(Comparative Negligence of Plaintiffs)

SANDBAR alleges that the damages suffered by the Plaintiffs, if any, was either partially or completely proximately caused by the negligence of Plaintiffs. SANDBAR further alleges that when Plaintiffs' negligence is compared to any negligence allegedly committed by SANDBAR, Plaintiffs own negligence exceeds any alleged negligence of SANDBAR, thereby barring recovery for any damages allegedly suffered.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

SANDBAR is informed and believes and thereon alleges that as to each alleged cause of action, Plaintiffs have failed, refused, and neglected to take reasonable steps to mitigate their alleged damages, if any, thus barring or diminishing Plaintiffs recovery herein.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

SANDBAR is informed and believes, and thereon alleges, that the claims of the Plaintiffs are reduced, modified and/or barred by the doctrine of Laches.

SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

SANDBAR is informed and believes, and thereon alleges, that Plaintiffs' claims for relief are barred in whole or in part by the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

(Negligence of Others)

SANDBAR alleges that the damages suffered by the Plaintiffs, if any, were the direct and proximate result of the negligence, strict liability, and/or breach of contract of parties, persons, corporations and/or entities other than SANDBAR, and that the liability of SANDBAR, if any, is limited in direct proportion to the percentage of fault actually attributable to SANDBAR.

///
///

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 **(No Punitive Damages)**

3 SANDBAR alleges that Plaintiffs' claims for punitive damages are barred to the extent that
4 they are not available and/or because any alleged unlawful conduct was not knowing, willful or
5 malicious.

6 **NINTH AFFIRMATIVE DEFENSE**

7 **(Alteration/Misuse)**

8 SANDBAR alleges that the damages suffered by the Plaintiffs, if any, were caused by the
9 alteration, modification or misuse of the product by Plaintiffs, a third party or parties over whom
10 SANDBAR had no supervision or control.

11 **TENTH AFFIRMATIVE DEFENSE**

12 **(Express and Implied Assumption of Risk)**

13 SANDBAR alleges that the Plaintiffs, orally and/or in writing, expressly assumed the risks and
14 hazards resulting in the injuries sustained, if any, in that at the time and prior to the time of the incident,
15 Plaintiffs knew of the danger involved, but, despite such knowledge, persisted in such conduct,
16 although free to stop and discontinue the same. The injuries alleged by Plaintiffs in the Complaint, if
17 any, were caused by and arose out of such assumed risk.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **(Express/Implied Malice)**

20 SANDBAR denies at any time acting either with express or implied malice in any way in
21 regards to the Plaintiffs, thereby barring a claim for punitive damages as a matter of law.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 **(Punitive Damages Unconstitutional)**

24 Nevada Revised Statute 42.010 does not provide adequate safeguards for its application and is
25 therefore void for vagueness under the due process clause of the 14th Amendment of the United States
26 Constitution and the Nevada Constitution, Article 1, Section VII.

27 ///

28 ///

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Bifurcation)**

3 SANDBAR is entitled, in the interest of a fair trial, to a bifurcated proceeding in which
4 evidence of financial worth is introduced to the jury after a preliminary finding of punitive liability.

5 **FOURTEENTH AFFIRMATIVE DEFENSE**

6 **(Burden of Proof)**

7 Fairness and constitutional due process require that punitive liability and damages be proven
8 by clear and convincing evidence.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 **(Reduction of Damages)**

11 Punitive damages, if any are awarded, must be reduced by reason of the fault of the Plaintiffs
12 and the circumstances under which this action arose.

13 **SIXTEENTH AFFIRMATIVE DEFENSE**

14 **(Waiver)**

15 SANDBAR is informed and believes that Plaintiffs, orally and/or in writing, waived all claims
16 against SANDBAR, thereby barring any recovery by Plaintiffs.

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 **(Release)**

19 SANDBAR is informed and believes that Plaintiffs, orally and/or in writing, released
20 SANDBAR for any claims, thereby barring any recovery by Plaintiffs.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 **(Indemnity)**

23 SANDBAR is informed and believes and thereon alleges that Plaintiffs, orally and/or in
24 writing, agreed to defend, indemnify and hold harmless SANDBAR for any and all claims and
25 damages arising out of the rental of the vehicle at issue in the Complaint on file herein, thereby barring
26 or diminishing Plaintiffs' claims against SANDBAR.

27 ///

28 ///

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 **(Breach of Contract)**

3 SANDBAR is informed and believes and thereon alleges that Plaintiffs breached the contract
4 between Plaintiffs and SANDBAR, thereby barring or diminishing Plaintiffs' recovery therein.

5 **TWENTIETH AFFIRMATIVE DEFENSE**

6 **(Reservation of Rights)**

7 Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have been
8 alleged herein insofar as sufficient facts were not available for Defendants after reasonable inquiry

9 **PRAYER FOR RELIEF**

10 WHEREFORE, based upon the above and foregoing, SANDBAR respectfully requests this
11 Court for relief as follows:

- 12 1. That Plaintiffs take nothing by way of their Complaint;
13 2. That Plaintiffs' Complaint be dismissed with prejudice;
14 3. That SANDBAR be awarded all costs incurred in the defense of this action, including
15 reasonable attorneys' fees; and
16 4. For such other relief as this Court deems just and proper under the circumstances.

17
18 **COUNTERCLAIM OF SANDBAR POWERSPORTS, LLC**

19 Counter-Claimant, SANDBAR POWER SPORTS, LLC ("SANDBAR" or "Counter-
20 Claimant") by and through its counsel of record of the law firm of Litchfield Cavo LLP, hereby alleges
21 as follows:

22 **GENERAL ALLEGATIONS**

- 23 1. Counter-Claimant is and was a limited liability company organized, existing and
24 formed under and in accordance with the law of the State of Nevada and authorized to conduct business
25 in the State of Nevada.
26 2. Counter-Defendant, JOHN BORGER, is and was a resident of Owatonna, Minnesota.
27 3. Counter-Defendant, SHERRI BORGER, is and was a resident of Owatonna,
28 Minnesota.

1 4. Counter-Claimant is informed and believes and thereon alleges that Counter-
2 Defendants are a married couple and the natural parents and legal guardians of their minor son, F.B.

3 5. Counter-Claimant refers to and incorporates herein each and every allegation made by
4 Plaintiffs/Counter-Defendants contained in Plaintiffs' Complaint for the sole purpose of establishing
5 the fact that Plaintiffs/Counter-Defendants have commenced suit against Counter-Claimant, but
6 without admitting, in whole or in part, any of the allegations contained in Plaintiffs' Complaint.

7 6. On or about October 18, 2016, Counter-Defendants rented a 2017 Polaris RZR XP4
8 900 (the "RZR") from Counter-Claimant.

9 7. Prior to taking possession of the RZR, Counter-Defendants participated in an
10 inspection of the vehicle with a Counter-Claimant employee.

11 8. Prior to taking possession of the RZR, Counter-Defendants received an orientation of
12 the RZR by a Counter-Claimant employee, during which they were shown how to work the RZR.

13 9. During the orientation, Counter-Defendants were told that they should drive slowly
14 and, if necessary, stop the vehicle and inspect the trail on foot to make sure it was safe before
15 proceeding in the RZR.

16 10. Counter-Defendants were told verbally and in writing that their children, ages 17 and
17 19, were not allowed or authorized to drive the RZR, as the company required all drivers to be at least
18 25 years old.

19 11. Prior to driving the vehicle away from Counter-Claimant's rental location, Counter-
20 Defendants read and voluntarily signed a number of documents, including but not limited to:

21 a. The Rental Contract, attached hereto as Exhibit A.

22 b. The Participant Agreement, Release and Assumption of Risk agreement ("Release
23 and Assumption of Risk Agreement"), attached hereto as Exhibit B.

24 12. The Rental Contract was initialed in various places by both Counter-Defendants and
25 signed in its entirety individually by Counter-Defendants.

26 13. The Rental Agreement, signed by Counter-Defendants, stated, in part, as follows:

27 **READ THE FOLLOWING SECTIONS FULLY AND CAREFULLY PRIOR TO**
28 **SIGNING. THIS IS A LEGALLY VALID AND BINDING OBLIGATION TO**
 RELEASE COMPANY FROM ALL KNOWN AND UNKNOWN RISKS, AND TO
 INDEMNIFY COMPANY AGAINST CLAIMS BROUGHT AGAINST IT

1 **BASED UPON YOUR USE OF THE VEHICLE. THIS INSTRUMENT**
2 **AFFECTS IMPORTANT LEGAL RIGHTS.**

3 *See, Exhibit A.*

4 14. By their signatures, Counter-Defendants acknowledged and confirmed that they read
5 the Rental Agreement and understood that they were releasing and discharging Counter-Claimant from
6 any and all claims arising out of their use, misuse or abuse of the RZR. *See, Exhibit A.*

7 15. By their signatures, Counter-Defendants agreed to protect Counter-Claimant, and to
8 defend and indemnify and hold harmless Counter-Claimant from any claims, losses, causes of action,
9 and expenses, including legal expenses and reasonable attorneys' fees arising in any way out of the
10 use, maintenance and operation of the RZR. *See, Exhibit A.*

11 16. By their signatures, Counter-Defendants acknowledged, confirmed and agreed that
12 they had been fully instructed, and fully understood how to operate the RZR in a safe and proper
13 manner; that they, at all times, agreed to observe and cause to be observed by all users of the Razer all
14 proper safety precautions in the use and operation of the Razer; and, that they would be responsible at
15 all times for the safety of any and all riders and passengers or any other individuals on or near the
16 RZR. *See, Exhibit A.*

17 17. By their signatures, Counter-Defendants acknowledged, agreed and confirmed that
18 they were aware of, and understood that "Prohibited Actions" included, but were not limited to the
19 following:

- 20 a. Reckless driving such as jumping, driving too fast, rock crawling, sliding or
21 spinning in circles/doing donuts in the vehicle;
22 b. Riders under the age of 18 riding without a helmet and eye protection;
23 c. Allowing an unauthorized driver to drive the vehicle with [sic] approval from
24 Counter-Claimant.

25 *See, Exhibit A.*

26 18. Above Counter-Defendants' signatures, the Rental Agreement stated as follows:

27 **RENTER PLEASE NOTE: YOU ARE LIABLE AND RESPONSIBLE FOR ANY AND ALL**
28 **TERMS AND CONDITIONS IN THIS CONTRACT EVEN IF**
 YOU DON'T TAKE THE TIME TO READ IT.

See, Exhibit A.

1 19. The Release and Assumption of Risk Agreements signed by Counter-Defendants,
2 stated in part as follows:

- 3 a. In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability
4 company, its agents, owners, officers, volunteers, participants and all other persons or entities
5 acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the
6 undersigned (hereinafter "I" or "participant") hereby agree [sic] to release, indemnify, and
7 discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs,
8 assigns, personal representative and estate as follows:
- 9 b. **Assumption of Risk.** I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV
10 RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD
11 RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR
12 DAMAGE TO ME, TO PROPERTY OR TO THIRD PARTIES. I UNDERSTAND THAT
13 SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE
14 ESSENTIAL QUALITIES OF THE ACTIVITY . . . I EXPRESSLY AGREE TO ACCEPT
15 AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY
16 PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO
17 PARTICIPATE IN SPITE OF THE RISKS.
- 18 c. **Waiver of Claims; Indemnification.** I hereby voluntarily release, forever discharge, and agree
19 to indemnify and hold harmless Company from any and all claims, demands, or cause of action,
20 which are in any way connected with my participation in this activity or my use of the
21 Company's Vehicles, equipment or facilities, including any such claims which allege negligent
22 acts or omissions of Company.

23 *See, Exhibit B.*

24 20. The Release and Assumption of the Risk Agreements specifically noted that the risks
25 being voluntarily assumed by Counter-Defendants. included, but were not limited to, injury resulting
26 from being jolted, jarred, bounced, thrown about and otherwise shaken during rides, injuries resulting
27 from items or conditions on the trail such as holes bumps, ruts, obstacles, tree limbs and branches or
28 rocks, and injury resulting from loss of control of the vehicle. *See, Exhibit B.*

29 21. Counter-Defendants also specifically acknowledged that Counter-Claimant and its
30 employees' ability to provide for the safety of participants such as Counter-Defendants and their
31 children is limited by the inherent risks and uncertainties related to the use of the RZR, the RZR itself,
32 weather conditions and the extent to which participants follow instructions and rules, whether written
33 or orally expressed by Counter-Claimant's employees. *See, Exhibit B.*

34 22. Directly above the portion of the Release and Assumption of the Risk Agreement
35 signed by Counter-Defendants, the document states as follows:

36 By signing this document, I acknowledge that if anyone is hurt or property is
37 damaged during my participation in this activity, I may be found by a court of law
38 to have waived my right to maintain a lawsuit against the Company on this basis of
 any claim from which I have released them herein.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

See, Exhibit B.

23. The Release and Assumption of the Risk Agreement was accompanied by exhibit A to the Agreement, setting forth instructions and rules, which Counter-Defendants and their children acknowledged and agreed to follow.

24. The Driver/Rider Usage Rules set forth in exhibit A to the Release and Assumption of Risk Agreement included, but were not limited to, the following:

- a. only the authorized drivers on the Rental Agreement were allowed to drive the rental vehicle;
- b. all passengers under the Age of 18 were required to wear a helmet as required by Arizona law;
- c. as the drivers of the rental vehicle, Counter-Defendants acknowledged that they were responsible for everything and anything that happens with respect to the rental vehicle and its use, and with respect to any passengers;
- d. the minimum driver age limit for the Polaris RZR 900 was 25+

See, Exhibit B.

25. Counter-Defendants, agreed and acknowledged their understanding that, if any of the Driver/Rider Usage Rules were violated, as the renter(s) of the Vehicle, they would lose the rental deposit and would be responsible for any and all damages arising from such violation, and any participant acting in violation of these Driver Usage Rules would be responsible for any and all damages arising from such violation. *See*, Exhibit B.

26. Counter-Defendants were given a helmet for their minor son, F.B., to wear pursuant to the rules to which they had agreed.

27. On behalf of his minor son, Counter-Defendant, JOHN BORGER, agreed that F.B. would use the helmet being provided by Counter-Claimant. *See*, Exhibit B.

28. Counter-Defendants each acknowledged on the Release and Assumption of the Risk Agreement their own refusals to wear a helmet. *See*, Exhibit B.

1 29. Counter-Defendant, SHERRI BORGER, signed an “Addendum to Dealer’s Rental
2 Insurance Agreement,” in which she declined to purchase the optional SLI (Supplemental Liability
3 Insurance) and PAI/PEI (Personal Effects/Personal Accident Insurance) coverage.

4 30. Counter-Defendant, JOHN BORGER, signed a “Pre Rental Check Out,” agreeing and
5 acknowledging that he “understands and knows where all the controls are and how they work;” and
6 that he has “read and [has] been given basic ATV riding instructions.”

7 31. Counter-Defendants were not compelled to participate in the activity involving the
8 RZR, reviewed the Agreements, and voluntarily signed the Agreements.

9 32. On October 18, 2016, at approximately 10:25 a.m., shortly after signing the Rental
10 Agreement and Release and Assumption of the Risk Agreement and taking possession of the rented
11 RZR, an employee of Counter-Claimant received a call in which Counter-Defendant, JOHN
12 BORGER, explained that he had tipped over the RZR, that Counter-Defendant, SHERRI BORGER,’s
13 arm was under the RZR and that the arm was barely attached. He advised that they were in Bison
14 Wash.

15 33. The Counter-Claimant employee called 911 and Counter-Defendant, JOHN BORGER,
16 was given instructions regarding activation of the GPS system to allow emergency personnel to find
17 them.

18 34. Counter-claimant’s employees immediately went to Bison Wash, where emergency
19 personnel were already on scene.

20 35. Counter-Defendants and their children were located and medical personnel attended to
21 Counter-Defendants.

22 36. Counter-Claimant is informed and believes and thereon alleges that Counter-
23 Defendant, JOHN BORGER, advised that he had driven across a small incline, was coming back down
24 and was going too fast when he started to make a turn and the RZR flipped on its side.

25 37. Counter-Claimant is informed and believes and thereon alleges that Counter-
26 Defendant, JOHN BORGER, advised Sgt. John Kole of the Mohave County Sheriffs’ Office that he,
27 JOHN BORGER, had been driving the RZR, turned left, and the machine rolled over on its right side.

28 38. Counter-Claimant is informed and believes and thereon alleges that Counter-

1 Defendant, JOHN BORGER, advised Sgt. Kole that inexperience in driving the machine is what
2 caused the accident.

3 39. Counter-Claimant is informed and believes and thereon alleges that Counter-
4 Defendant, JOHN BORGER, advised Sgt. Kole that he was not sure how fast he had been driving
5 when the accident occurred, but thought he may have been going about 20 miles per hour.

6 40. Counter-Claimant is informed and believes and thereon alleges that Lake Havasu City
7 Police Department's Officer Murdock advised Sgt. Kole that Counter-Defendant, JOHN BORGER's,
8 two children had been riding in the back seat and that Counter-Defendant, SHERRI BORGER, had
9 been in the front passenger seat at the time of the accident.

10 41. Counter-Claimant is informed and believes and thereon alleges that Sgt. Kole also
11 spoke to Counter-Defendant, JOHN BORGER's, minor son, F.B, and daughter, Jade Borger, at the
12 scene of the accident.

13 42. Counter-Claimant is informed and believes and thereon alleges that F.B. corrected Sgt.
14 Kole's understanding of the location of the accident, but did not correct Sgt. Kole's understanding that
15 his father, Counter-Defendant, JOHN BORGER, had been driving. F.B. advised Sgt. Kole that he had
16 been sitting in the back seat at the time of the accident.

17 43. Counter-Claimant is informed and believes and thereon alleges that Counter-
18 Defendant, SHERRI BORGER, was transported by helicopter to the hospital.

19 44. Counter-Claimant is informed and believes and thereon alleges that Counter-
20 Defendant, JOHN BORGER, was transported away from the scene by medical personnel in an ATV-
21 type vehicle.

22 45. Upon retrieving the RZR, Counter-Claimant's employee, David Lehmitz, noted that
23 the RZR was in high gear and in 4-wheel drive mode.

24 46. Counter-Defendant, SHERRI BORGER, suffered serious injuries at the time her son
25 was driving the RZR.

26 47. Counter-Claimant is informed and believes and thereon alleges that on October 25,
27 2016, Counter-Defendant, SHERRI BORGER, advised Sgt. Kole that she was not sure of the seating
28 position of her children prior to the accident, but that he should speak to Counter-Defendant, JOHN

1 BORGER, to obtain that information.

2 48. Counter-Claimant is informed and believes and thereon alleges that on October 26,
3 2016, Sgt. Kole was able to reach Counter-Defendant, JOHN BORGER, on his cell phone. At that
4 time, Counter-Claimant is informed and believes and thereon alleges that, Counter-Defendant, JOHN
5 BORGER, admitted that upon arriving in the area off of Bison Road, he and his son, F.B., switched
6 seats, placing F.B. in the driver's seat and Counter-Defendant, JOHN BORGER, in the back
7 passenger-side seat, behind his wife and next to his daughter at the time of the accident.

8 49. Counter-Claimant is informed and believes and thereon alleges that Counter-
9 Defendant, JOHN BORGER, advised Sgt. Kole that F.B. drove for a few minutes on the flat area, then
10 turned left, at which time the RZR went over onto its right side, perhaps the result of the tire getting
11 caught on a rock.

12 50. Counter-Claimant is informed and believes and thereon alleges that Counter-
13 Defendant, JOHN BORGER, advised that at the time of the accident, his minor son, F.B., was driving
14 approximately 25-30 miles per hour.

15 51. Counter-Claimant is informed and believes and thereon alleges that Counter-
16 Defendant, JOHN BORGER, advised that the helmet found in the vehicle was intended for his son
17 who was under 18, but that it was not used.

18 52. Counter-Claimant is informed and believes and thereon alleges that on November 4,
19 2016, Counter-Defendant, JOHN BORGER, again confirmed to Sgt. Kole that his son, F.B., had been
20 driving the RZR at the time of the accident.

21 53. Counter-Claimant is informed and believes and thereon alleges that F.B. was under the
22 age of 18 at the time of the accident.

23 54. Counter-Claimant is informed and believes and thereon alleges that F.B. was not an
24 authorized driver of the RZR.

25 **COUNT I**

26 **(Express/Contractual Indemnity)**

27 55. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
28 through 54 of this Counterclaim as though fully set forth herein.

1 56. Counter-Defendants, expressly agreed to protect Counter-Claimant. Specifically,
2 Counter-Defendants expressly agreed to defend, indemnify and hold harmless Counter-Claimant from
3 and against any demands, claims, losses, causes of action, expenses, legal expenses, and attorneys'
4 fees which are in any way connected with, or in any way arising out of the use, maintenance and
5 operation of the RZR.

6 57. Counter-Claimant was not negligent in any way and no act or omission by Counter-
7 Claimant caused the accident at issue. However, even if any act or omission of Counter-Claimant
8 caused or contributed to the accident, Counter-Defendants agreed to protect Counter-Claimant and
9 expressly agreed to defend, indemnify and hold harmless Counter-Claimant for all claims, demands
10 or causes of action, including any such claims which allege negligent acts or omissions of Counter-
11 Claimant.

12 58. Counter-Claimant denies any liability for the damages and injuries alleged by
13 Plaintiffs. However, to the extent that Counter-Claimant is found to have any liability, pursuant to the
14 terms of the Rental Agreement and the Release and Assumption of the Risk Agreement (collectively
15 referred to herein as the "Agreements"), Counter-Claimant is informed and believes and thereon
16 alleges that it has defense and indemnity rights from Counter-Defendants for the injuries and damages
17 alleged by Plaintiffs.

18 59. By this action, Counter-Claimant tenders the defense and indemnity of Plaintiffs'
19 claims to Counter-Defendants.

20 60. Pursuant to the terms of the Agreements entered into between Counter-Claimant and
21 Counter-Defendants, Counter-Defendants, and each of them, have the duty to defend, indemnify and
22 hold harmless Counter-Claimant in the action filed by Plaintiffs.

23 61. It has been necessary for Counter-Claimant to retain the services of legal counsel to
24 defend Plaintiffs' action and bring this action. Counter-Claimant is entitled to recover attorneys' fees
25 and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the contractual
26 provisions of the Agreements.

27 ///

28 ///

1 **COUNT II**

2 **(Implied Indemnity)**

3 62. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
4 through 61 of this Counterclaim as though fully set forth herein.

5 63. Counter-Claimant is informed and belies and thereon alleges that Counter-Defendants
6 entered into written, oral and/or implied agreements with Counter-Claimant.

7 64. By reason of the foregoing, to the extent that Plaintiffs recover against Counter-
8 Claimant, Counter-Claimant is entitled to implied contractual indemnity from Counter-Defendants,
9 and each of them, for injuries and damages sustained by Plaintiffs, if any, for any sums paid by way
10 of settlement or, in the alternative, for judgment rendered against Counter-Claimant based upon
11 Plaintiff's Complaint.

12 65. It has been necessary for Counter-Claimant to retain the services of legal counsel to
13 defend Plaintiffs' action and to bring this action. Counter-Claimant is entitled to recover attorneys'
14 fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the
15 contractual provisions of the Agreements.

16 **COUNT III**

17 **(Breach of Contract)**

18 66. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1 thru
19 65 of this Counterclaim as though fully set forth herein.

20 67. Counter-Claimant and Counter-Defendants entered into Agreements as described
21 herein. *See*, Exhibits A and B.

22 68. Counter-Defendants voluntarily agreed to the terms and conditions of the RZR rental
23 as set forth in the Agreements.

24 69. Counter-Claimant has fully performed all conditions, covenants and promises required
25 by it to be performed in accordance with the terms and conditions of said Agreements.

26 70. Counter-Claimant is informed and believes and thereon allege that Counter-
27 Defendants, and each of them, breached terms, condition and duties set forth in said Agreements,
28 including, but not limited to: (1) allowing an unauthorized driver to drive the RZR in violation of the

1 terms of the written Agreements and verbal instructions; (2) allowing a person under the age of 25 to
2 drive the RZR in violation of the terms of the written Agreements and verbal instructions; (3) failing
3 to require F.B. to wear a helmet in violation of the terms of the written Agreements and verbal
4 instructions; (4) driving the RZR in a reckless manner in violation of the written Agreements and
5 verbal instructions; and, (5) by bringing suit against Counter-Claimant in violation of their assumption
6 of the risks associated with the off-road vehicle activity, in violation of their waiver of liability as to
7 Counter-Claimant, and in violation of their agreement to accept responsibility for everything and
8 anything that happens with respect to the RZR and/or the passengers.

9 71. As a direct and proximate result of Counter-Defendants' breaches of contract, Counter-
10 Claimant has been damaged in a sum which is currently unascertainable. Counter-Claimant will seek
11 leave of court to amend this Counterclaim once such sum can be reasonably ascertained.

12 72. As a direct and proximate result of the breaches of contract by Counter-Defendants,
13 and each of them, Counter-Claimant has incurred and will continue to incur costs and expenses
14 including, but not limited to, litigation costs, attorneys' fees and consultants' fees in connection with
15 the Complaint filed by Plaintiffs in the action on filed herein to the general damage of Counter-
16 Claimant, as will be shown according to proof at the time of the trial of this matter. Counter-Claimant
17 will seek recovery of the legal fees incurred in defending Counter-Claimant.

18 COUNT IV

19 (Equitable Indemnity)

20 73. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1 thru
21 72 of this Counterclaim as though fully set forth herein.

22 74. Counter-Claimant is informed and believes and hereon alleges that any and all injuries
23 and damages alleged by Plaintiffs in the Complaint were caused by Counter-Defendants, and each of
24 them, arising out of and in connection with their own negligence, negligent entrustment and breaches
25 of the contractual terms of the Agreements.

26 75. Counter-Claimant is informed and believes and hereon alleges that Counter-
27 Defendants agreed to be responsible for any and all injury and damage arising out of the rental and
28 use of the RZR.

76. In equity and good conscience, if Plaintiffs recover against Counter-Claimant herein, by way of sums paid by settlement or by judgment rendered against Counter-Claimant based upon Plaintiffs' Complaint, then Counter-Claimant is entitled to an equitable indemnity apportionment of the liability and contribution among and from the Counter-Defendants, and each of them, according to their respective faults for the injuries and damages allegedly sustained by Plaintiffs, if any.

77. It has been necessary for Counter-Claimant to retain the services of legal counsel to defend Plaintiffs' action and to bring this action. Counter-Claimant is entitled to recover its attorneys' fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the contractual provisions of the Agreements.

COUNT V

(Negligence)

78. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1 through 77 of this Counterclaim as though fully set forth herein.

79. Counter-Defendants, and each of them, owed a contractual and/or legal duty to Counter-Claimant and others, including Plaintiffs, to exercise due and reasonable care in the use of the RZR.

80. Counter-Defendants failed to act reasonably and failed to exercise due and reasonable care in the use of the RZR.

81. Counter-Defendants failed to act reasonably and failed to exercise due and reasonable care by entrusting the RZR to an unauthorized and minor driver, F.B.

82. By failing to use due and reasonable care, Counter-Defendants breached their duty owed to Counter-Claimant and others, including Plaintiffs.

83. The acts and omissions of Counter-Defendants, and each of them, were the direct and proximate cause of any and all injuries and damages, if any, incurred by Plaintiffs and Counter-defendant.

84. Counter-Claimant is informed and believes and thereon allege that Plaintiffs' damages, if any, were proximately caused by Counter-Defendants, and each of them, and that Counter-Defendants are liable for the damages sound by Plaintiffs in the Complaint.

85. The breaches of the aforementioned duties by each Counter-defendant, as described in the preceding paragraphs, were and are the actual and proximate cause of damages to Counter-Claimant in excess of \$15,000.00.

86. It has been necessary for Counter-Claimant to retain the services of legal counsel to defend Plaintiffs' action and bring this action. Counter-Claimant is entitled to recover its attorneys' fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the contractual provisions of the Agreements.

COUNT VI

(Contribution)

87. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1 through 86 of this Counterclaim as though fully set forth herein.

88. Based upon the acts and/or omissions of Counter-Defendants, and each of them, if a judgment is rendered on behalf of Plaintiffs, Counter-Claimant is entitled to contribution from each of the Counter-Defendants in an amount proportionate to the amount of negligence and/or fault attributable to each of the Counter-Defendants.

89. It has been necessary for Counter-Claimant to retain the services of legal counsel to defend Plaintiffs' action and bring this action. Counter-Claimant is entitled to recover its attorneys' fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the contractual provisions of the Agreements.

COUNT VII

(Negligent Entrustment)

90. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1 through 89 of this Counterclaim as though fully set forth herein.

91. Counter-Defendants allowed F.B. to drive the RZR contrary to the Agreements and contrary to verbal instructions by Counter-Claimant employees.

92. Counter-Claimant is informed and believes and thereon alleges that the injuries, harm, and damages, if any, were incurred by Plaintiffs as a result of the use of the vehicle by F.B, in a negligent and reckless manner, which because of youth and inexperience, Counter-Defendants knew,

1 or had reason to know, was likely.

2 93. Allowing F.B. to drive the RZR involved an unreasonable risk of harm to others.

3 94. Counter-Defendants, as the renters and authorized drivers of the RZR, had the right,
4 power and duty to prohibit the use of the RZR by F.B.

5 95. Counter-Defendants knew, or had reason to know, that because of youth, inexperience,
6 the Driver/Rider Usage Rules, and the Agreements with Counter-Claimant, F.B. was likely to drive
7 the RZR in a negligent and reckless manner.

8 96. Plaintiffs' injury, damages and harm, if any, were a direct result of Counter-Defendants
9 negligently entrusting F.B., who operated the RZR in a negligent and reckless manner.

10 97. The breaches of the aforementioned duties by each Counter-Defendant, as described in
11 the preceding paragraphs, were and are the actual and proximate cause of damages to Counter-
12 Claimant in excess of \$15,000.00.

13 98. It has been necessary for Counter-Claimant to retain the services of legal counsel to
14 defend Plaintiffs' action and bring this action. Counter-Claimant is entitled to recover its attorneys'
15 fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the
16 contractual provisions of the Agreements.

17 **COUNT VIII**

18 **(Declaratory Relief)**

19 99. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
20 through 98 of this Counterclaim as though fully set forth herein.

21 100. At all times, Counter-Claimant has been in compliance with the terms of the
22 Agreements.

23 101. Counter-Defendants' actions constitute negligence, breach of contract, express
24 assumption of the risk, waiver, a duty to defend Counter-Claimant in any action brought arising out
25 of Counter-Defendants' use of the RZR and a duty to indemnify and hold harmless Counter-Claimant
26 for any liability arising out of Counter-Defendants' use of the RZR.

27 102. Counter-Claimant contends that it is entitled to indemnity and contribution from
28 Counter-Defendants based upon the legal theories set forth herein.

1 103. Counter-Claimant seeks a judicial determination of its rights under the Agreements and
2 a finding by this Court that Counter-Defendants are required to defend and indemnify Counter-
3 Claimant for any claims, suits, or liabilities arising out of Counter-Defendants use or misuse of the
4 RZR.

5 104. Counter-Claimant seeks a judicial determination that, pursuant to the terms of the
6 Agreements, Plaintiffs/Counter-Defendants, and each of them, have released and waived any and all
7 claims against Defendant/Counter-defendant arising out of or relating to Plaintiffs'/Counter-
8 Defendants' use of the RZR.

9 105. Counter-Claimant seeks a judicial determination that, pursuant to the terms of the
10 Agreements, Plaintiffs/Counter-Defendants expressly, voluntarily and contractually assumed the risk
11 of any and all injuries and damages arising out of their use of the RZR.

12 106. There exists a bona fide, actual, present and practical need for a legal determination by
13 this Court of the respective rights, duties and obligations of Counter-Claimant and Counter-Defendants
14 in connection with the matter herein alleged.

15 107. Counter-Claimant and Counter-Defendants have an actual, present controversy in the
16 subject matter described herein.

17 108. This issue is ripe for judicial determination because it presents an existing controversy
18 as to the parties' rights and obligations at issue herein.

19 109. Accordingly, Counter-Claimant is entitled to a declaratory judgment that (a)
20 Plaintiffs/Counter-Defendants have waived their ability to bring this action against Counter-Claimant;
21 (b) Plaintiffs/Counter-Defendants expressly and impliedly assumed the risks of injury and damage
22 arising out of their use of the RZR; (c) Plaintiffs/Counter-Defendants are in breach of the Rental
23 Agreement and the Release and Assumption of the Risk Agreement; and (d) Plaintiffs/Counter-
24 Defendants are required to defend and indemnify Counter-Claimant for any and all liabilities arising
25 out of Counter-Defendants' use of the RZR.

26 110. Counter-Claimant has been required to retain the services of an attorney to defend the
27 Complaint and to prosecute this action and is therefore entitled to recover its reasonable attorneys'
28 fees and costs as a result.

1 **WHEREFORE**, Counter-Claimant prays for judgment against Counter-Defendants, and each
2 of them, as follows:

- 3 1. For general and special damages in excess of \$15,000.00;
- 4 2. For indemnity, all damages and/or economic losses that Plaintiffs and/or any other
5 parties recover against Counter-Claimant by way of judgment, order, settlement, compromise or trial;
- 6 3. For reasonable attorneys' fees, costs, and expert costs and expenses pursuant to
7 statutory and contract law and the terms of the Agreements;
- 8 4. For pre-judgment interest;
- 9 5. For consequential damages in excess of \$15,000.00;
- 10 6. For incidental damages in excess of \$15,000.00;
- 11 7. For contribution pursuant to NRS 17.225;
- 12 8. For a declaration of the rights and obligations of the parties, including but not limited
13 to, a declaration that Counter-Defendants are required to defend and indemnify Counter-Claimant for
14 any claim, suit or liability arising out of Counter-Defendants' rental and use of the RZR;
- 15 9. For such other and further relief as the court may deem just, equitable and proper.

16 Dated: May 19, 2017

LITCHFIELD CAVO LLP

17 By: Griffith H. Hayes
18 GRIFFITH H. HAYES, ESQ.

Nevada Bar No. 7374

MELANIE BERNSTEIN CHAPMAN, ESQ.

Nevada Bar No. 6223

MARISA A. POCCI, ESQ.

Nevada Bar No. 10720

3753 Howard Hughes Parkway, Suite 200

Las Vegas, NV 89169

T: 702-949-9301

F: 702-879-9175

*Attorneys for Defendant/Counter-Claimant Sandbar
Powersports, LLC*

EXHIBIT A

SANDBAR

1600 Countryshire
Lake Havasu City, AZ 86403
928-864-4242



Renter's Name and Address	X Sherm Berger 8030 3rd Ave NE Owadonna MN 55000	Renter's Cell Phone	X 501 313 3034
Riding Area	Lake Havasu	2nd Cell No.	
	Vehicle Make & Model Rented/Leased		P22 900 4 Seater

Sandbar Powersports, LLC ("Company") agrees to rent the following vehicle, a new or recent model Polaris, including all parts and accessories thereto ("Vehicle") to Renter, upon the condition that Renter agrees to all terms and conditions set forth below, including the release of claims, and evidences Renter's agreement with his/her signature in the space provided. As used herein, the term "Renter" shall include the person listed above and signing this Agreement, as well as all other persons using the rented Vehicle as an operator or as a passenger.

The Vehicle shall be rented for the time period and rate specified as follows (TO BE COMPLETED BY STAFF):

License Plate: #	P22 4 Seater 900	Driver's License Number:	See Copy	State of Issue:	
Number of Passengers:	4	Age of Renter/Driver:	501	Vehicle Mileage Out:	
Time Out:		Time Due In (Scheduled / Actual):		Mileage In:	
Card #	See Copy	Exp	/	Rental Deposit: \$	1000
Insurance per day: \$ 15 X	= \$ 15.00	Day(s) Rented:		x Rental Rate: \$	
Rental Rate: \$ 380	+ Tax: \$ 29.44	Total Rental: \$	409.44	Late/Excessive Usage Fees: \$	

READ THE FOLLOWING SECTIONS FULLY AND CAREFULLY PRIOR TO SIGNING. THIS IS A LEGALLY VALID AND BINDING OBLIGATION TO RELEASE COMPANY FROM ALL KNOWN AND UNKNOWN RISKS, AND TO INDEMNIFY COMPANY AGAINST CLAIMS BROUGHT AGAINST IT BASED UPON YOUR USE OF THE VEHICLE. THIS INSTRUMENT AFFECTS IMPORTANT LEGAL RIGHTS.

TERMS AND CONDITIONS

- 1 **Release and Waiver of Claims; Indemnification.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Renter does hereby remise, release, and forever discharge Company, and its agents, servants, successors, heirs, executors, administrators, personal representatives and owners from which boat is leased, of and from all, and all manner of, actions, causes of action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and demands whatsoever in law or equity, which Renter ever had, now has, or which Renter's heirs, executors, administrators or personal representatives hereafter can, shall, or may have for or by reason of any matter, cause, or thing whatsoever arising out of this Agreement; out of the use, misuse, or abuse of the Vehicle, or in any way arising out of the rental relationship between Renter and Company. Renter agrees to hold harmless the Company and to defend and indemnify Company for, from any against all claims, losses, causes of action, and expenses, including legal expenses and reasonable attorneys' fees whether incurred by the Renter or by those making claim against the Renter, arising in any way out of the use, maintenance and operation of the leased Vehicle.
- 2 **Assumption of Risk.** Renter acknowledges that the activities for which the Vehicle is designed include inherent dangers, including the risk of bodily injury, dismemberment and/or death. Renter hereby assumes the risk of any harm, accident or damage which may be done to or suffered by the Renter, any person who operates, is a passenger in or uses the rented Vehicle or to the personal property of any of them arising out of the use of the Vehicle, including damage caused by any defects in the Vehicle or damage caused by negligence of the Company. Renter hereby forever releases and waives any and all claims which may arise against the Company and its agents for injuries or damage which may be sustained, arising in any way out of the operation or use of the leased Vehicle during the rental term. It is Renter's responsibility to remove all personal property from the Vehicle upon its return. Company shall not be responsible for any personal property of Renter or of others which may be lost or left on the Vehicle at the conclusion of the rental term.
- 3 **Insurance.** Renter certifies that Renter has adequate insurance to cover any injury or damage Renter may cause or suffer while participating, or else Renter agrees to bear the costs of such injury or damage.
- 4 **Vehicle Rented As Is.** Renter acknowledges that the Vehicle is rented AS IS. Company is not a manufacturer of this Vehicle and Company HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE LEASED VEHICLE, NOR OF ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. NO REFUNDS WILL BE GIVEN.
- 5 **Renter Obligations; Use Limitations.** Renter agrees to be responsible, financially and otherwise, for all Vehicles rented. The Vehicles may only be used on designated trails and legal riding areas. Renter further agrees not to sublease or rent or otherwise convey any interest in any of said Vehicle to others. Renter also agrees not to allow any persons to drive or operate the leased Vehicle who are approved by the company and or have not received the instructions for use of the rented Vehicle given by Company. All operators of the leased Vehicle must be at least 25 years of age for the Polaris Razor 800/900 and 30 + years of age for the Polaris Razor 1000 Xp with a valid driver's license and have signed the rental contract. I UNDERSTAND AND AGREE THAT IF I AM RENTING A VEHICLE I WILL NOT HAVE MORE THAN THREE PASSENGERS ON THE VEHICLE AT ANY GIVEN TIME. Renter's initials: *JB*
- 6 **Acceptable Use.** Renter acknowledges that he/she has been fully instructed and fully understands how to operate the Vehicle in a safe and proper manner. Renter shall at all times adhere to the precaution practices, rules and safety instructions specified by the Company. Renter agrees to observe and cause to be observed by all users of the Vehicle all proper safety precautions in the use and operation of the Vehicle, and agrees not to use or allow others to use the Vehicle in a manner other than as intended by the manufacturer. Renter shall be responsible at all times for the safety of any and all riders and passengers or any other individuals on or near the Vehicle and acknowledges that the Company will not be liable for any accidents caused by natural disasters or any accidents that are out of control of the Company.
- 7 **Prohibited Actions.** If Renter engages in one or more prohibited activities, he or she will be in violation of this Agreement, the vehicle will be repossessed at Renter's expense, without refund, and Renter will be charged a \$300 fine in addition to damages. Prohibited actions include:
 - A. The Utv/Atv is not licensed for or allowed to be driven down the Hwy 95.
 - B. Reckless driving such as jumping, driving too fast, rock crawling, sliding or spinning in circles/doing donuts in the vehicle.
 - C. Riders under the age of 18 riding without a helmet & eye protection;
 - D. Towing or allowing the Vehicle to be towed without verbal or written approval from Company;
 - E. Driving the Vehicle up or down any incline or decline of more than 15 degrees;
 - F. Allowing an unauthorized driver to drive the vehicle with approval from the Company.

Renter(s) have read and verified all information on this page: Renter 1: *JB* / Renter 2: *JB*

- G. Use of alcoholic beverages or drugs while riding in or operating the Vehicle;
- H. No use of the rented vehicle in or at a competition track, park or off road race.
- I. Working on or attempting to repair the Vehicle by Renter, any passenger or any other person without the prior approval of the Company;
- J. Failing to notify the Company of any accident involving the Vehicle or injury to any driver or passenger during the operation of the Vehicle.
8. **Damages:** All damages/repairs to any part of the vehicle are the renter(s) responsibility and shall be paid for prior to leaving at the end of the rental. Insurance does not cover flat tires, replacement of the tires, seats, wheels, body parts, steering parts, suspension parts, roof, mirrors or damages to the roll cage.
9. **Condition of Vehicle upon Return.** Renter must return the Vehicle to our rental office, on the date and time specified in this Agreement, and in the same condition that Renter received it, except for ordinary wear. Renter is responsible for all damage to, or loss or theft of, the Vehicle, including damage caused by weather, road conditions and acts of nature, whether or not Renter is at fault. It is Renter's responsibility to thoroughly inspect the Vehicle for any existing damage before the rental commences and to ensure any damage is documented on the Vehicle rental checkout inspection. Any damage not documented on the form will be Renter's responsibility. Renter is responsible for the cost of the repair or the actual cash retail value of the Vehicle on the date of the loss if the Vehicle is not repairable or if we elect not to repair the Vehicle. Loss of Use, Diminished Value, and any administrative expenses we incur processing the claim. Renter is also responsible for any loss rental income that was caused by his or her negligence. Renter must report all accidents or incidents of theft and vandalism to us and the police as soon as the Renter discovers them. Renter is responsible for paying to the appropriate 3rd party all applicable costs and fees, including, but not limited to tolls, parking, traffic and toll violations, toll evasion fines, citations, other fees, penalties, forfeitures, court costs, towing, and storage charges occurring during the Rental Period. If Renter fails to pay the charging entities and we pay all or part of the charges on Renter's behalf, Renter will reimburse us for all such costs and, in addition, pay us an administrative fee of \$100 for each such charge. Renter agrees that all charges, as outlined by the paragraph and throughout this Agreement, may be deducted from Renter's Security Deposit. To the extent that the Security Deposit does not cover all damage costs, Renter agrees to pay Company on the return of the Vehicle for any and all damage to the Vehicle exceeding the Security Deposit. In the event that the vehicle is totaled, the renter is responsible for the deductible on the insurance of \$2500.00. **NEITHER RENTER NOR ANY OTHER PERSON IS AUTHORIZED TO REPAIR OR WORK ON SAID VEHICLE WITHOUT WRITTEN OR VERBAL APPROVAL FROM COMPANY. I Accept Responsibility For Any And All Cost/Damage To The Vehicle.** Renter's Initials: X
10. **Cleaning Fee.** Vehicles returned with excessive dirt, mud or trash on or in the Vehicle rented, will be charged a \$75.00 cleaning fee.
11. **Late Return/Extra Usage: Fuel Costs.** If Renter returns the Vehicle after the scheduled "Time In" indicated above, the Renter will be charged a late fee of \$75 per half hour per Vehicle. Renter agrees to pay for all oil and gas consumed by the Vehicle for the use of the Vehicle by Renter. In the event Renter retains the Vehicle for an additional time period such retention shall be construed as a continuance of this lease, at the same rental rate described above, and under the same terms and conditions stated herein, until the Vehicle is returned to Company. Any sums owing by Renter for such extended rental shall be paid immediately upon return of the Vehicle, and may be withheld by Company from the Security Deposit or charged on Renter's credit/debit card or cash.
12. **Recovery/Rescue Costs.** Renter is responsible for any recovery costs, rescue costs or costs related to getting Vehicles unstuck, including, but not limited to, a \$75 per half hour labor charge, plus fuel and oil for ATVs used in the recovery.
13. **Rental Deposit; Charge Authorization.** I authorize the Company to charge my Credit or Debit Card ("Charge Card") for the rented Vehicle listed in this Agreement. If applicable, I also authorize the Company to charge my Charge Card for damages, cleaning and other fees in accordance with the provisions herein. In the event that my Charge Card will not cover all charges, I authorize the Company to bill me, and/or charge a secondary credit or debit card or make arrangements for payment to cover all charges within 30 days.
14. **Weather Conditions.** Company is not responsible for weather conditions, weather changes or unpredictable storms. Company does not refund rental amounts paid due to weather conditions.
15. **Fuel.** Renter is required to replace used fuel. If Renter does not replace fuel, Company will replace the Vehicle at \$5.50 per gallon and charge Renter's Charge Card on file for the replacement fuel cost. Renter Replaces Fuel X Standard Replaces Fuel _____
16. **Alterations/Changes to Agreement.** Renter shall not change or alter any portion or part of this Agreement. Any attempt by Renter to alter this Agreement shall be of no effect and Renter shall forfeit the rental deposit paid and all rental privileges.
17. **Refund/Cancellation of Rental Policy.** In the event of a mechanical failure through no fault of Renter, Company will issue a Rental Credit Voucher (if paid by credit card) or supply Renter with another Vehicle that is available. If Renter cancels any part of the rental, damages the rental beyond repair or an unforeseen incident weather has caused the rental to end early, there will be no credit or refund for time unused. Rental Credit Vouchers are valid for _____ months beyond issue date.
18. **Over Night Rentals.** Renter is fully responsible for the Vehicle. Vehicle is not allowed to be driven off road after sunset and before sunrise. After hour emergency calls will be billed at \$150 an hour.
19. **Notification of Problems.** In the event that there is a problem with the Vehicle, mechanical or otherwise, Renter must immediately notify Company of the problem. If Renter fails to notify Company, any and all issues with the Vehicle will be deemed the fault of the Renter.
20. **Miscellaneous.** This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representative, successors and assigns of the Renter. This Agreement and any disputes arising there under shall be governed by the laws of Arizona. In case of any failure to faithfully perform the terms and covenants set forth herein, the Renter party shall pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach, whether or not the rental period has earlier terminated or any lawsuit is filed or similar action taken to accomplish the result sought or obtained. No change or addition to this Agreement shall be effective or binding unless evidenced in writing signed by the Company and the party agreeing to perform there under. Renter agrees that if any portion of this agreement is found to be void or unenforceable, the remaining portions shall remain in full force and effect.
21. The parties acknowledge that Renter has deposited the Security Deposit listed in this Agreement by cash or a signed VISA, MASTERCARD or DISCOVER credit card. In the event of any damage to the Vehicle or to others or their property, Company shall charge the cost to repair such damage to the Renter's credit card and/or shall retain all or part of the security deposit to be applied toward any damage incurred. Renter authorizes payment to Company of the amount to be determined by Company upon return of the rented Vehicle, for any damages to or arising from use of the rented Vehicle.
22. Renter represents that he/she has carefully read and understands and agrees to each of the terms of this Agreement.

RENTER PLEASE NOTE: YOU ARE LIABLE AND RESPONSIBLE FOR ANY AND ALL TERMS AND CONDITIONS IN THIS CONTRACT EVEN IF YOU DON'T TAKE THE TIME TO READ IT.

RENTER'S Initials, Print & Signature indicates agreement to all terms & conditions set forth in this contract. Renter has read, understands all of the terms, conditions and rules set forth above, and agrees to all terms without reservation.

Renter affirms that Renter is not impaired or under the influence of any drugs, medications, or alcohol of any kind, that would keep Renter from understanding or mislead Renter's judgment with regard to signing this contract/rental agreement.

Renter: Print name: X Sign: X Date: 10/18/16
Renter(s) have read and verified all information on this page: Renter X / Renter 2 X

EXHIBIT B

PARTICIPANT AGREEMENT, RELEASE AND ASSUMPTION OF RISK***All participants, including drivers AND passengers, must sign this Agreement.***

In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the undersigned (hereinafter, "I" or "participant") hereby agree to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. **Assumption of Risk.** I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY, OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY. I ALSO UNDERSTAND THAT MY RISK OF INJURY MAY BE INCREASED DUE TO MY OWN PHYSICAL CONDITION, AND THE PHYSICAL EXERTION ASSOCIATED WITH THIS ACTIVITY. I ACKNOWLEDGE THAT ACCIDENTS OR ILLNESS CAN OCCUR IN REMOTE PLACES WITHOUT MEDICAL FACILITIES OR THE AVAILABILITY OF IMMEDIATE MEDICAL ATTENTION IN THE EVENT OF AN INJURY. I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS. **THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:**

slips and falls, riding on uneven and/or snow covered terrain, changing weather conditions and variations in elevation; injury resulting from improper lifting or carrying; injury resulting from being jolted, jarred, bounced, thrown about and otherwise shaken during rides; injury resulting from contact with other passengers or equipment; injury resulting from items or conditions on the trail such as holes, bumps, ruts, obstacles, tree limbs and branches or rocks; injury resulting from loss of control of the vehicle, falls from the vehicle, collision with other vehicles, participants, trees, rocks, and other manmade or natural obstacles; injury resulting from exposure to temperature and weather extremes which could cause hypothermia, hyperthermia (heat related illness), heat exhaustion, sunburn, dehydration; and exposure to potentially dangerous wild animals, insect bites, and hazardous plant life, equipment failure, burns, mechanical and/or equipment problems.

I understand that Company employees have difficult jobs to perform. They seek to provide for the safety of all participants, but their ability to do so is limited by not only the inherent risks and uncertainties related to the use of the Vehicle or the Vehicle itself, weather and conditions, but also by the extent to which participants follow instructions and rules, whether written or orally expressed by Company employees. I agree to follow ALL instructions and rules set forth by the Company and its employees, including, but not limited to those set forth on Exhibit A hereto.

2. **Waiver of Claims; Indemnification.** I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of Company's Vehicles, equipment or facilities, including any such claims which allege negligent acts or omissions of Company.

3. **Insurance.** I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

4. **Pregnant Participants.** Female drivers/passengers who are, or believe or suspect that they are pregnant, MUST have a doctor's release to participate in said activity prior to riding/driving a rented Vehicle.

5. **Miscellaneous.** This Agreement shall be governed by and construed under the laws of the State of Arizona, without regard to its conflict of laws principles. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of the participant. I hereby waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. I agree that if any portion of this agreement is found to be void or unenforceable, the remaining document shall remain in full force and effect. I agree to pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against the Company on the basis of any claim from which I have released them herein.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

☒ By checking this Box I am declining to wear a helmet.

☒ By checking this box I will use a helmet that is being provided by "Company".

☐ By checking this Box I will be providing my own personal helmet that is Snell and Dot approved.

Signature of Participant

Print Name

Address

Phone

Date

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION

(Must be completed for participants under the age of 18)

In consideration of

(print minor's name)

("Minor") being permitted by Company to participate in its equipment and facilities, I further agree to indemnify and hold harmless Company from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent or Guardian

Print Name

Date

PARTICIPANT AGREEMENT, RELEASE AND ASSUMPTION OF RISK***All participants, including drivers AND passengers, must sign this Agreement.***

In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the undersigned (hereinafter, "I" or "participant") hereby agree to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. **Assumption of Risk.** I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY, OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY. I ALSO UNDERSTAND THAT MY RISK OF INJURY MAY BE INCREASED DUE TO MY OWN PHYSICAL CONDITION, AND THE PHYSICAL EXERTION ASSOCIATED WITH THIS ACTIVITY. I ACKNOWLEDGE THAT ACCIDENTS OR ILLNESS CAN OCCUR IN REMOTE PLACES WITHOUT MEDICAL FACILITIES OR THE AVAILABILITY OF IMMEDIATE MEDICAL ATTENTION IN THE EVENT OF AN INJURY. I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS. **THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:**

slips and falls, riding on uneven and/or snow covered terrain, changing weather conditions and variations in elevation; injury resulting from improper lifting or carrying; injury resulting from being jolted, jarred, bounced, thrown about and otherwise shaken during rides; injury resulting from contact with other passengers or equipment; injury resulting from items or conditions on the trail such as holes, bumps, ruts, obstacles, tree limbs and branches or rocks; injury resulting from loss of control of the vehicle, falls from the vehicle, collision with other vehicles, participants, trees, rocks, and other manmade or natural obstacles; injury resulting from exposure to temperature and weather extremes which could cause hypothermia, hyperthermia (heat related illness), heat exhaustion, sunburn, dehydration; and exposure to potentially dangerous wild animals, insect bites, and hazardous plant life, equipment failure, burns, mechanical and/or equipment problems.

I understand that Company employees have difficult jobs to perform. They seek to provide for the safety of all participants, but their ability to do so is limited by not only the inherent risks and uncertainties related to the use of the Vehicle or the Vehicle itself, weather and conditions, but also by the extent to which participants follow instructions and rules, whether written or orally expressed by Company employees. I agree to follow ALL instructions and rules set forth by the Company and its employees, including, but not limited to those set forth on Exhibit A hereto.

2. **Waiver of Claims; Indemnification.** I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of Company's Vehicles, equipment or facilities, including any such claims which allege negligent acts or omissions of Company.

3. **Insurance.** I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

4. **Pregnant Participants.** Female drivers/passengers who are, or believe or suspect that they are pregnant, MUST have a doctor's release to participate in said activity prior to riding/driving a rented Vehicle.

5. **Miscellaneous.** This Agreement shall be governed by and construed under the laws of the State of Arizona, without regard to its conflict of laws principles. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of the participant. I hereby waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. I agree that if any portion of this agreement is found to be void or unenforceable, the remaining document shall remain in full force and effect. I agree to pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against the Company on the basis of any claim from which I have released them herein.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

☒ By checking this Box I am declining to wear a helmet.

☐ By checking this box I will use a helmet that is being provided by "Company".

☐ By checking this box I will be providing my own personal helmet that is Snell and Dot approved.

Signature of Participant [Signature] Print Name Sherrin Bonger

Address 3030 3rd Ave NE Owatonna MN 55060

Phone 507 573 3034 Date 10/18/16

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION**(Must be completed for participants under the age of 18)**

In consideration of _____ (print minor's name)

("Minor") being permitted by Company to participate in its equipment and facilities, I further agree to indemnify and hold harmless Company from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent or Guardian: _____ Print Name: _____

Date: _____

PARTICIPANT AGREEMENT, RELEASE AND ASSUMPTION OF RISK

All participants, including drivers AND passengers, must sign this Agreement.

In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the undersigned (hereinafter, "I" or "participant") hereby agree to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. **Assumption of Risk.** I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY, OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY. I ALSO UNDERSTAND THAT MY RISK OF INJURY MAY BE INCREASED DUE TO MY OWN PHYSICAL CONDITION, AND THE PHYSICAL EXERTION ASSOCIATED WITH THIS ACTIVITY. I ACKNOWLEDGE THAT ACCIDENTS OR ILLNESS CAN OCCUR IN REMOTE PLACES WITHOUT MEDICAL FACILITIES OR THE AVAILABILITY OF IMMEDIATE MEDICAL ATTENTION IN THE EVENT OF AN INJURY. I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS. **THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:**

slips and falls, riding on uneven and/or snow covered terrain, changing weather conditions and variations in elevation; injury resulting from improper lifting or carrying; injury resulting from being jolted, jarred, bounced, thrown about and otherwise shaken during rides; injury resulting from contact with other passengers or equipment; injury resulting from items or conditions on the trail such as holes, bumps, ruts, obstacles, tree limbs and branches or rocks; injury resulting from loss of control of the vehicle, falls from the vehicle, collision with other vehicles, participants, trees, rocks, and other manmade or natural obstacles; injury resulting from exposure to temperature and weather extremes which could cause hypothermia, hyperthermia (heat related illness), heat exhaustion, sunburn, dehydration; and exposure to potentially dangerous wild animals, insect bites, and hazardous plant life, equipment failure, burns, mechanical and/or equipment problems.

I understand that Company employees have difficult jobs to perform. They seek to provide for the safety of all participants, but their ability to do so is limited by not only the inherent risks and uncertainties related to the use of the Vehicle or the Vehicle itself, weather and conditions, but also by the extent to which participants follow instructions and rules, whether written or orally expressed by Company employees. I agree to follow ALL instructions and rules set forth by the Company and its employees, including, but not limited to those set forth on Exhibit A hereto.

2. **Waiver of Claims; Indemnification.** I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of Company's Vehicles, equipment or facilities, including any such claims which allege negligent acts or omissions of Company.

3. **Insurance.** I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

4. **Pregnant Participants.** Female drivers/passengers who are, or believe or suspect that they are pregnant, MUST have a doctor's release to participate in said activity prior to riding/driving a rented Vehicle.

5. **Miscellaneous.** This Agreement shall be governed by and construed under the laws of the State of Arizona, without regard to its conflict of laws principles. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of the participant. I hereby waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. I agree that if any portion of this agreement is found to be void or unenforceable, the remaining document shall remain in full force and effect. I agree to pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against the Company on the basis of any claim from which I have released them herein.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

☒ By checking this Box I am declining to wear a helmet.

☐ By checking this box I will use a helmet that is being provided by "Company".

☐ By checking this Box I will be providing my own personal helmet that is Snell and Dot approved.

Signature of Participant [Signature] Print Name Jade Berger

Address 3030 3rd Ave NE Olatona, MN 55060

Phone (607) 575-1217 Date 10/18/16

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION

(Must be completed for participants under the age of 18)

In consideration of _____ (print minor's name)

("Minor") being permitted by Company to participate in its equipment and facilities, I further agree to indemnify and hold harmless Company from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent or Guardian: _____ Print Name: _____

Date: _____

EXHIBIT A**Driver/Rider Usage Rules:**

1. I/We will not drink and drive or allow a driver to drink.
2. I/We will only allow the authorized drivers on the Rental Agreement to drive the rental Vehicle.
3. I/We will not over load any part of the rental Vehicle (i.e.: more people on the vehicle than the number of seats on the vehicle), carrying excessive equipment or towing of equipment.
4. I/We will not ride on private property or areas stating that no driving or off road vehicles are allowed.
5. I/We will follow and obey all traffic laws and rules when driving on all paved roads and off roads that are located on BLM land.
6. I/We will not drive the rental Vehicle up or down or drive along the side of a hill that has more than a 15% incline or decline.
7. I/We will not drive the rental Vehicle in a reckless manner, such as (excessive speeding on trails, roads, or sliding the Vehicle sideways or doing donuts or burn outs, or racing or driving the rental Vehicle in an unauthorized area.
8. I/We will only drive the rental Vehicle on designated trails, or previously ridden trails or roads, but not to exceed my driving ability. I/We will not make our own trail. You are required to stay on existing trails only.
9. I/We by Arizona Law are required to have all passengers under the Age of 18 wear a helmet.
10. I/We will not ride in any Sand Dune areas. I will only ride in areas the is approved by the rental company.
11. I/We will not jump the rental Vehicle.
12. I/We will not roll or tip the rental Vehicle over.
13. I/We will make sure that all riders/passengers have their seat belts buckled at all times prior to driving the rental Vehicle.
14. I/We will make sure that all riders/passengers wear eye protection at all times prior to driving the rental Vehicle.
15. As the driver of the rental Vehicle I am responsible for everything and anything that happens with respect to the rental Vehicle and its use, and with respect to any passengers.
16. I/We will return the rental vehicle(s) full of fuel or be subject to refueling cost.
17. No Refunds are allowed. Credits only. If negligence or driver is found to be careless no credit will be allowed.
18. Driver Age Limits:
 - A) Polaris RZR 800 - Minimum age is 25 +
 - B) Polaris RZR 900 - Minimum age is 25 +
 - C) Polaris RZR 1000 - Minimum age is 30+ with experience Only and is approved by the rental company.
19. Excessive Usage to the rental Vehicle may, can or will include any of the following.
 - A) Tire/Wheels/Shocks repair or replacement - examples are dented bent, flat or punctured tires, chunked, hub broken, axles, drive shafts, a-arms, tie-rods etc. - Cost start at \$95
 - B) Engine damage or loss, examples - such as knocking, overheating, won't start, has trouble running, Vehicle will not go in forward or reverse or neutral, valve or head issues, transmission or drive gears etc. Parts + Labor Start @(\$95hr)
 - C) Exterior marks or fender, roll bar damage of any kind, such as scratches, chips, holes, chunks, missing or dented areas and or parts. Repairs Parts Replacement Value
 - D) Interior damage such as cigarette burns, stains of any kind, tears and any broken equipment. Burns \$100 per hole, Fabric or any repairs will be a repair or replacement cost.
 - E) Loss of equipment such as anything that is sent out with the rental Vehicle safety equipment, ropes of any kind, fire extinguisher, flags, air horns, ignition or lock key(s) - Cost of replacement at current value.
 - F) Complete loss of rented equipment such as crashed, stolen, abandonment or non-return at return time: Cost of current replacement value. Abandonment will result in loss of deposit plus damages, non-return will be late charges and without notification within 2 hours will be reported stolen.
 - G) Any additional rented or loaned equipment, such as ropes, ice chest, goggles, and helmets - Replacement cost.
 - H) Recovery Cost \$75 per hour + .99cents per mile + any additional equipment need to recover the rental Vehicle + damages.
 - I) In the event that the machine is tip or rolled over, renter will automatically be charged full replacement cost of the roll cage and any additional damage + labor.

If any of these Driver Usage Rules are violated, the renter of the Vehicle will lose his or her rental deposit and will be responsible for any and all damages arising from such violation, and any participant acting in violation of these Driver Usage Rules will be responsible for any and all damages arising from such violation.

By signing below, participant certifies that participant understands and agrees to all of the terms, rules and conditions set forth in this Agreement without reservation. participant affirms that participant is not intoxicated or under the influence of any drugs or alcohol at the time of signing.

1600 Countryshire
Lake Havasu City, AZ 86403
928-854-4242



- G. Use of alcoholic beverages or drugs while riding in or operating the Vehicle;
- H. No use of the rented vehicle in or at a competition track, park or off road race.
- I. Working on or attempting to repair the Vehicle by Renter, any passenger or any other person without the prior approval of the Company;
- J. Failing to notify the Company of any accident involving the Vehicle or injury to any driver or passenger during the operation of the Vehicle.
8. Damages: All damages/repairs to any part of the vehicle are the renter(s) responsibility and shall be paid for prior to leaving at the end of the rental. Insurance does not cover flat tires, replacement of the tires, seats, wheels, body parts, steering parts, suspension parts, roof, mirrors or damages to the roll cage.
9. Condition of Vehicle upon Return. Renter must return the Vehicle to our rental office, on the date and time specified in this Agreement, and in the same condition that Renter received it, except for ordinary wear. Renter is responsible for all damage to, or loss or theft of, the Vehicle, including damage caused by weather, road conditions and acts of nature, whether or not **Appendix 059** Renter's responsibility to thoroughly inspect the Vehicle for any existing damage before the rental commences and to ensure any

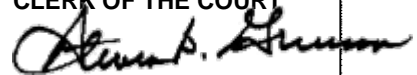
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on this 19th day of May, 2017, that I caused to be served a true
3 and accurate copy of the foregoing **ANSWER OF SANDBAR POWERSPORTS, LLC TO**
4 **COMPLAINT AND COUNTERCLAIM** by sending a copy of the same via Odyssey eFile NV, the
5 Court's electronic service program to the following:
6

7

Counsel of Record	Phone/Fax Nos.	Party
8 Chad A. Bowers, Esq. 9 CHAD A, BOWERS, LTD. 3202 West Charleston Blvd. 10 Las Vegas, NV 89102	T: 702-457-1001 F: 702-457-8006 E:	Plaintiffs

11 
12 An employee of MITCHELL CAVO LLP
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



KYLE W. FARRAR, ESQ.
KASTER, LYNCH, FARRAR & BALL, L.L.P.
1010 LAMAR, SUITE 1600
HOUSTON, TX 77002
TEL: (713) 221-8300
FAX: (713) 221-8301
ADMITTED PRO HAC VICE
EMAIL: kyle@fbtrial.com

Attorneys for Plaintiffs

**IN THE JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK**

SANBAR POWERSPORTS LLC

Counter-Claimant,

v.

JOHN BORGER and SHERRI BORGER

Counter-Defendants.

Case No.: A-17-751896-C

Dept.: XXV

**COUNTER-DEFENDANT'S ANSWER
TO CLAIMANT'S COUNTERCLAIM**

Come now the Counter-Defendants, John Borger and Sherri Borger, by and through counsel, and hereby file this Answer to Counter-Claimant, Sandbar Powersports, LLC's Counterclaim.

GENERAL ALLEGATIONS

1. Answering Paragraph 1 of Counter-Claimant's Complaint, COUNTER-DEFENDANT admits the allegation set forth.
2. Answering Paragraph 2 of Counter-Claimant's Complaint, COUNTER-DEFENDANT admits the allegation set forth.
3. Answering Paragraph 3 of Counter-Claimant's Complaint, COUNTER-DEFENDANT admits the allegation set forth.
4. Answering Paragraph 4 of Counter-Claimant's Complaint, COUNTER-DEFENDANT admits the allegation set forth.

1 5. Answering Paragraph 5 of Counter-Claimant's Complaint, COUNTER-
2 DEFENDANT admits the allegation set forth.

3 6. Answering Paragraph 6 of Counter-Claimant's Complaint, COUNTER-
4 DEFENDANT admits the allegation set forth.

5 7. Answering Paragraph 7 of Counter Claimant's Complaint, COUNTER-
6 DEFENDANT denies each and every allegation contained therein.

7 8. Answering Paragraph 8 of Counter Claimant's Complaint, COUNTER-
8 DEFENDANT denies each and every allegation contained therein.

9 9. Answering Paragraph 9 of Counter Claimant's Complaint, COUNTER-
10 DEFENDANT denies each and every allegation contained therein.

11 10. Answering Paragraph 10 of Counter Claimant's Complaint, COUNTER-
12 DEFENDANT denies each and every allegation contained therein.

13 11. Answering Paragraph 11 of Counter Claimant's Complaint, COUNTER-
14 DEFENDANT denies each and every allegation contained therein.

15 12. Answering Paragraph 12 of Counter Claimant's Complaint, COUNTER-
16 DEFENDANT denies each and every allegation contained therein.

17 13. Answering Paragraph 13 of Counter Claimant's Complaint, COUNTER-
18 DEFENDANT denies each and every allegation contained therein.

19 14. Answering Paragraph 14 of Counter-Claimant's Complaint, COUNTER-
20 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
21 these allegations, and therefore generally and specifically denies the same.

15. Answering Paragraph 15 of Counter-Claimant's Complaint, COUNTER-DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore generally and specifically denies the same.

16. Answering Paragraph 16 of Counter-Claimant's Complaint, COUNTER-DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore generally and specifically denies the same.

17. Answering Paragraph 17 of Counter Claimant's Complaint, COUNTER-DEFENDANT denies each and every allegation contained therein.

18. Answering Paragraph 18 of Counter Claimant's Complaint, COUNTER-DEFENDANT denies each and every allegation contained therein.

19. Answering Paragraph 19 of Counter-Claimant's Complaint, COUNTER-DEFENDANT admits the allegation set forth.

20. Answering Paragraph 20 of Counter Claimant's Complaint, COUNTER-DEFENDANT denies each and every allegation contained therein.

21. Answering Paragraph 21 of Counter Claimant's Complaint, COUNTER-DEFENDANT denies each and every allegation contained therein.

22. Answering Paragraph 22 of Counter Claimant's Complaint, COUNTER-DEFENDANT denies each and every allegation contained therein.

23. Answering Paragraph 23 of Counter-Claimant's Complaint, COUNTER-DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore generally and specifically denies the same.

1 24. Answering Paragraph 24 of Counter-Claimant's Complaint, COUNTER-
2 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
3 these allegations, and therefore generally and specifically denies the same.
4

5 25. Answering Paragraph 25 of Counter-Claimant's Complaint, COUNTER-
6 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
7 these allegations, and therefore generally and specifically denies the same.
8

9 26. Answering Paragraph 26 of Counter Claimant's Complaint, COUNTER-
10 DEFENDANT denies each and every allegation contained therein.
11

12 27. Answering Paragraph 27 of Counter-Claimant's Complaint, COUNTER-
13 DEFENDANT admits the allegation set forth.
14

15 28. Answering Paragraph 28 of Counter-Claimant's Complaint, COUNTER-
16 DEFENDANT admits the allegation set forth.
17

18 29. Answering Paragraph 29 of Counter-Claimant's Complaint, COUNTER-
19 DEFENDANT admits the allegation set forth.
20

21 30. Answering Paragraph 30 of Counter-Claimant's Complaint, COUNTER-
22 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
23 these allegations, and therefore generally and specifically denies the same.
24

25 31. Answering Paragraph 31 of Counter-Claimant's Complaint, COUNTER-
26 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
27 these allegations, and therefore generally and specifically denies the same.
28

 32. Answering Paragraph 32 of Counter Claimant's Complaint, COUNTER-
DEFENDANT denies each and every allegation contained therein.

1 33. Answering Paragraph 33 of Counter Claimant's Complaint, COUNTER-
2 DEFENDANT denies each and every allegation contained therein.

3 34. Answering Paragraph 34 of Counter Claimant's Complaint, COUNTER-
4 DEFENDANT denies each and every allegation contained therein.

5 35. Answering Paragraph 35 of Counter-Claimant's Complaint, COUNTER-
6 DEFENDANT admits the allegation set forth.

7 36. Answering Paragraph 36 of Counter-Claimant's Complaint, COUNTER-
8 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
9 these allegations, and therefore generally and specifically denies the same.

10 37. Answering Paragraph 37 of Counter Claimant's Complaint, COUNTER-
11 DEFENDANT denies each and every allegation contained therein.

12 38. Answering Paragraph 38 of Counter Claimant's Complaint, COUNTER-
13 DEFENDANT denies each and every allegation contained therein.

14 39. Answering Paragraph 39 of Counter Claimant's Complaint, COUNTER-
15 DEFENDANT denies each and every allegation contained therein.

16 40. Answering Paragraph 40 of Counter Claimant's Complaint, COUNTER-
17 DEFENDANT denies each and every allegation contained therein.

18 41. Answering Paragraph 41 of Counter Claimant's Complaint, COUNTER-
19 DEFENDANT denies each and every allegation contained therein.

20 42. Answering Paragraph 42 of Counter Claimant's Complaint, COUNTER-
21 DEFENDANT denies each and every allegation contained therein.

22 43. Answering Paragraph 43 of Counter-Claimant's Complaint, COUNTER-
23 DEFENDANT admits the allegation set forth.

1 44. Answering Paragraph 44 of Counter-Claimant's Complaint, COUNTER-
2 DEFENDANT admits the allegation set forth.

3 45. Answering Paragraph 45 of Counter Claimant's Complaint, COUNTER-
4 DEFENDANT denies each and every allegation contained therein.

5 46. Answering Paragraph 46 of Counter-Claimant's Complaint, COUNTER-
6 DEFENDANT admits the allegation set forth.

7 47. Answering Paragraph 47 of Counter-Claimant's Complaint, COUNTER-
8 DEFENDANT admits the allegation set forth.

9 48. Answering Paragraph 48 of Counter-Claimant's Complaint, COUNTER-
10 DEFENDANT admits the allegation set forth.

11 49. Answering Paragraph 49 of Counter-Claimant's Complaint, COUNTER-
12 DEFENDANT admits the allegation set forth.

13 50. Answering Paragraph 50 of Counter-Claimant's Complaint, COUNTER-
14 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
15 these allegations, and therefore generally and specifically denies the same.

16 51. Answering Paragraph 51 of Counter Claimant's Complaint, COUNTER-
17 DEFENDANT denies each and every allegation contained therein.

18 52. Answering Paragraph 52 of Counter-Claimant's Complaint, COUNTER-
19 DEFENDANT admits the allegation set forth.

20 53. Answering Paragraph 53 of Counter-Claimant's Complaint, COUNTER-
21 DEFENDANT admits the allegation set forth.

1 54. Answering Paragraph 54 of Counter-Claimant's Complaint, COUNTER-
2 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
3 these allegations, and therefore generally and specifically denies the same.
4

5 **COUNT 1**
6 **(Express/Contractual Indemnity)**

7 55. See Answers 1 -54.

8 56. Answering Paragraph 56 of Counter-Claimant's Complaint, COUNTER-
9 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
10 these allegations, and therefore generally and specifically denies the same.

11 57. Answering Paragraph 57 of Counter-Claimant's Complaint, COUNTER-
12 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
13 these allegations, and therefore generally and specifically denies the same.

14 58. Answering Paragraph 58 of Counter-Claimant's Complaint, COUNTER-
15 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
16 these allegations, and therefore generally and specifically denies the same.

17 59. Answering Paragraph 59 of Counter-Claimant's Complaint, COUNTER-
18 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
19 these allegations, and therefore generally and specifically denies the same.

20 60. Answering Paragraph 60 of Counter-Claimant's Complaint, COUNTER-
21 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
22 these allegations, and therefore generally and specifically denies the same.
23
24

1 61. Answering Paragraph 61 of Counter-Claimant's Complaint, COUNTER-
2
3 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
4 these allegations, and therefore generally and specifically denies the same.

5 **COUNT II**
6 **(Implied Indemnity)**

7 62. See Answers 1 – 61.

8 63. Answering Paragraph 63 of Counter-Claimant's Complaint, COUNTER-
9 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
10 these allegations, and therefore generally and specifically denies the same.

11 64. Answering Paragraph 64 of Counter-Claimant's Complaint, COUNTER-
12 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
13 these allegations, and therefore generally and specifically denies the same.

14 65. Answering Paragraph 65 of Counter-Claimant's Complaint, COUNTER-
15 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
16 these allegations, and therefore generally and specifically denies the same.

17 **COUNT III**
18 **(Breach of Contract)**

19 66. See Answers 1-65

20 67. Answering Paragraph 67 of Counter-Claimant's Complaint, COUNTER-
21 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
22 these allegations, and therefore generally and specifically denies the same.

23 68. Answering Paragraph 68 of Counter-Claimant's Complaint, COUNTER-
24 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
25 these allegations, and therefore generally and specifically denies the same.
26
27
28

1 76. Answering Paragraph 76 of Counter-Claimant's Complaint, COUNTER-
2 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
3 these allegations, and therefore generally and specifically denies the same.
4

5 77. Answering Paragraph 77 of Counter-Claimant's Complaint, COUNTER-
6 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
7 these allegations, and therefore generally and specifically denies the same.
8

9 **COUNT V**
10 **(Negligence)**

11 78. See Answers 1 – 77.

12 79. Answering Paragraph 79 of Counter Claimant's Complaint, COUNTER-
13 DEFENDANT denies each and every allegation contained therein.

14 80. Answering Paragraph 80 of Counter-Claimant's Complaint, COUNTER-
15 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
16 these allegations, and therefore generally and specifically denies the same.

17 81. Answering Paragraph 81 of Counter-Claimant's Complaint, COUNTER-
18 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
19 these allegations, and therefore generally and specifically denies the same.

20 82. Answering Paragraph 82 of Counter-Claimant's Complaint, COUNTER-
21 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
22 these allegations, and therefore generally and specifically denies the same.

23 83. Answering Paragraph 83 of Counter-Claimant's Complaint, COUNTER-
24 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
25 these allegations, and therefore generally and specifically denies the same.
26

1 84. Answering Paragraph 84 of Counter-Claimant's Complaint, COUNTER-
2 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
3 these allegations, and therefore generally and specifically denies the same.
4

5 85. Answering Paragraph 85 of Counter-Claimant's Complaint, COUNTER-
6 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
7 these allegations, and therefore generally and specifically denies the same.
8

9 86. Answering Paragraph 86 of Counter-Claimant's Complaint, COUNTER-
10 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
11 these allegations, and therefore generally and specifically denies the same.
12

13 **COUNT VI**
14 **(Contribution)**

15 87. See Answers 1 – 86.

16 88. Answering Paragraph 88 of Counter Claimant's Complaint, COUNTER-
17 DEFENDANT denies each and every allegation contained therein.

18 89. Answering Paragraph 89 of Counter Claimant's Complaint, COUNTER-
19 DEFENDANT denies each and every allegation contained therein.

20 **COUNT VII**
21 **(Negligent Entrustment)**

22 90. See Answers 1 – 89.

23 91. Answering Paragraph 91 of Counter-Claimant's Complaint, COUNTER-
24 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
25 these allegations, and therefore generally and specifically denies the same.
26

1 92. Answering Paragraph 92 of Counter-Claimant's Complaint, COUNTER-
2 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
3 these allegations, and therefore generally and specifically denies the same.
4

5 93. Answering Paragraph 93 of Counter-Claimant's Complaint, COUNTER-
6 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
7 these allegations, and therefore generally and specifically denies the same.
8

9 94. Answering Paragraph 94 of Counter-Claimant's Complaint, COUNTER-
10 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
11 these allegations, and therefore generally and specifically denies the same.
12

13 95. Answering Paragraph 95 of Counter-Claimant's Complaint, COUNTER-
14 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
15 these allegations, and therefore generally and specifically denies the same.
16

17 96. Answering Paragraph 96 of Counter-Claimant's Complaint, COUNTER-
18 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
19 these allegations, and therefore generally and specifically denies the same.
20

21 97. Answering Paragraph 97 of Counter-Claimant's Complaint, COUNTER-
22 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
23 these allegations, and therefore generally and specifically denies the same.
24

25 98. Answering Paragraph 98 of Counter-Claimant's Complaint, COUNTER-
26 DEFENDANT is without knowledge or information sufficient to form a belief as to the truth of
27 these allegations, and therefore generally and specifically denies the same.
28

COUNT VIII
(Declaratory Relief)

99. See Answers 1 – 98.

100. Answering Paragraph 100, Cross-Claimant's complaint, CROSS-Defendant states that this paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the extent a response is required; CROSS-Defendant generally and specifically denies all of the allegations contained therein.

101. Answering Paragraph 101, Cross-Claimant's complaint, CROSS-Defendant states that this paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the extent a response is required; CROSS-Defendant generally and specifically denies all of the allegations contained therein.

102. Answering Paragraph 102, Cross-Claimant's complaint, CROSS-Defendant states that this paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the extent a response is required; CROSS-Defendant generally and specifically denies all of the allegations contained therein.

103. Answering Paragraph 103, Cross-Claimant's complaint, CROSS-Defendant states that this paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the extent a response is required; CROSS-Defendant generally and specifically denies all of the allegations contained therein.

104. Answering Paragraph 104, Cross-Claimant's complaint, CROSS-Defendant states that this paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the extent a response is required; CROSS-Defendant generally and specifically denies all of the allegations contained therein.

105. Answering Paragraph 105, Cross-Claimant's complaint, CROSS-Defendant states that this paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the extent a response is required; CROSS-Defendant generally and specifically denies all of the allegations contained therein.

106. Answering Paragraph 106, Cross-Claimant's complaint, CROSS-Defendant states that this paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the extent a response is required; CROSS-Defendant generally and specifically denies all of the allegations contained therein.

107. Answering Paragraph 107, Cross-Claimant's complaint, CROSS-Defendant states that this paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the extent a response is required; CROSS-Defendant generally and specifically denies all of the allegations contained therein.

108. Answering Paragraph 108, Cross-Claimant's complaint, CROSS-Defendant states that this paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the extent a response is required; CROSS-Defendant generally and specifically denies all of the allegations contained therein.

109. Answering Paragraph 109, Cross-Claimant's complaint, CROSS-Defendant states that this paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the extent a response is required; CROSS-Defendant generally and specifically denies all of the allegations contained therein.

110. Answering Paragraph 110, Cross-Claimant's complaint, CROSS-Defendant states that this paragraph contains a legal conclusion/statement and therefore no response is

1 required thereto. To the extent a response is required; CROSS-Defendant generally and
2 specifically denies all of the allegations contained therein.
3

4 DATED this 7th day of July, 2017.
5

6 **KASTER LYNCH FARRAR & BALL, LLP**

7 
8

9 By _____
10 Kyle W. Farrar, Esq.(Pro Hac Vice)
11 1010 Lamar, Suite 1600
Houston, Texas 77002

12 and

13 Chad A. Bowers, Esquire
14 Nevada Bar No. 007283
CHAD A. BOWERS, LTD.
15 3202 West Charleston Blvd.
Las Vegas, NV 89102

16 *Attorneys for Plaintiffs/Counter-Defendants*
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2017, that I caused to be served a true and accurate copy of the foregoing **ANSWER TO CLAIMANT'S COUNTERCLAIM** by sending a copy of the same via Odyssey eFile NV, the Court's electronic service program to the following:

Griffith Hayes, Esquire
Melanie Bernstein Chapman, Esquire
Marisa A. Pucci, Esquire
LITCHFIELD CAVO LLP
3753 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
702.949.9301
702.879.9175 – Facsimile

Attorneys for Defendant/Counter-Claimant Sandbar Powersports, LLC

KASTER LYNCH FARRAR & BALL, LLP

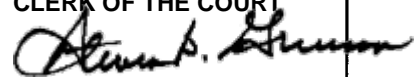


By _____
Kyle W. Farrar, Esq.(Pro Hac Vice)
1010 Lamar, Suite 1600
Houston, Texas 77002

and

Chad A. Bowers, Esquire
Nevada Bar No. 007283
CHAD A. BOWERS, LTD.
3202 West Charleston Blvd.
Las Vegas, NV 89102

Attorneys for Plaintiffs/Counter-Defendants



DSO

DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN BORGER, et al.,

Plaintiffs,

v.

CASE NO. A-17-751896-C
DEPT NO. XXV

SANBAR POWERSPORTS LLC., et al.,

Defendants.

AND RELATED COUNTERCLAIM.

SCHEDULING ORDER

(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Personal injury - vehicle accident**

DATE OF FILING JOINT CASE CONFERENCE REPORT(S): **8/8/17**

TIME REQUIRED FOR TRIAL: **5-7 days**

DATES FOR SETTLEMENT CONFERENCE: **None requested**

Counsel for Plaintiffs:

Chad A. Bowers, Esq.

Counsel for Defendant:

Griffith H. Hayes, Esq., Litchfield Cavo

Counsel representing all parties have been heard and after
consideration by the Discovery Commissioner,

IT IS HEREBY ORDERED:

1. all parties shall complete discovery on or before

7/10/18.

1 2. all parties shall file motions to amend pleadings or
2 add parties on or before 3/12/18.

3 3. all parties shall make initial expert disclosures
4 pursuant to N.R.C.P. 16.1(a)(2) on or before 3/12/18.
5

6 4. all parties shall make rebuttal expert disclosures
7 pursuant to N.R.C.P. 16.1(a)(2) on or before 4/10/18.

8 5. all parties shall file dispositive motions on or
9 before 8/10/18.

10 Certain dates from your case conference report(s) may have
11 been changed to bring them into compliance with N.R.C.P. 16.1.
12

13 Within 60 days from the date of this Scheduling Order, the
14 Court shall notify counsel for the parties as to the date of
15 trial, as well as any further pretrial requirements in addition
16 to those set forth above.
17

18 Unless otherwise directed by the court, all pretrial
19 disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at
20 least 30 days before trial.

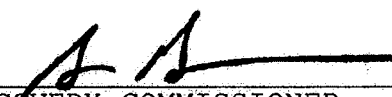
21 Motions for extensions of discovery shall be made to the
22 Discovery Commissioner in strict accordance with E.D.C.R. 2.35.
23 Discovery is completed on the day responses are due or the day a
24 deposition begins.
25

26 . . .

27 . . .
28

1 Unless otherwise ordered, all discovery disputes (except
2 disputes presented at a pre-trial conference or at trial) must
3 first be heard by the Discovery Commissioner.
4

5 Date: August 21, 2017

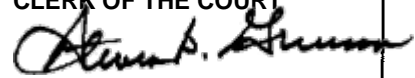
6
7 
8 DISCOVERY COMMISSIONER

9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on the date filed, I placed a copy of
11 the foregoing SCHEDULING ORDER in the attorney folder(s), mailed
12 or e-served as follows:

13 Chad A. Bowers, Esq.
14 Griffith H. Hayes, Esq.

15 
16 COMMISSIONER DESIGNEE
17
18
19
20
21
22
23
24
25
26
27
28



1 OSCJC

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 JOHN BORGER and SHERRI BORGER,

5 Plaintiffs,

6 vs.

7 SANBAR POWERSPORTS, LLC, and DOES
8 I through X; and ROE CORPORATIONS X1
through XX, inclusive,

9 Defendant(s).

10 And All Related Matters.

Case No.: A-17-751896-C
Dept. No.: XXV

11 **ORDER SETTING CIVIL JURY TRIAL AND PRETRIAL/CALENDAR CALL**

12 IT IS HEREBY ORDERED THAT:

13
14 A. The above-entitled case is set to be tried to a jury on a five-week stack to begin
15 **Monday, October 8, 2018, at 10:30 a.m.**

16 B. A Pretrial/Calendar Call will be held on **Tuesday, October 2, 2018, at**
17 **10:30 a.m.** Trial Counsel (and any party in proper person) must appear.

18 C. The Pretrial Memorandum must be filed prior to the Pretrial/Calendar Call, with
19 a courtesy copy delivered to Department XXV. EDCR 2.67 must be complied with.

20
21 D. All discovery deadlines, deadlines for filing dispositive motions and motions to
22 amend the pleadings or add parties are controlled by the previously issued Scheduling
23 Order.

24 F. Orders shortening time will not be signed except in extreme emergencies.

25 ***AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY***

26 ///


27 ///

KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV

1 Failure of the designated trial attorney or any party appearing in proper person to
2 appear for any court appearances or to comply with this Order shall result in any of the
3 following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4)
4 vacation of trial date; and/or any other appropriate remedy or sanction.

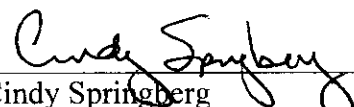
5 Counsel must advise the Court immediately when the case settles or is otherwise
6 resolved prior to trial. A stipulation which terminates a case by dismissal shall
7 indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date
8 of that trial.
9

10 DATED: August ____, 2017.

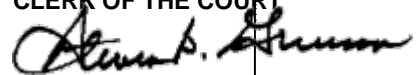
11 
12 KATHLEEN E. DELANEY
13 District Court Judge

14 I hereby certify that on or about the date filed,
15 the foregoing order was E-served, mailed, or
16 a copy was placed in the attorney's folder in
the Clerk's Office as follows:

17 Chad A. Bowers, Esq.
18 Kyle W. Farrar, Esq. – kyle@fbtrial.com
19 Griffith H. Hayes, Esq. – Litchfield Cavo

20 
21 Cindy Springer
22 Judicial Executive Assistant

KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV



CHAD A. BOWERS, Esq.
CHAD A. BOWERS, LTD.
NEVADA BAR NO. 007283
3202 W. CHARLESTON BLVD.
LAS VEGAS, NEVADA 89102
TEL: (702) 457-1001
FAX: (702) 878-9350

Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOHN BORGER and SHERRI BORGER,

Plaintiffs,

v.

SANDBAR POWERSPORTS LLC., DOES I
through X; ROE CORPORATIONS XI
through XX, inclusive, and POLARIS
INDUSTRIES, INC.

Defendants.

Case No.: A-17-751896-C
Dept.: XXV

**PLAINTIFFS' AMENDED
COMPLAINT**

Come now the Plaintiffs, John Borger and Sherri Borger, by and through counsel, and hereby file this Complaint for Damages and respectfully state their causes of action against Defendants Sandbar Powersports, LLC and Polaris Industries, Inc. as follows:

PARTIES

1. Plaintiffs John Borger and Sherri Borger are a married couple who are residents of Owatonna, Minnesota.

2. Defendant Sandbar Powersports LLC ("Sandbar") is a domestic business entity with its principal place of business located at 5135 Camino Al Norte, Suite 250, Las Vegas, Nevada, 89031. Sandbar has been served and appeared in this case.

1 3. Plaintiff is unaware of the true names and legal capacities, whether individual,
2 corporate, associate, or otherwise, of the Defendants sued herein as DOES I-X, and ROE
3 CORPORATIONS, XI-XX, inclusive, and therefore sue said Defendants by such fictitious
4 names. Plaintiffs, pray leave to insert said Defendants' true names and legal capacities when
5 ascertained. Plaintiffs are informed, believe and thereon allege, that each of the Defendants
6 designated herein as a DOE and ROE are in some way legally responsible and liable for the
7 events referred to herein, and proximately caused the damages alleged herein.
8

9 4. Defendant, Polaris Industries, Inc. ("Polaris"), is a foreign business entity
10 (Delaware Corporation) with its principal place of business in Medina, Minnesota, but doing
11 business in and throughout the State of Nevada. It may be served via its registered agent, CS
12 Services of Nevada located at 2215-B Renaissance Drive, Las Vegas, Nevada, 89119.
13

14 5. At all times relevant, and in doing the acts and omissions alleged herein, the
15 Defendants, and each of them, including the DOE Defendants, and ROE Defendants, acted by
16 and through their officers, agents, employees, and co-conspirators, including the fictitious
17 Defendants named herein, each of whom was acting within the purpose and scope of that agency,
18 employment and conspiracy, and said acts and omissions were known to, and authorized and
19 ratified by, each of the other Defendants.
20

21 FACTS

22 6. On October 18, 2016, Plaintiffs John and Sherri Borger rented a Polaris RZR
23 from Defendant Sandbar Powersports, LLC near Lake Havasu, Arizona. While driving on areas
24 designated by Sandbar, the vehicle unexpectedly rolled onto its right side. Sherri Borger was the
25 properly belted right front passenger at the time. Sherri's arm was trapped underneath the
26 vehicle and sustain significant injuries, ultimately leading to an amputation of her right arm.
27
28

1 7. At the time of the incident, the RZR was being operated in a foreseeable and
2 prudent manner. Further, the RZR was being used for the purpose for which it was reasonably
3 and foreseeably intended and in a manner reasonably foreseeable to Defendants.

4 **COUNT I – NEGLIGENCE (SANDBAR)**

5 8. At all relevant times, Sandbar was engaged in the business of renting recreational
6 vehicles including the RZR at issue for use by members of the general public. As such, Sandbar
7 owed a duty to its renters as well as the general public to ensure the vehicles were safe for
8 foreseeable operation. Sandbar breached its duty by, among other things:

- 9
- 10 a. Failing to install or offer proper equipment and safeguards to protect
11 occupants during normal foreseeable driving conditions including tip-
12 overs and/or rollovers;
- 13 b. Failure to adopt known and feasible safety measures, including, but not
14 limited to, an adequate cage, structure, netting, and/or Occupant
15 Containment System to prevent occupants and/or their extremities from
16 being ejected from the RZR during a tip-over and/or rollover;
- 17 c. Failing to conduct a proper inspection of the RZR;
- 18 d. Failing to properly train all occupants on the use of the RZR;
- 19 e. Failure to warn about the propensity of the RZR to tip-overs or rollover;
- 20 e. Failure to warn about the propensity of partial ejection during tip-overs or
21 rollovers;
- 22 f. Failure to provide a safe RZR.

23 9. Sandbar's breach of its duties, including but not limited to the breaches
24 enumerated above, were the direct and proximate cause of the permanent and significant
25 damages to Plaintiffs John and Sherri Borger.

COUNT II - STRICT PRODUCT LIABILITY
DESIGN AND MARKETING DEFECTS (POLARIS)

10. The subject RZR was designed, manufactured and marketed by Defendant Polaris. The RZR was defective and unsafe for its intended purpose inasmuch as it was in a defective condition and unreasonably dangerous as designed and/or marketed. The defects existed at the time the RZR left the control of defendant Polaris, and the subject RZR was in substantially the same condition at the time of the subject incident as it was when it left the control of Polaris.

11. More specifically, but not by way of limitation, the subject RZR was defectively designed in one or more of the following particulars, which were a producing cause of the rollover event and/or injuries/damages in question:

- Deficient and Defective stability;
- Deficient and Defective occupant protection (lack of safety nets/doors)

12. More specifically, but not by way of limitation, the subject RZR was defectively marketed in one or more of the following particulars, which were a producing cause of the rollover event and/or injuries/damages in question:

- Inadequate warnings on the instability;
- Inadequate instructions on controlling speed to control instability;
- Inadequate warning on the lack of occupant protection;
- Inadequate instructions how to increase occupant protection;
- Inadequate warning on the lack of speed control (lack of governor)

13. Polaris is liable for the defective design and/or the defective marketing of the subject RZR, which constituted a producing cause of the rollover event and/or injuries/damages in question.

1 **COUNT III - BREACH OF WARRANTY (POLARIS)**

2 14. Polaris warranted to consumers, including the Plaintiffs, that the subject RZR was
3 safe and fit for the intended purposes when used under ordinary and/or foreseeable conditions.
4 Polaris's breach of warranty was a proximate cause of the rollover event and/or injuries/damages
5 in question.

6
7 15. Polaris is engaged in the business of designing, testing, manufacturing,
8 assembling, marketing, selling, distributing, and/or otherwise placing products like the subject
9 RZR into the stream of commerce.

10 16. The subject RZR failed to comply with the applicable warranties by virtue of the
11 instability and inadequate occupant protection.

12 **COUNT IV - NEGLIGENT DESIGN AND MARKETING (POLARIS)**

13
14 17. Polaris was negligent in the design and/or marketing of the subject RZR, which
15 was a proximate cause of the rollover event and/or injuries/damages in question.

16 **DAMAGES**

17 18. As a direct and proximate result of Sandbar and Polaris' conduct, Sherri Borger
18 suffered serious and severe injuries including, but not limited to the loss of her right arm. Due to
19 her injuries, she has suffered in the past, and will continue to suffer in the future the following
20 damages: medical expenses, loss of earnings and/or earning capacity, loss of household services,
21 mental anguish, pain and suffering, disability and disfigurement. As a direct and proximate result
22 of Defendants' conduct, John Borger suffered loss of consortium damages, including but not
23 limited to, loss of love and emotional support, companionship and the mutual benefits which
24 existed in their marriage.
25
26
27
28

19. Plaintiffs seek exemplary damages caused by both Defendants' malice, gross negligence and willful acts, omissions and gross negligence.

20. Plaintiffs are entitled to recovery of pre-judgment and post-judgment interest in accordance with law and equity as part of their damages herein, and Plaintiffs here and now sue for recovery of pre-judgment and post-judgment interest as provided by law and equity, under the applicable provision of the laws of the State of Nevada.

21. Plaintiffs would additionally say and show that they are entitled to recovery of court costs, reasonable and necessary attorneys' fees incurred in this action.

PRAYER

WHEREFORE, Plaintiffs prays as follows:

1. For compensatory damages according to proof;
2. For punitive damages;
3. For costs of suit;
4. Reasonable and necessary attorneys' fees; and

///

///

///

///

///

/ / /

///

///

5. For such other and further relief as is proper.

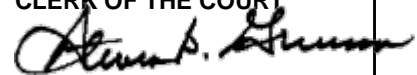
DATED this 10th day of November, 2017.

By: /s/ Chad A. Bowers
CHAD A. BOWERS, ESQ.
Nevada Bar #: 007283
CHAD A. BOWERS, LTD.
3202 West Charleston Blvd
Las Vegas, NV 89102
702-457-1001

and

Kyle W. Farrar
(Pro Hac Vice)
KASTER, LYNCH, FARRAR & BALL, LLP
1010 Lamar, Suite 1600
Houston, Texas 77002
713.221.8300
713.221.8301 – Facsimile

Attorneys for Plaintiffs



1 **AOS**
2 CHAD A. BOWERS, ESQ.
3 Nevada Bar #: 007283
4 **CHAD A. BOWERS, LTD.**
5 3202 West Charleston Blvd.
6 Las Vegas, Nevada 89102
7 Telephone(702) 457-1001
8 Facsimile(702) 946-5048
9 Attorney for Plaintiff

6 **DISTRICT COURT**
7
8 **CLARK COUNTY, NEVADA**

9 JOHN BORGER and SHERRI BORGER,)
10)
11)

12 Plaintiffs,)
13)
14)

15 vs.)
16)

Case No. : A-17-751896-C
Dept No. : XXV

17 SANBAR POWERSPORTS, LLC., and)
18 DOES I through X; and ROE CORPORATIONS)
19 XI through XX, inclusive, and POLARIS)
20 INDUSTRIES, INC.)
21)
22)

23 Defendants.)
24)
25)
26)
27)
28)

17 **AFFIDAVIT OF SERVICE**

18 NOTICE IS HEREBY GIVEN that service of the Summons and Complaint was served
19 on November 21, 2017, on Polaris Industries, Inc., by delivering and leaving a copy with Taylor
20 Lee - Administrative Assistant for Registered Agent CSC Services of Nevada, Inc., at 2215
21 Renaissance Dr., Ste B, Las Vegas, Nevada 89119-6727

22 The Affidavit of Service is attached hereto.

23 DATED this 29th day of November, 2017.

24 CHAD A. BOWERS, LTD.

25 */s/ Chad A. Bowers*

26
27 CHAD A. BOWERS, ESQ.
3202 West Charleston Blvd.
Las Vegas, Nevada 89102
28 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

John Borger and Sherri Borger,
Plaintiff(s),

VS.

Sanbar Powersports, LLC, et.al,
Defendant(s),

CASE NO: A-17-751896-C

DEPT NO: XXV

AFFIDAVIT OF SERVICE

STATE OF NEVADA }
COUNTY OF CLARK } ss.

Michael E. Clarke, being duly sworn, states that at all times herein Affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. Affiant is a licensed process server whose license number is stated below.

That Affiant received a copy of the Summons & Plaintiff's Amended Complaint on November 21, 2017. That Affiant personally served Polaris Industries, Inc. with a copy of the above stated documents on November 22, 2017 at 1:25 PM.

Served upon registered agent personally or by leaving a true copy with Taylor Lee - Administrative Assistant for Registered Agent CSC Services of Nevada, Inc., a person of suitable age and discretion at the most recent street address of the registered agent shown on the information filed with the Secretary of State at 2215 Renaissance Dr Ste B, Las Vegas, NV 89119-6727.

That the description of the person actually served is as follows: Gender: Female Skin: Cau Age: 25ish Height: 5'6 Weight: 145 Hair: Dark Eyes: Marks:

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated November 22, 2017.

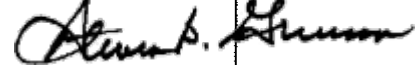


Michael E. Clarke
Signature of Affiant

State License# R-003972
Clark County Process Service LLC
720 E Charleston Blvd, Suite 135
Las Vegas, NV 89104
State License# 2031C



Order #:CC14611
Their File



1 **ANAC**
Jennifer Willis Arledge, Esq.
2 Nevada Bar No. 8729
WILSON ELSEER MOSKOWITZ
3 EDELMAN & DICKER LLP
300 South 4th Street, 11th Floor
4 Las Vegas, Nevada 89101
Tel: 702.727.1400 / Fax: 702.727.1401
5 Email: Jennifer.Arledge@wilsonelser.com
Attorney for Defendant Polaris Industries, Inc.

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 JOHN BORGER and SHERRI BORGER,
10 Plaintiffs,

Case No: A-17-751896-C
Dept No: XXV

11 vs.

**DEFENDANT POLARIS INDUSTRIES,
INC.'S ANSWER TO PLAINTIFFS'
AMENDED COMPLAINT**

12 SANDBAR POWERSPORTS, LLC, and
DOES 1 through X; and ROE
13 CORPORATIONS XI through XX, inclusive;
and POLARIS INDUSTRIES, INC.,

14 Defendants.

15 COMES NOW Defendant, Polaris Industries, Inc. ("POLARIS"), by and through its
16 counsel of record, and hereby files its Answer to Plaintiffs' Amended Complaint and admits,
17 denies and alleges as follows:

18 Pursuant to N.R.C.P. 8(b), POLARIS denies generally each and every allegation of
19 matter, fact and thing against it contained in the Plaintiffs' Amended Complaint, unless
20 otherwise admitted or qualified.

21 **PARTIES**

22 1. Answering Paragraph 1 of Plaintiffs' Amended Complaint, POLARIS is
23 without sufficient knowledge or information to form a belief as to the truth of these allegations,
24 and therefore generally and specifically denies the same.

25 2. Answering Paragraph 2 of Plaintiffs' Amended Complaint, POLARIS is
26 without sufficient knowledge or information to form a belief as to the truth of these allegations,
27 and therefore generally and specifically denies the same.
28

3. Answering Paragraph 3 of Plaintiffs' Amended Complaint, POLARIS states that this paragraph contains a legal conclusion and/or statement and to which no response is required. To the extent a response is required, POLARIS generally and specifically denies all of the allegations contained therein.

4. Answering Paragraph 4 of Plaintiffs' Amended Complaint, POLARIS admits that it is a foreign business entity with its principal place of business in Medina, Minnesota. POLARIS also admits that it is a Delaware Corporation. Except as admitted, POLARIS generally and specifically denies the remaining allegations contained therein.

5. Answering Paragraph 5 of Plaintiffs' Amended Complaint, POLARIS states that this paragraph contains a legal conclusion and/or statement and to which no response is required. To the extent a response is required, POLARIS generally and specifically denies all of the allegations contained therein.

FACTS

6. Answering Paragraph 6 of Plaintiffs' Amended Complaint, POLARIS admits that Plaintiffs rented a Polaris RZR from Defendant Sandbar Powersports, LLC ("SANDBAR") on or about October 18, 2016. Except as admitted, POLARIS generally and specifically denies the remaining allegations contained therein.

7. Answering Paragraph 7 of Plaintiffs' Amended Complaint, POLARIS states that this paragraph contains a legal conclusion and/or statement and to which no response is required. To the extent a response is required, POLARIS generally and specifically denies all of the allegations contained therein.

COUNT I – NEGLIGENCE (SANDBAR)

8. Answering Paragraph 8 of Plaintiffs' Amended Complaint, this paragraph does not contain allegations against POLARIS, and therefore a response is not required. To the extent a response is required, POLARIS generally and specifically denies all of the allegations contained therein.

9. Answering Paragraph 9 of Plaintiffs' Amended Complaint, this paragraph does not contain allegations against POLARIS, and therefore a response is not required. To the

1 extent a response is required, POLARIS generally and specifically denies all of the allegations
2 contained therein.

3 **COUNT II – STRICT PRODUCT LIABILITY**

4 **DESIGN AND MARKETING DEFECTS (POLARIS)**

5 10. POLARIS repeats, realleges and incorporates its responses to Paragraphs 1
6 through 9, inclusive, above, as though fully set forth herein.

7 11. Answering Paragraph 10 of Plaintiffs' Amended Complaint, POLARIS states
8 that this paragraph contains a legal conclusion and/or statement and to which no response is
9 required. To the extent a response is required, POLARIS generally and specifically denies all
10 of the allegations contained therein.

11 12. Answering Paragraph 11 of Plaintiffs' Amended Complaint, POLARIS
12 generally and specifically denies all of the allegations contained therein.

13 13. Answering Paragraph 12 of Plaintiffs' Amended Complaint, POLARIS
14 generally and specifically denies all of the allegations contained therein.

15 14. Answering Paragraph 13 of Plaintiffs' Amended Complaint, POLARIS
16 generally and specifically denies all of the allegations contained therein.

17 **COUNT III – BREACH OF WARRANTY (POLARIS)**

18 15. POLARIS repeats, realleges and incorporates its responses to Paragraphs 1
19 through 13, inclusive, above, as though fully set forth herein.

20 16. Answering Paragraph 14 of Plaintiffs' Amended Complaint, POLARIS states
21 that this paragraph contains a legal conclusion and/or statement and to which no response is
22 required. To the extent a response is required, POLARIS generally and specifically denies all
23 of the allegations contained therein.

24 17. Answering Paragraph 15 of Plaintiffs' Amended Complaint, POLARIS states
25 that this paragraph contains a legal conclusion and/or statement and to which no response is
26 required. To the extent a response is required, POLARIS generally and specifically denies all
27 of the allegations contained therein.

1 18. Answering Paragraph 16 of Plaintiffs' Amended Complaint, POLARIS
2 generally and specifically denies all of the allegations contained therein.

3 **COUNT IV – NEGLIGENT DESIGN AND MARKETING (POLARIS)**

4 19. POLARIS repeats, realleges and incorporates its responses to Paragraphs 1
5 through 16, inclusive, above, as though fully set forth herein.

6 20. Answering Paragraph 17 of Plaintiffs' Amended Complaint, POLARIS
7 generally and specifically denies all of the allegations contained therein.

8 **DAMAGES**

9 21. POLARIS repeats, realleges and incorporates its responses to Paragraphs 1
10 through 17, inclusive, above, as though fully set forth herein.

11 22. Answering Paragraph 18 of Plaintiffs' Amended Complaint, POLARIS states
12 that this paragraph contains a legal conclusion and/or statement and to which no response is
13 required. To the extent a response is required, POLARIS generally and specifically denies all
14 of the allegations contained therein.

15 23. Answering Paragraph 19 of Plaintiffs' Amended Complaint, POLARIS states
16 that this paragraph contains a legal conclusion and/or statement and to which no response is
17 required. To the extent a response is required, POLARIS generally and specifically denies all
18 of the allegations contained therein.

19 24. Answering Paragraph 20 of Plaintiffs' Amended Complaint, POLARIS
20 generally and specifically denies all of the allegations contained therein.

21 25. Answering Paragraph 21 of Plaintiffs' Amended Complaint, POLARIS
22 generally and specifically denies all of the allegations contained therein.

23 **FIRST AFFIRMATIVE DEFENSE**

24 **(Venue)**

25 POLARIS alleges that venue is improper in Clark County, Nevada as none of the acts
26 and/or omissions giving rise to this action occurred in Clark County. POLARIS also alleges
27 that the incident occurred in Lake Havasu City, Arizona, the witnesses, investigators and first
28 responders, including specifically the Lake Havasu City Police Department, Lake Havasu Fire

1 Department, Mohave County Sheriff's Office and the Mohave County Sheriff's Office Search
2 and Rescue are located in Lake Havasu City, Arizona. POLARIS further alleges that Plaintiffs
3 and POLARIS are residents of the State of Minnesota, and as such, relevant fact witnesses,
4 including Plaintiffs' medical treatment providers, are located in Minnesota. Although
5 SANDBAR is a resident of the State of Nevada, POLARIS further alleges that the SANDBAR
6 facility at issue, and relevant fact witnesses, are located in Lake Havasu City, Arizona. Based
7 on the foregoing, POLARIS requests this lawsuit be transferred to a more appropriate venue.

8 **SECOND AFFIRMATIVE DEFENSE**

9 **(Statute of Limitations)**

10 POLARIS alleges that Plaintiffs' claims for relief are barred, in whole or in part, by the
11 applicable statute of limitations.

12 **THIRD AFFIRMATIVE DEFENSE**

13 **(Failure to State a Claim)**

14 POLARIS alleges that Plaintiffs' Amended Complaint, and each and every cause of
15 action therein, fails to state a claim against POLARIS upon which relief can be granted.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 **(Comparative Negligence of Plaintiffs)**

18 POLARIS alleges that Plaintiffs' damages, if any, were either partially or completely
19 proximately caused by the negligence of Plaintiffs. POLARIS further alleges that when
20 Plaintiffs' negligence is compared to any negligence allegedly committed by POLARIS,
21 Plaintiffs own negligence exceeds any alleged negligence of POLARIS, thereby barring
22 recovery for any damages allegedly suffered.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 **(Negligence of Others)**

25 POLARIS alleges that Plaintiffs' damages, if any, were the direct and proximate result
26 of the negligence, strict liability and/or breach of contract of parties, persons, corporations
27 and/or entities other than POLARIS, and that the liability of POLARIS, if any, is limited in
28 direct proportion to the percentage of fault actually attributable to POLARIS.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Open and Obvious)**

3 POLARIS alleges that the conditions which allegedly caused the injuries and damages
4 alleged in Plaintiffs' Amended Complaint were open and obvious, and Plaintiffs' recovery
5 against POLARIS should therefore be barred.

6 **SEVENTH AFFIRMATIVE DEFENSE**

7 **(Alteration/Misuse)**

8 POLARIS alleges that Plaintiffs' damages, if any, were caused by the alteration,
9 modification or misuse of the produce by Plaintiffs, a third party or parties over whom
10 POLARIS had no supervision or control.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 **(Failure to Mitigate)**

13 POLARIS alleges that as to each alleged cause of action, Plaintiffs have failed, refused
14 and neglected to take reasonable steps to mitigate their alleged damages, if any, thus barring or
15 diminishing Plaintiffs' recovery herein.

16 **NINTH AFFIRMATIVE DEFENSE**

17 **(Laches)**

18 POLARIS alleges that Plaintiffs' claims are reduced, modified and/or barred by the
19 doctrine of Laches.

20 **TENTH AFFIRMATIVE DEFENSE**

21 **(Waiver)**

22 POLARIS alleges that Plaintiffs, orally and/or in writing, waives all claims against
23 POLARIS, thereby barring any recovery by Plaintiffs.

24 **ELEVENTH AFFIRMATIVE DEFENSE**

25 **(Release)**

26 POLARIS alleges that Plaintiffs, orally and/or in writing, released POLARIS for any
27 claims, thereby barring any recovery by Plaintiffs.

28 ///

1 **TWELTH AFFIRMATIVE DEFENSE**

2 **(Express and Implied Assumption of Risk)**

3 POLARIS alleges that Plaintiffs, orally and/or in writing, expressly assumed the risks
4 and hazards resulting in the injuries sustained, if any, in that at the time and prior to the time of
5 the incident, Plaintiffs knew of the danger involved, but despite such knowledge, persisted in
6 such conduct, although free to stop and discontinue the same. The injuries alleged by Plaintiffs
7 in the Amended Complaint, if any, were caused by and arose out of such assumed risk.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 **(No Punitive Damages)**

10 POLARIS alleges that Plaintiffs' claims for punitive damages are barred to the extent
11 that they are not available and/or because any alleged unlawful conduct was not knowing,
12 willful or malicious.

13 **FOURTEENTH AFFIRMATIVE DEFENSE**

14 **(Express/Implied Malice)**

15 POLARIS denies at any time acting either with express or implies malice in any way in
16 regards to Plaintiffs, thereby barring a claim for punitive damages as a matter of law.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 **(Punitive Damages Unconstitutional)**

19 Nevada Revised Statute 42.010 does not provide adequate safeguards for the
20 application of punitive damages and is therefore void for vagueness under the due process
21 clause of the Fourteenth Amendment of the United States Constitution and the Nevada
22 Constitution, Article 1, Section VII.

23 **SIXTEENTH AFFIRMATIVE DEFENSE**

24 **(Bifurcation)**

25 POLARIS is entitled, in the interest of a fair trial, to a bifurcated proceeding in which
26 evidence of financial worth is introduced to the jury after a preliminary finding of punitive
27 liability, if any.

28 ///

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 **(Burden of Proof)**

3 Fairness and constitutional due process require that punitive liability and damages be
4 proven by clear and convincing evidence.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 **(Reduction of Damages)**

7 Punitive damages, if any are awarded, must be reduced by reason of the fault of
8 Plaintiffs and the circumstances under which this action arose.

9 **NINETEENTH AFFIRMATIVE DEFENSE**

10 **(Reservation of Rights)**

11 Pursuant to Rule 11 of the Nevada Rules of Civil Procedure, as amended, all possible
12 affirmative defenses may not have been alleged herein insofar as sufficient facts were not
13 available for POLARIS after reasonable inquiry. In the event further investigation or
14 discovery reveals the applicability of any such defenses, POLARIS reserves the right to seek
15 leave of court to amend this answer to specifically assert any such defense. Such defenses are
16 herein incorporated by reference for the specific purpose of not waiving any such defense.

17 **TWENTIETH AFFIRMATIVE DEFENSE**

18 **(Failure to Plead Special Damages)**

19 Plaintiff is barred from recovering any special damages herein for failure to specifically
20 allege the items of special damages claimed, pursuant to NRCP 9(g).

21 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

22 **(State of the Art)**

23 All products, and equipment, which Plaintiffs came in contact with complied with all
24 applicable Nevada and Federal statutes, regulations, and specifications, and were in
25 compliance and conformity with the state of the art at all relevant times stated in the complaint.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, based upon the above and foregoing, POLARIS respectfully requests
28 this Court for relief as follows:

1. That Plaintiffs take nothing by way of their Amended Complaint;
2. That Plaintiffs' Amended Complaint be dismissed with prejudice;
3. That POLARIS be awarded all costs incurred in the defense of this action, including reasonable attorneys' fees and expenses; and
4. For such other and further relief as this Court deems just and proper under the circumstances.

DATED this 12th day of December, 2017.

WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP

By: Jennifer W. Arledge
Jennifer Willis Arledge, Esq.
Nevada Bar No. 8729
300 South 4th Street, 11th Floor
Las Vegas, Nevada 89101
Tel: 702.727.1400/Fax: 702.727.1401
Email: Jennifer.Arledge@wilsonelser.com
Attorney for Defendant Polaris Industries, Inc.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am an employee of Wilson Elser Moskowitz
3 Edelman & Dicker LLP, and that on this 24 day of December 2017, I served a true and
4 correct copy of the foregoing **Defendant Polaris Industries, Inc.'s Answer to Plaintiffs'**
5 **Amended Complaint** as follows:

6 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
7 envelope upon which first class postage was prepaid in Las Vegas, Nevada;

8 ☒ via electronic means by operation of the Court's electronic filing system, upon each party
9 in this case who is registered as an electronic case filing user with the Clerk;

10 ☐ via hand-delivery to the addressees listed below;

11 ☐ via facsimile;

12 ☐ by transmitting via email the document listed above to the email address set forth below
13 on this date before 5:00 p.m.

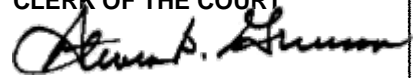
14 Chad Bowers, Esq.
15 CHAD A. BOWERS, LTD.
16 3202 W. Charleston Blvd.
17 Las Vegas, NV 89102
Attorneys for Plaintiff

18 Kyle W. Farrar
19 KASTER, LYNCH, FARRAR & BALL, LLP
1010 Lamar, Suite 1600
Houston, TX 77002
20 Attorneys for Plaintiff

Griffith H. Hayes, Esq.
Melanie Bernstein Chapman, Esq.
LITCHFIELD CAVO, LLP
3753 Howard Hughes Parkway, Suite 200
Las Vegas, NV 8919
Attorneys for Defendant
SANDBAR POWERSPORTS, LLC

21
22
23 BY 

24 An Employee of
25 Wilson Elser Moskowitz Edelman & Dicker LLP
26
27
28



AACC
GRIFFITH H. HAYES, ESQ.
Nevada Bar No. 7374
MARISA A. POCCI, ESQ.
Nevada Bar No. 10720
KEIVAN A. ROEBUCK, ESQ.
Nevada Bar No. 14110
LITCHFIELD CAVO LLP
3993 Howard Hughes Parkway, Suite 100
Las Vegas, Nevada 89169
Telephone: (702) 949-3100
Facsimile: (702) 916-1776
Email: hayes@litchfieldcavo.com
Email: pocci@litchfieldcavo.com
Email: roebuck@litchfieldcavo.com

Attorneys for Defendant/Counter-Claimant, Sandbar Powersports, LLC

DISTRICT COURT

CLARK COUNTY NEVADA

JOHN BORGER and SHERRI BORGER,

Plaintiffs,

v.

SANBAR POWERSPORTS, LLC, DOES I
through X, ROE CORPORATIONS XI through
XX, inclusive, and POLARIS INDUSTRIES,
INC.

Defendants.

SANBAR POWERSPORTS, LLC.

Counter-Claimant,

v.

JOHN BORGER and SHERRI BORGER,

Counter-Defendants.

SANBAR POWERSPORTS, LLC.

Cross-Claimant,

v.

POLARIS INDUSTRIES, INC.,
Cross-Defendants.

Case No.: A-17-751896-C

Dept.: XXV

**ANSWER OF SANDBAR
POWERSPORTS, LLC TO PLAINTIFFS'
AMENDED COMPLAINT AND
COUNTERCLAIM AND CROSSCLAIM**

1 COME NOW Defendant, SANDBAR POWERSPORTS, LLC, erroneously sued and served
2 herein with Plaintiffs' original complaint as SANBAR POWERSPORTS, LLC (hereinafter
3 "SANDBAR") by and through its counsel of record, the law firm of Litchfield Cavo LLP, and hereby
4 files its Answer to Plaintiffs' Amended Complaint and admits, denies and alleges as follows:

5 **THE PARTIES**

6 1. Answering Paragraph 1 of Plaintiffs' Amended Complaint, SANDBAR is without
7 knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore
8 generally and specifically denies the same.

9 2. Answering Paragraph 2 of Plaintiffs' Amended Complaint, SANDBAR admits that it
10 is a domestic business entity with its principal place of business located at 5135 Camino Al Norte,
11 Suite 250, Las Vegas, Nevada 89031. SANDBAR further admits that it may be served via its
12 registered agent, Tax Management Group, LLC at 5135 Camino Al Norte, Suite 250, Las Vegas,
13 Nevada 89031. SANDBAR further admits that it was erroneously sued and served herein with
14 Plaintiffs' original complaint as SANBAR POWERSPORTS, LLC, and that it has appeared in this
15 case. Except as admitted, SANDBAR generally and specifically denies the remaining allegations
16 contained therein.

17 3. Answering Paragraph 3 of Plaintiffs' Amended Complaint, SANDBAR states that this
18 paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the
19 extent a response is required, SANDBAR generally and specifically denies all of the allegations
20 contained therein.

21 4. Answering Paragraph 4 of Plaintiffs' Amended Complaint, SANDBAR is without
22 knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore
23 generally and specifically denies the same.

24 5. Answering Paragraph 5 of Plaintiffs' Amended Complaint, SANDBAR states that this
25 paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the
26 extent a response is required, SANDBAR generally and specifically denies all of the allegations
27 contained therein.

28 ///

1 **FACTS**

2 6. Answering Paragraph 6 of Plaintiffs' Amended Complaint, SANDBAR admits that a
3 Polaris RZR was rented from SANDBAR on or about October 18, 2016. SANDBAR further admits
4 that Ms. Borger was injured on or about this date. Except as admitted, SANDBAR generally and
5 specifically denies the remaining allegations contained therein.

6 7. Answering Paragraph 7 of Plaintiffs' Amended Complaint, SANDBAR states that this
7 paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the
8 extent a response is required, SANDBAR generally and specifically denies all of the allegations
9 contained therein.

10 **COUNT I – NEGLIGENCE (SANDBAR)**

11 8. Answering Paragraph 8 of Plaintiffs' Amended Complaint, SANDBAR states that this
12 paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the
13 extent a response is required, SANDBAR generally and specifically denies all of the allegations
14 contained therein.

15 9. Answering Paragraph 9 of Plaintiffs' Amended Complaint, SANDBAR generally and
16 specifically denies all of the allegations contained therein.

17 **COUNT II – STRICT PRODUCT LIABILITY**

18 **DESIGN AND MARKETING DEFECTS (POLARIS)**

19 10. Answering Paragraph 10 of Plaintiffs' Amended Complaint, this paragraph does not
20 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
21 response is required, SANDBAR generally and specifically denies all of the allegations contained
22 therein.

23 11. Answering Paragraph 11 of Plaintiffs' Amended Complaint, this paragraph does not
24 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
25 response is required, SANDBAR generally and specifically denies all of the allegations contained
26 therein.

27 12. Answering Paragraph 12 of Plaintiffs' Amended Complaint, this paragraph does not
28 contain allegations against SANDBAR, and therefore a response is not required. To the extent a

1 response is required, SANDBAR generally and specifically denies all of the allegations contained
2 therein.

3 13. Answering Paragraph 13 of Plaintiffs' Amended Complaint, this paragraph does not
4 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
5 response is required, SANDBAR generally and specifically denies all of the allegations contained
6 therein.

7 **COUNT III – BREACH OF WARRANTY (POLARIS)**

8 14. Answering Paragraph 14 of Plaintiffs' Amended Complaint, this paragraph does not
9 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
10 response is required, SANDBAR generally and specifically denies all of the allegations contained
11 therein.

12 15. Answering Paragraph 15 of Plaintiffs' Amended Complaint, this paragraph does not
13 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
14 response is required, SANDBAR generally and specifically denies all of the allegations contained
15 therein.

16 16. Answering Paragraph 16 of Plaintiffs' Amended Complaint, this paragraph does not
17 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
18 response is required, SANDBAR generally and specifically denies all of the allegations contained
19 therein.

20 **COUNT IV – NEGLIGENT DESIGN AND MARKETING (POLARIS)**

21 17. Answering Paragraph 17 of Plaintiffs' Amended Complaint, this paragraph does not
22 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
23 response is required, SANDBAR generally and specifically denies all of the allegations contained
24 therein.

25 **DAMAGES**

26 18. Answering Paragraph 18 of Plaintiffs' Complaint, SANDBAR admits Ms. Borger was
27 injured on or about October 18, 2016. Except as admitted, SANDBAR generally and specifically
28 denies the remaining allegations contained therein.

1 19. Answering Paragraph 19 of Plaintiffs' Complaint, SANDBAR states that this
2 paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the
3 extent a response is required, SANDBAR generally and specifically denies all of the allegations
4 contained therein.

5 20. Answering Paragraph 20 of Plaintiffs' Complaint, SANDBAR generally and
6 specifically denies all of the allegations contained therein.

7 21. Answering Paragraph 21 of Plaintiffs' Complaint, SANDBAR generally and
8 specifically denies all of the allegations contained therein.

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Claim)**

11 SANDBAR alleges that Plaintiffs' Amended Complaint, and each and every cause of action
12 therein, fails to state a claim against SANDBAR upon which relief can be granted.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Open and Obvious)**

15 SANDBAR is informed and believes and thereon alleges that the condition which allegedly
16 caused the injuries and damages alleged in Plaintiffs' Amended Complaint was open and obvious, and
17 Plaintiffs' recovery against SANDBAR should therefore be barred.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(Comparative Negligence of Plaintiffs)**

20 SANDBAR alleges that the damages suffered by the Plaintiffs, if any, was either partially or
21 completely proximately caused by the negligence of Plaintiffs. SANDBAR further alleges that when
22 Plaintiffs' negligence is compared to any negligence allegedly committed by SANDBAR, Plaintiffs
23 own negligence exceeds any alleged negligence of SANDBAR, thereby barring recovery for any
24 damages allegedly suffered.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Failure to Mitigate)**

27 SANDBAR is informed and believes and thereon alleges that as to each alleged cause of action,
28 Plaintiffs have failed, refused, and neglected to take reasonable steps to mitigate their alleged damages,

1 if any, thus barring or diminishing Plaintiffs recovery herein.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 **(Laches)**

4 SANDBAR is informed and believes, and thereon alleges, that the claims of the Plaintiffs are
5 reduced, modified and/or barred by the doctrine of Laches.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(Statute of Limitations)**

8 SANDBAR is informed and believes, and thereon alleges, that Plaintiffs' claims for relief are
9 barred in whole or in part by the applicable statute of limitations.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 **(Negligence/Strict Liability/Breach/Misconduct of Others)**

12 SANDBAR alleges that the damages suffered by the Plaintiffs, if any, were the direct and
13 proximate result of the negligence, strict liability, breach of contract and/or misconduct of parties,
14 persons, corporations and/or entities other than SANDBAR, and that the liability of SANDBAR, if
15 any, is limited in direct proportion to the percentage of fault actually attributable to SANDBAR.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 **(No Punitive Damages)**

18 SANDBAR alleges that Plaintiffs' claims for punitive damages are barred to the extent that
19 they are not available and/or because any alleged unlawful conduct was not knowing, willful or
20 malicious.

21 **NINTH AFFIRMATIVE DEFENSE**

22 **(Express and Implied Assumption of Risk)**

23 SANDBAR alleges that the Plaintiffs, orally and/or in writing, expressly assumed the risks and
24 hazards resulting in the injuries sustained, if any, in that at the time and prior to the time of the incident,
25 Plaintiffs knew of the danger involved, but, despite such knowledge, persisted in such conduct,
26 although free to stop and discontinue the same. The injuries alleged by Plaintiffs in the Complaint, if
27 any, were caused by and arose out of such assumed risk.

28 ///

1 **TENTH AFFIRMATIVE DEFENSE**

2 **(Express/Implied Malice)**

3 SANDBAR denies at any time acting either with express or implied malice in any way in
4 regards to the Plaintiffs, thereby barring a claim for punitive damages as a matter of law.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 **(Punitive Damages Unconstitutional)**

7 Nevada Revised Statute 42.010 does not provide adequate safeguards for its application and is
8 therefore void for vagueness under the due process clause of the 14th Amendment of the United States
9 Constitution and the Nevada Constitution, Article 1, Section VII.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 **(Bifurcation)**

12 SANDBAR is entitled, in the interest of a fair trial, to a bifurcated proceeding in which
13 evidence of financial worth is introduced to the jury after a preliminary finding of punitive liability.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 **(Burden of Proof)**

16 Fairness and constitutional due process require that punitive liability and damages be proven
17 by clear and convincing evidence.

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 **(Reduction of Damages)**

20 Punitive damages, if any are awarded, must be reduced by reason of the fault of the Plaintiffs
21 and the circumstances under which this action arose.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 **(Waiver)**

24 SANDBAR is informed and believes that Plaintiffs, orally and/or in writing, waived all claims
25 against SANDBAR, thereby barring any recovery by Plaintiffs.

26 **SIXTEENTH AFFIRMATIVE DEFENSE**

27 **(Release)**

28 SANDBAR is informed and believes that Plaintiffs, orally and/or in writing, released

SANDBAR for any claims, thereby barring any recovery by Plaintiffs.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Indemnity)

SANDBAR is informed and believes and thereon alleges that Plaintiffs, orally and/or in writing, agreed to defend, indemnify and hold harmless SANDBAR for any and all claims and damages arising out of the rental of the vehicle at issue in the Complaint on file herein, thereby barring or diminishing Plaintiffs' claims against SANDBAR.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Breach of Contract)

SANDBAR is informed and believes and thereon alleges that Plaintiffs breached the contract between Plaintiffs and SANDBAR, thereby barring or diminishing Plaintiffs' recovery therein.

NINETEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

SANDBAR is informed and believes, and thereon alleges, that the claims of the Plaintiffs are reduced, modified and/or barred by the doctrine of Laches.

TWENTIETH AFFIRMATIVE DEFENSE

(Supervening or Intervening Cause)

SANDBAR is informed and believes, and thereon alleges, that the claims of the Plaintiffs are reduced, modified and/or barred by a supervening and/or intervening cause.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Reservation of Rights)

Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available for Defendants after reasonable inquiry.

PRAYER FOR RELIEF

WHEREFORE, based upon the above and foregoing, SANDBAR respectfully requests this Court for relief as follows:

1. That Plaintiffs take nothing by way of their Amended Complaint;
2. That Plaintiffs' Amended Complaint be dismissed with prejudice;

1 3. That SANDBAR be awarded all costs incurred in the defense of this action, including
2 reasonable attorneys' fees; and

3 4. For such other relief as this Court deems just and proper under the circumstances.

4 **COUNTERCLAIM OF SANDBAR POWERSPORTS, LLC**

5 Counter-Claimant, SANDBAR POWERSPORTS, LLC ("SANDBAR" or "Counter-
6 Claimant") by and through its counsel of record of the law firm of Litchfield Cavo LLP, hereby alleges
7 as follows:

8 **GENERAL ALLEGATIONS**

9 1. Counter-Claimant is and was a limited liability company organized, existing and
10 formed under and in accordance with the law of the State of Nevada and authorized to conduct business
11 in the State of Nevada.

12 2. Counter-Defendant, JOHN BORGER, is and was a resident of Owatonna, Minnesota.

13 3. Counter-Defendant, SHERRI BORGER, is and was a resident of Owatonna,
14 Minnesota.

15 4. Counter-Claimant is informed and believes and thereon alleges that Counter-
16 Defendants are a married couple and the natural parents and legal guardians of their minor son, F.B.

17 5. Counter-Claimant refers to and incorporates herein each and every allegation made by
18 Plaintiffs/Counter-Defendants contained in Plaintiffs' Amended Complaint for the sole purpose of
19 establishing the fact that Plaintiffs/Counter-Defendants have commenced suit against Counter-
20 Claimant, but without admitting, in whole or in part, any of the allegations contained in Plaintiffs'
21 Amended Complaint.

22 6. On or about October 18, 2016, Counter-Defendants rented a 2017 Polaris RZR XP4
23 900 (the "RZR") from Counter-Claimant.

24 7. Prior to taking possession of the RZR, Counter-Defendants participated in an
25 inspection of the vehicle with a Counter-Claimant employee.

26 8. Prior to taking possession of the RZR, Counter-Defendants received an orientation of
27 the RZR by a Counter-Claimant employee, during which they were shown how to work the RZR.

28 9. During the orientation, Counter-Defendants were told that they should drive slowly

1 and, if necessary, stop the vehicle and inspect the trail on foot to make sure it was safe before
2 proceeding in the RZR.

3 10. Counter-Defendants were told verbally and in writing that their children, ages 17 and
4 19, were not allowed or authorized to drive the RZR, as the company required all drivers to be at least
5 25 years old.

6 11. Prior to driving the vehicle away from Counter-Claimant's rental location, Counter-
7 Defendants read and voluntarily signed a number of documents, including but not limited to:

8 a. The Rental Contract, attached hereto as Exhibit A.

9 b. The Participant Agreement, Release and Assumption of Risk agreement ("Release
10 and Assumption of Risk Agreement"), attached hereto as Exhibit B.

11 12. The Rental Contract was initialed in various places by both Counter-Defendants and
12 signed in its entirety individually by Counter-Defendants.

13 13. The Rental Agreement, signed by Counter-Defendants, stated, in part, as follows:

14 **READ THE FOLLOWING SECTIONS FULLY AND CAREFULLY PRIOR TO**
15 **SIGNING. THIS IS A LEGALLY VALID AND BINDING OBLIGATION TO**
16 **RELEASE COMPANY FROM ALL KNOWN AND UNKNOWN RISKS, AND TO**
17 **INDEMNIFY COMPANY AGAINST CLAIMS BROUGHT AGAINST IT**
18 **BASED UPON YOUR USE OF THE VEHICLE. THIS INSTRUMENT**
19 **AFFECTS IMPORTANT LEGAL RIGHTS.**

20 *See, Exhibit A.*

21 14. By their signatures, Counter-Defendants acknowledged and confirmed that they read
22 the Rental Agreement and understood that they were releasing and discharging Counter-Claimant from
23 any and all claims arising out of their use, misuse or abuse of the RZR. *See, Exhibit A.*

24 15. By their signatures, Counter-Defendants agreed to protect Counter-Claimant, and to
25 defend and indemnify and hold harmless Counter-Claimant from any claims, losses, causes of action,
26 and expenses, including legal expenses and reasonable attorneys' fees arising in any way out of the
27 use, maintenance and operation of the RZR. *See, Exhibit A.*

28 16. By their signatures, Counter-Defendants acknowledged, confirmed and agreed that
they had been fully instructed, and fully understood how to operate the RZR in a safe and proper
manner; that they, at all times, agreed to observe and cause to be observed by all users of the Razer all

proper safety precautions in the use and operation of the RZR; and, that they would be responsible at all times for the safety of any and all riders and passengers or any other individuals on or near the RZR. *See*, Exhibit A.

17. By their signatures, Counter-Defendants acknowledged, agreed and confirmed that they were aware of, and understood that “Prohibited Actions” included, but were not limited to the following:

- a. Reckless driving such as jumping, driving too fast, rock crawling, sliding or spinning in circles/doing donuts in the vehicle;
- b. Riders under the age of 18 riding without a helmet and eye protection;
- c. Allowing an unauthorized driver to drive the vehicle with [sic] approval from Counter-Claimant.

See, Exhibit A.

18. Above Counter-Defendants’ signatures, the Rental Agreement stated as follows:

RENTER PLEASE NOTE: YOU ARE LIABLE AND RESPONSIBLE FOR ANY AND ALL TERMS AND CONDITIONS IN THIS CONTRACT EVEN IF YOU DON’T TAKE THE TIME TO READ IT.

See, Exhibit A.

19. The Release and Assumption of Risk Agreements signed by Counter-Defendants, stated in part as follows:

- a. In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as “Company”), the undersigned (hereinafter “I” or “participant”) hereby agree [sic] to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:
- b. **Assumption of Risk.** I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY . . . I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS.
- c. **Waiver of Claims; Indemnification.** I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of the Company’s Vehicles, equipment or facilities, including any such claims which allege negligent

1 acts or omissions of Company.

2 *See*, Exhibit B.

3 20. The Release and Assumption of the Risk Agreements specifically noted that the risks
4 being voluntarily assumed by Counter-Defendants included, but were not limited to, injury resulting
5 from being jolted, jarred, bounced, thrown about and otherwise shaken during rides, injuries resulting
6 from items or conditions on the trail such as holes bumps, ruts, obstacles, tree limbs and branches or
7 rocks, and injury resulting from loss of control of the vehicle. *See*, Exhibit B.

8 21. Counter-Defendants also specifically acknowledged that Counter-Claimant and its
9 employees' ability to provide for the safety of participants such as Counter-Defendants and their
10 children is limited by the inherent risks and uncertainties related to the use of the RZR, the RZR itself,
11 weather conditions and the extent to which participants follow instructions and rules, whether written
12 or orally expressed by Counter-Claimant's employees. *See*, Exhibit B.

13 22. Directly above the portion of the Release and Assumption of the Risk Agreement
14 signed by Counter-Defendants, the document states as follows:

15 By signing this document, I acknowledge that if anyone is hurt or property is
16 damaged during my participation in this activity, I may be found by a court of law
to have waived my right to maintain a lawsuit against the Company on this basis of
17 any claim from which I have released them herein.

18 I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

19 *See*, Exhibit B.

20 23. The Release and Assumption of the Risk Agreement was accompanied by exhibit A to
21 the Agreement, setting forth instructions and rules, which Counter-Defendants and their children
22 acknowledged and agreed to follow.

23 24. The Driver/Rider Usage Rules set forth in exhibit A to the Release and Assumption of
24 Risk Agreement included, but were not limited to, the following:

- 25 a. only the authorized drivers on the Rental Agreement were allowed to drive the
26 rental vehicle;
- 27 b. all passengers under the Age of 18 were required to wear a helmet as required by
28 Arizona law;

1 c. as the drivers of the rental vehicle, Counter-Defendants acknowledged that they
2 were responsible for everything and anything that happens with respect to the rental
3 vehicle and its use, and with respect to any passengers;

4 d. the minimum driver age limit for the Polaris RZR 900 was 25+

5 *See, Exhibit B.*

6 25. Counter-Defendants, agreed and acknowledged their understanding that, if any of the
7 Driver/Rider Usage Rules were violated, as the renter(s) of the Vehicle, they would lose the rental
8 deposit and would be responsible for any and all damages arising from such violation, and any
9 participant acting in violation of these Driver Usage Rules would be responsible for any and all
10 damages arising from such violation. *See, Exhibit B.*

11 26. Counter-Defendants were given a helmet for their minor son, F.B., to wear pursuant to
12 the rules to which they had agreed.

13 27. On behalf of his minor son, Counter-Defendant, JOHN BORGER, agreed that F.B.
14 would use the helmet being provided by Counter-Claimant. *See, Exhibit B.*

15 28. Counter-Defendants each acknowledged on the Release and Assumption of the Risk
16 Agreement their own refusals to wear a helmet. *See, Exhibit B.*

17 29. Counter-Defendant, SHERRI BORGER, signed an "Addendum to Dealer's Rental
18 Insurance Agreement," in which she declined to purchase the optional SLI (Supplemental Liability
19 Insurance) and PAI/PEI (Personal Effects/Personal Accident Insurance) coverage.

20 30. Counter-Defendant, JOHN BORGER, signed a "Pre Rental Check Out," agreeing and
21 acknowledging that he "understands and knows where all the controls are and how they work;" and
22 that he has "read and [has] been given basic ATV riding instructions."

23 31. Counter-Defendants were not compelled to participate in the activity involving the
24 RZR, reviewed the Agreements, and voluntarily signed the Agreements.

25 32. On October 18, 2016, at approximately 10:25 a.m., shortly after signing the Rental
26 Agreement and Release and Assumption of the Risk Agreement and taking possession of the rented
27 RZR, an employee of Counter-Claimant received a call in which Counter-Defendant, JOHN
28 BORGER, explained that he had tipped over the RZR, that Counter-Defendant, SHERRI BORGER,'s

1 arm was under the RZR and that the arm was barely attached. He advised that they were in Bison
2 Wash.

3 33. The Counter-Claimant employee called 911 and Counter-Defendant, JOHN BORGER,
4 was given instructions regarding activation of the GPS system to allow emergency personnel to find
5 them.

6 34. Counter-claimant's employees immediately went to Bison Wash, where emergency
7 personnel were already on scene.

8 35. Counter-Defendants and their children were located and medical personnel attended to
9 Counter-Defendants.

10 36. Counter-Claimant is informed and believes and thereon alleges that Counter-
11 Defendant, JOHN BORGER, advised that he had driven across a small incline, was coming back down
12 and was going too fast when he started to make a turn and the RZR flipped on its side.

13 37. Counter-Claimant is informed and believes and thereon alleges that Counter-
14 Defendant, JOHN BORGER, advised Sgt. John Kole of the Mohave County Sheriffs' Office that he,
15 JOHN BORGER, had been driving the RZR, turned left, and the machine rolled over on its right side.

16 38. Counter-Claimant is informed and believes and thereon alleges that Counter-
17 Defendant, JOHN BORGER, advised Sgt. Kole that inexperience in driving the machine is what
18 caused the accident.

19 39. Counter-Claimant is informed and believes and thereon alleges that Counter-
20 Defendant, JOHN BORGER, advised Sgt. Kole that he was not sure how fast he had been driving
21 when the accident occurred, but thought he may have been going about 20 miles per hour.

22 40. Counter-Claimant is informed and believes and thereon alleges that Lake Havasu City
23 Police Department's Officer Murdock advised Sgt. Kole that Counter-Defendant, JOHN BORGER's,
24 two children had been riding in the back seat and that Counter-Defendant, SHERRI BORGER, had
25 been in the front passenger seat at the time of the accident.

26 41. Counter-Claimant is informed and believes and thereon alleges that Sgt. Kole also
27 spoke to Counter-Defendant, JOHN BORGER's, minor son, F.B, and daughter, Jade Borger, at the
28 scene of the accident.

1 42. Counter-Claimant is informed and believes and thereon alleges that F.B. corrected Sgt.
2 Kole's understanding of the location of the accident, but did not correct Sgt. Kole's understanding that
3 his father, Counter-Defendant, JOHN BORGER, had been driving. F.B. advised Sgt. Kole that he had
4 been sitting in the back seat at the time of the accident.

5 43. Counter-Claimant is informed and believes and thereon alleges that Counter-
6 Defendant, SHERRI BORGER, was transported by helicopter to the hospital.

7 44. Counter-Claimant is informed and believes and thereon alleges that Counter-
8 Defendant, JOHN BORGER, was transported away from the scene by medical personnel in an ATV-
9 type vehicle.

10 45. Upon retrieving the RZR, Counter-Claimant's employee, David Lehmitz, noted that
11 the RZR was in high gear and in 4-wheel drive mode.

12 46. Counter-Defendant, SHERRI BORGER, suffered serious injuries at the time her son
13 was driving the RZR.

14 47. Counter-Claimant is informed and believes and thereon alleges that on October 25,
15 2016, Counter-Defendant, SHERRI BORGER, advised Sgt. Kole that she was not sure of the seating
16 position of her children prior to the accident, but that he should speak to Counter-Defendant, JOHN
17 BORGER, to obtain that information.

18 48. Counter-Claimant is informed and believes and thereon alleges that on October 26,
19 2016, Sgt. Kole was able to reach Counter-Defendant, JOHN BORGER, on his cell phone. At that
20 time, Counter-Claimant is informed and believes and thereon alleges that, Counter-Defendant, JOHN
21 BORGER, admitted that upon arriving in the area off of Bison Road, he and his son, F.B., switched
22 seats, placing F.B. in the driver's seat and Counter-Defendant, JOHN BORGER, in the back
23 passenger-side seat, behind his wife and next to his daughter at the time of the accident.

24 49. Counter-Claimant is informed and believes and thereon alleges that Counter-
25 Defendant, JOHN BORGER, advised Sgt. Kole that F.B. drove for a few minutes on the flat area, then
26 turned left, at which time the RZR went over onto its right side, perhaps the result of the tire getting
27 caught on a rock.

28 50. Counter-Claimant is informed and believes and thereon alleges that Counter-

1 Defendant, JOHN BORGER, advised that at the time of the accident, his minor son, F.B., was driving
2 approximately 25-30 miles per hour.

3 51. Counter-Claimant is informed and believes and thereon alleges that Counter-
4 Defendant, JOHN BORGER, advised that the helmet found in the vehicle was intended for his son
5 who was under 18, but that it was not used.

6 52. Counter-Claimant is informed and believes and thereon alleges that on November 4,
7 2016, Counter-Defendant, JOHN BORGER, again confirmed to Sgt. Kole that his son, F.B., had been
8 driving the RZR at the time of the accident.

9 53. Counter-Claimant is informed and believes and thereon alleges that F.B. was under the
10 age of 18 at the time of the accident.

11 54. Counter-Claimant is informed and believes and thereon alleges that F.B. was not an
12 authorized driver of the RZR.

13 COUNT I

14 (Express/Contractual Indemnity)

15 55. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
16 through 54 of this Counterclaim as though fully set forth herein.

17 56. Counter-Defendants, expressly agreed to protect Counter-Claimant. Specifically,
18 Counter-Defendants expressly agreed to defend, indemnify and hold harmless Counter-Claimant from
19 and against any demands, claims, losses, causes of action, expenses, legal expenses, and attorneys'
20 fees which are in any way connected with, or in any way arising out of the use, maintenance and
21 operation of the RZR.

22 57. Counter-Claimant was not negligent in any way and no act or omission by Counter-
23 Claimant caused the accident at issue. However, even if any act or omission of Counter-Claimant
24 caused or contributed to the accident, Counter-Defendants agreed to protect Counter-Claimant and
25 expressly agreed to defend, indemnify and hold harmless Counter-Claimant for all claims, demands
26 or causes of action, including any such claims which allege negligent acts or omissions of Counter-
27 Claimant.

28 58. Counter-Claimant denies any liability for the damages and injuries alleged by

1 Plaintiffs. However, to the extent that Counter-Claimant is found to have any liability, pursuant to the
2 terms of the Rental Agreement and the Release and Assumption of the Risk Agreement (collectively
3 referred to herein as the "Agreements"), Counter-Claimant is informed and believes and thereon
4 alleges that it has defense and indemnity rights from Counter-Defendants for the injuries and damages
5 alleged by Plaintiffs.

6 59. By this action, Counter-Claimant tenders the defense and indemnity of Plaintiffs'
7 claims to Counter-Defendants.

8 60. Pursuant to the terms of the Agreements entered into between Counter-Claimant and
9 Counter-Defendants, Counter-Defendants, and each of them, have the duty to defend, indemnify and
10 hold harmless Counter-Claimant in the action filed by Plaintiffs.

11 61. It has been necessary for Counter-Claimant to retain the services of legal counsel to
12 defend Plaintiffs' action and bring this action. Counter-Claimant is entitled to recover attorneys' fees
13 and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the contractual
14 provisions of the Agreements.

15 COUNT II

16 (Implied Indemnity)

17 62. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
18 through 61 of this Counterclaim as though fully set forth herein.

19 63. Counter-Claimant is informed and believes and thereon alleges that Counter-Defendants
20 entered into written, oral and/or implied agreements with Counter-Claimant.

21 64. By reason of the foregoing, to the extent that Plaintiffs recover against Counter-
22 Claimant, Counter-Claimant is entitled to implied contractual indemnity from Counter-Defendants,
23 and each of them, for injuries and damages sustained by Plaintiffs, if any, for any sums paid by way
24 of settlement or, in the alternative, for judgment rendered against Counter-Claimant based upon
25 Plaintiff's Complaint.

26 65. It has been necessary for Counter-Claimant to retain the services of legal counsel to
27 defend Plaintiffs' action and to bring this action. Counter-Claimant is entitled to recover attorneys'
28 fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the

1 contractual provisions of the Agreements.

2 **COUNT III**

3 **(Breach of Contract)**

4 66. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
5 through 65 of this Counterclaim as though fully set forth herein.

6 67. Counter-Claimant and Counter-Defendants entered into Agreements as described
7 herein. *See*, Exhibits A and B.

8 68. Counter-Defendants voluntarily agreed to the terms and conditions of the RZR rental
9 as set forth in the Agreements.

10 69. Counter-Claimant has fully performed all conditions, covenants and promises required
11 by it to be performed in accordance with the terms and conditions of said Agreements.

12 70. Counter-Claimant is informed and believes and thereon allege that Counter-
13 Defendants, and each of them, breached terms, condition and duties set forth in said Agreements,
14 including, but not limited to: (1) allowing an unauthorized driver to drive the RZR in violation of the
15 terms of the written Agreements and verbal instructions; (2) allowing a person under the age of 25 to
16 drive the RZR in violation of the terms of the written Agreements and verbal instructions; (3) failing
17 to require F.B. to wear a helmet in violation of the terms of the written Agreements and verbal
18 instructions; (4) driving the RZR in a reckless manner in violation of the written Agreements and
19 verbal instructions; and, (5) by bringing suit against Counter-Claimant in violation of their assumption
20 of the risks associated with the off-road vehicle activity, in violation of their waiver of liability as to
21 Counter-Claimant, and in violation of their agreement to accept responsibility for everything and
22 anything that happens with respect to the RZR and/or the passengers.

23 71. As a direct and proximate result of Counter-Defendants' breaches of contract, Counter-
24 Claimant has been damaged in a sum which is currently unascertainable. Counter-Claimant will seek
25 leave of court to amend this Counterclaim once such sum can be reasonably ascertained.

26 72. As a direct and proximate result of the breaches of contract by Counter-Defendants,
27 and each of them, Counter-Claimant has incurred and will continue to incur costs and expenses
28 including, but not limited to, litigation costs, attorneys' fees and consultants' fees in connection with

1 the Complaint filed by Plaintiffs in the action on filed herein to the general damage of Counter-
2 Claimant, as will be shown according to proof at the time of the trial of this matter. Counter-Claimant
3 will seek recovery of the legal fees incurred in defending Counter-Claimant.

4 **COUNT IV**

5 **(Equitable Indemnity)**

6 73. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
7 through 72 of this Counterclaim as though fully set forth herein.

8 74. Counter-Claimant is informed and believes and hereon alleges that any and all injuries
9 and damages alleged by Plaintiffs in the Complaint were caused by Counter-Defendants, and each of
10 them, arising out of and in connection with their own negligence, negligent entrustment and breaches
11 of the contractual terms of the Agreements.

12 75. Counter-Claimant is informed and believes and hereon alleges that Counter-
13 Defendants agreed to be responsible for any and all injury and damage arising out of the rental and
14 use of the RZR.

15 76. In equity and good conscience, if Plaintiffs recover against Counter-Claimant herein,
16 by way of sums paid by settlement or by judgment rendered against Counter-Claimant based upon
17 Plaintiffs' Amended Complaint, then Counter-Claimant is entitled to an equitable indemnity
18 apportionment of the liability and contribution among and from the Counter-Defendants, and each of
19 them, according to their respective faults for the injuries and damages allegedly sustained by Plaintiffs,
20 if any.

21 77. It has been necessary for Counter-Claimant to retain the services of legal counsel to
22 defend Plaintiffs' action and to bring this action. Counter-Claimant is entitled to recover its attorneys'
23 fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the
24 contractual provisions of the Agreements.

25 **COUNT V**

26 **(Negligence)**

27 78. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
28 through 77 of this Counterclaim as though fully set forth herein.

79. Counter-Defendants, and each of them, owed a contractual and/or legal duty to Counter-Claimant and others, including Plaintiffs, to exercise due and reasonable care in the use of the RZR.

80. Counter-Defendants failed to act reasonably and failed to exercise due and reasonable care in the use of the RZR.

81. Counter-Defendants failed to act reasonably and failed to exercise due and reasonable care by entrusting the RZR to an unauthorized and minor driver, F.B.

82. By failing to use due and reasonable care, Counter-Defendants breached their duty owed to Counter-Claimant and others, including Plaintiffs.

83. The acts and omissions of Counter-Defendants, and each of them, were the direct and proximate cause of any and all injuries and damages, if any, incurred by Plaintiffs and Counter-defendant.

84. Counter-Claimant is informed and believes and thereon allege that Plaintiffs' damages, if any, were proximately caused by Counter-Defendants, and each of them, and that Counter-Defendants are liable for the damages sound by Plaintiffs in the Complaint.

85. The breaches of the aforementioned duties by each Counter-defendant, as described in the preceding paragraphs, were and are the actual and proximate cause of damages to Counter-Claimant in excess of \$15,000.00.

86. It has been necessary for Counter-Claimant to retain the services of legal counsel to defend Plaintiffs' action and bring this action. Counter-Claimant is entitled to recover its attorneys' fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the contractual provisions of the Agreements.

COUNT VI

(Contribution)

87. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1 through 86 of this Counterclaim as though fully set forth herein.

88. Based upon the acts and/or omissions of Counter-Defendants, and each of them, if a judgment is rendered on behalf of Plaintiffs, Counter-Claimant is entitled to contribution from each of

1 the Counter-Defendants in an amount proportionate to the amount of negligence and/or fault
2 attributable to each of the Counter-Defendants.

3 89. It has been necessary for Counter-Claimant to retain the services of legal counsel to
4 defend Plaintiffs' action and bring this action. Counter-Claimant is entitled to recover its attorneys'
5 fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the
6 contractual provisions of the Agreements.

7 COUNT VII

8 (Negligent Entrustment)

9 90. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
10 through 89 of this Counterclaim as though fully set forth herein.

11 91. Counter-Defendants allowed F.B. to drive the RZR contrary to the Agreements and
12 contrary to verbal instructions by Counter-Claimant employees.

13 92. Counter-Claimant is informed and believes and thereon alleges that the injuries, harm,
14 and damages, if any, were incurred by Plaintiffs as a result of the use of the vehicle by F.B. in a
15 negligent and reckless manner, which because of youth and inexperience, Counter-Defendants knew,
16 or had reason to know, was likely.

17 93. Allowing F.B. to drive the RZR involved an unreasonable risk of harm to others.

18 94. Counter-Defendants, as the renters and authorized drivers of the RZR, had the right,
19 power and duty to prohibit the use of the RZR by F.B.

20 95. Counter-Defendants knew, or had reason to know, that because of youth, inexperience,
21 the Driver/Rider Usage Rules, and the Agreements with Counter-Claimant, F.B. was likely to drive
22 the RZR in a negligent and reckless manner.

23 96. Plaintiffs' injury, damages and harm, if any, were a direct result of Counter-Defendants
24 negligently entrusting F.B., who operated the RZR in a negligent and reckless manner.

25 97. The breaches of the aforementioned duties by each Counter-Defendant, as described in
26 the preceding paragraphs, were and are the actual and proximate cause of damages to Counter-
27 Claimant in excess of \$15,000.00.

28 98. It has been necessary for Counter-Claimant to retain the services of legal counsel to

1 defend Plaintiffs' action and bring this action. Counter-Claimant is entitled to recover its attorneys'
2 fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the
3 contractual provisions of the Agreements.

4 **COUNT VIII**

5 **(Declaratory Relief)**

6 99. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
7 through 98 of this Counterclaim as though fully set forth herein.

8 100. At all times, Counter-Claimant has been in compliance with the terms of the
9 Agreements.

10 101. Counter-Defendants' actions constitute negligence, breach of contract, express
11 assumption of the risk, waiver, a duty to defend Counter-Claimant in any action brought arising out
12 of Counter-Defendants' use of the RZR and a duty to indemnify and hold harmless Counter-Claimant
13 for any liability arising out of Counter-Defendants' use of the RZR.

14 102. Counter-Claimant contends that it is entitled to indemnity and contribution from
15 Counter-Defendants based upon the legal theories set forth herein.

16 103. Counter-Claimant seeks a judicial determination of its rights under the Agreements and
17 a finding by this Court that Counter-Defendants are required to defend and indemnify Counter-
18 Claimant for any claims, suits, or liabilities arising out of Counter-Defendants use or misuse of the
19 RZR.

20 104. Counter-Claimant seeks a judicial determination that, pursuant to the terms of the
21 Agreements, Plaintiffs/Counter-Defendants, and each of them, have released and waived any and all
22 claims against Defendant/Counter-defendant arising out of or relating to Plaintiffs'/Counter-
23 Defendants' use of the RZR.

24 105. Counter-Claimant seeks a judicial determination that, pursuant to the terms of the
25 Agreements, Plaintiffs/Counter-Defendants expressly, voluntarily and contractually assumed the risk
26 of any and all injuries and damages arising out of their use of the RZR.

27 106. There exists a bona fide, actual, present and practical need for a legal determination by
28 this Court of the respective rights, duties and obligations of Counter-Claimant and Counter-Defendants

1 in connection with the matter herein alleged.

2 107. Counter-Claimant and Counter-Defendants have an actual, present controversy in the
3 subject matter described herein.

4 108. This issue is ripe for judicial determination because it presents an existing controversy
5 as to the parties' rights and obligations at issue herein.

6 109. Accordingly, Counter-Claimant is entitled to a declaratory judgment that (a)
7 Plaintiffs/Counter-Defendants have waived their ability to bring this action against Counter-Claimant;
8 (b) Plaintiffs/Counter-Defendants expressly and impliedly assumed the risks of injury and damage
9 arising out of their use of the RZR; (c) Plaintiffs/Counter-Defendants are in breach of the Rental
10 Agreement and the Release and Assumption of the Risk Agreement; and (d) Plaintiffs/Counter-
11 Defendants are required to defend and indemnify Counter-Claimant for any and all liabilities arising
12 out of Counter-Defendants' use of the RZR.

13 110. Counter-Claimant has been required to retain the services of an attorney to defend the
14 Complaint and to prosecute this action and is therefore entitled to recover its reasonable attorneys'
15 fees and costs as a result.

16 **WHEREFORE**, Counter-Claimant prays for judgment against Counter-Defendants, and each
17 of them, as follows:

- 18 1. For general and special damages in excess of \$15,000.00;
- 19 2. For indemnity, all damages and/or economic losses that Plaintiffs and/or any other
20 parties recover against Counter-Claimant by way of judgment, order, settlement, compromise or trial;
- 21 3. For reasonable attorneys' fees, costs, and expert costs and expenses pursuant to
22 statutory and contract law and the terms of the Agreements;
- 23 4. For pre-judgment interest;
- 24 5. For consequential damages in excess of \$15,000.00;
- 25 6. For incidental damages in excess of \$15,000.00;
- 26 7. For contribution pursuant to NRS 17.225;
- 27 8. For a declaration of the rights and obligations of the parties, including but not limited
28 to, a declaration that Counter-Defendants are required to defend and indemnify Counter-Claimant for

any claim, suit or liability arising out of Counter-Defendants' rental and use of the RZR;

9. For such other and further relief as the court may deem just, equitable and proper.

CROSSCLAIM OF SANDBAR POWERSPORTS, LLC

Cross-Claimant, SANDBAR POWERSPORTS, LLC ("SANDBAR" or "Cross-Claimant") by and through its counsel of record, the law firm of Litchfield Cavo LLP, and for its Crossclaim against POLARIS INDUSTRIES, INC. ("POLARIS" or "Cross-Defendant"), hereby affirmatively allege as follows:

1. Plaintiffs' causes of action sets forth claims for recovery under theories of "product liability," as defined in ARS 12-681.

2. SANDBAR is considered a "seller" of the RZR that is alleged to be defective in Plaintiffs' Amended Complaint in accordance with ARS 12-681(7).

3. POLARIS is a manufacturer of the RZR that is alleged to be defective in Plaintiffs' Amended Complaint in accordance with ARS 12-681(1).

4. On or about January 15, 2018, SANDBAR tendered its defense in this action to POLARIS.

5. On or about January 25, 2018, POLARIS rejected SANDBAR's tender of defense.

6. No defenses to the statutory indemnity provided to a seller by a manufacturer under ARS 12-684 are present.

7. Pursuant to ARS 12-684, POLARIS is responsible for indemnifying SANDBAR for costs and attorneys' fees incurred in this action, as well as any Judgment.

WHEREFORE, SANDBAR prays for judgment against POLARIS, as follows:

1. For a Judgment in favor of SANDBAR and against POLARIS, awarding SANDBAR its costs and attorneys' fees incurred in defending this action as well as indemnification for any Judgment that may be entered against it as a result of product liability claims asserted by the Plaintiffs in Plaintiffs' Amended Complaint, including any attorneys' fees and/or litigation costs, taxable and non-taxable, incurred in such defense; and

///

///

1 2. For such other and further relief as the court may deem just, equitable and proper.

2
3 Dated: February 2, 2018

LITCHFIELD CAVO LLP

4
5 By: _____

6 GRIFFITH H. HAYES, ESQ.

7 Nevada Bar No. 7374

8 MARISA A. POCCI, ESQ.

9 Nevada Bar No. 10720

10 KEIVAN A. ROEBUCK, ESQ.

11 Nevada Bar No. 14110

12 3993 Howard Hughes Parkway, Suite 100

13 Las Vegas, Nevada 89169

14 Telephone: (702) 949-3100

15 Facsimile: (702) 916-1776

16 Email: hayes@litchfieldcavo.com

17 Email: pocci@litchfieldcavo.com

18 Email: roebuck@litchfieldcavo.com

19 *Attorneys for Defendant/Counter-Claimant Sandbar*
20 *Powersports, LLC*

EXHIBIT A

Renter's Name and Address	Sherrin Darger 3030 3rd Ave NE Owajon, MN 55000	Renter's Cell Phone	501 513 3034
Riding Area	Lake Havasu	2nd Cell No.	
Vehicle Make & Model Rented/Leased		P2L 900 4 Seater	

Sandbar Powersports, LLC ("Company") agrees to rent the following vehicle, a new or recent model Polaris, including all parts and accessories thereto ("Vehicle") to Renter, upon the condition that Renter agrees to all terms and conditions set forth below, including the release of claims, and evidences Renter's agreement with his/her signature in the space provided. As used herein, the term "Renter" shall include the person listed above and signing this Agreement, as well as all other persons using the rented Vehicle as an operator or as a passenger.

The Vehicle shall be rented for the time period and rate specified as follows (TO BE COMPLETED BY STAFF):

License Plate:	P2L 4 Seater 900	Driver's License Number:	See Copy	State of Issue:	
Number of Passengers:	4	Age of Renter/Driver:	50	Vehicle Mileage Out:	
Time Out:		Time Due In (Scheduled / Actual):		Mileage In:	
Card #	See Copy	Exp	/	Rental Deposit:	\$ 1000
Insurance per day: \$ 15 X		= \$	15.00	Day(s) Rented:	
Rental Rate:	380	+ Tax: \$	29.44	Total Rental:	\$ 409.44
				Late/Excessive Usage Fees:	\$

READ THE FOLLOWING SECTIONS FULLY AND CAREFULLY PRIOR TO SIGNING. THIS IS A LEGALLY VALID AND BINDING OBLIGATION TO RELEASE COMPANY FROM ALL KNOWN AND UNKNOWN RISKS, AND TO INDEMNIFY COMPANY AGAINST CLAIMS BROUGHT AGAINST IT BASED UPON YOUR USE OF THE VEHICLE. THIS INSTRUMENT AFFECTS IMPORTANT LEGAL RIGHTS.

TERMS AND CONDITIONS

- Release and Waiver of Claims; Indemnification.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Renter does hereby remise, release, and forever discharge Company, and its agents, servants, successors, heirs, executors, administrators, personal representatives and owners from which boat is leased, of and from all, and all manner of, actions, causes of action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and demands whatsoever in law or equity, which Renter ever had, now has, or which Renter's heirs, executors, administrators or personal representatives hereafter can, shall, or may have for or by reason of any matter, cause, or thing whatsoever arising out of this Agreement; out of the use, misuse, or abuse of the Vehicle, or in any way arising out of the rental relationship between Renter and Company. Renter agrees to hold harmless the Company and to defend and indemnify Company for, from any against all claims, losses, causes of action, and expenses, including legal expenses and reasonable attorneys' fees whether incurred by the Renter or by those making claim against the Renter, arising in any way out of the use, maintenance and operation of the leased Vehicle.
- Assumption of Risk.** Renter acknowledges that the activities for which the Vehicle is designed include inherent dangers, including the risk of bodily injury, dismemberment and/or death. Renter hereby assumes the risk of any harm, accident or damage which may be done to or suffered by the Renter, any person who operates, is a passenger in or uses the rented Vehicle or to the personal property of any of them arising out of the use of the Vehicle, including damage caused by any defects in the Vehicle or damage caused by negligence of the Company. Renter hereby forever releases and waives any and all claims which may arise against the Company and its agents for injuries or damage which may be sustained, arising in any way out of the operation or use of the leased Vehicle during the rental term. It is Renter's responsibility to remove all personal property from the Vehicle upon its return. Company shall not be responsible for any personal property of Renter or of others which may be lost or left on the Vehicle at the conclusion of the rental term.
- Insurance.** Renter certifies that Renter has adequate insurance to cover any injury or damage Renter may cause or suffer while participating, or else Renter agrees to bear the costs of such injury or damage.
- Vehicle Rented As Is.** Renter acknowledges that the Vehicle is rented AS IS. Company is not a manufacturer of this Vehicle and Company HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE LEASED VEHICLE, NOR OF ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. NO REFUNDS WILL BE GIVEN.
- Renter Obligations; Use Limitations.** Renter agrees to be responsible, financially and otherwise, for all Vehicles rented. The Vehicles may only be used on designated trails and legal riding areas. Renter further agrees not to sublease or rent or otherwise convey any interest in any of said Vehicle to others. Renter also agrees not to allow any persons to drive or operate the leased Vehicle who are approved by the company and/or have not received the instructions for use of the rented Vehicle given by Company. All operators of the leased Vehicle must be at least 25 years of age for the Polaris Razor 800/900 and 30 + years of age for the Polaris Razor 1000 Xp with a valid driver's license and have signed the rental contract. I UNDERSTAND AND AGREE THAT IF I AM RENTING A VEHICLE I WILL NOT HAVE MORE THAN THREE PASSENGERS ON THE VEHICLE AT ANY GIVEN TIME. Renter's Initials: *JD*
- Acceptable Use.** Renter acknowledges that he/she has been fully instructed and fully understands how to operate the Vehicle in a safe and proper manner. Renter shall at all times adhere to the precaution practices, rules and safety instructions specified by the Company. Renter agrees to observe and cause to be observed by all users of the Vehicle all proper safety precautions in the use and operation of the Vehicle, and agrees not to use or allow others to use the Vehicle in a manner other than as intended by the manufacturer. Renter shall be responsible at all times for the safety of any and all riders and passengers or any other individuals on or near the Vehicle and acknowledges that the Company will not be liable for any accidents caused by natural disasters or any accidents that are out of control of the Company.
- Prohibited Actions.** If Renter engages in one or more prohibited activities, he or she will be in violation of this Agreement, the vehicle will be repossessed at Renter's expense, without refund, and Renter will be charged a \$500 fine in addition to damages. Prohibited actions include:
 - The UTV/ATV is not licensed for or allowed to be driven down the Hwy 95.
 - Reckless driving such as jumping, driving too fast, rock crawling, sliding or spinning in circles/doing donuts in the vehicle.
 - Riders under the age of 18 riding without a helmet & eye protection;
 - Towing or allowing the Vehicle to be towed without verbal or written approval from Company;
 - Driving the Vehicle up or down any incline or decline of more than 15 degrees;
 - Allowing an unauthorized driver to drive the vehicle with approval from the Company.

Renter(s) have read and verified all information on this page: Renter 1: *JD* / Renter 2: *JD*

- G. Use of alcoholic beverages or drugs while riding in or operating the Vehicle;
- H. No use of the rented vehicle in or at a competition track, park or off road race.
- I. Working on or attempting to repair the Vehicle by Renter, any passenger or any other person without the prior approval of the Company;
- J. Failing to notify the Company of any accident involving the Vehicle or injury to any driver or passenger during the operation of the Vehicle.
8. **Damages:** All damages/repairs to any part of the vehicle are the renter(s) responsibility and shall be paid for prior to leaving at the end of the rental. Insurance does not cover flat tires, replacement of the tires, seats, wheels, body parts, steering parts, suspension parts, roof, mirrors or damages to the roll cage.
9. **Condition of Vehicle upon Return.** Renter must return the Vehicle to our rental office, on the date and time specified in this Agreement, and in the same condition that Renter received it, except for ordinary wear. Renter is responsible for all damage to, or loss or theft of, the Vehicle, including damage caused by weather, road conditions and acts of nature, whether or not Renter is at fault. It is Renter's responsibility to thoroughly inspect the Vehicle for any existing damage before the rental commences and to ensure any damage is documented on the Vehicle rental checkout inspection. Any damage not documented on the form will be Renter's responsibility. Renter is responsible for the cost of the repair or the actual cash retail value of the Vehicle on the date of the loss if the Vehicle is not repairable or if we elect not to repair the Vehicle. Loss of Use, Diminished Value, and any administrative expenses we incur processing the claim. Renter is also responsible for any loss rental income that was caused by his or her negligence. Renter must report all accidents or incidents of theft and vandalism to us and the police as soon as the Renter discovers them. Renter is responsible for paying to the appropriate 3rd party all applicable costs and fees, including, but not limited to tolls, parking, traffic and toll violations, toll evasion fines, citations, other fees, penalties, forfeitures, court costs, towing, and storage charges occurring during the Rental Period. If Renter fails to pay the charging entities and we pay all or part of the charges on Renter's behalf, Renter will reimburse us for all such costs and, in addition, pay us an administrative fee of \$100 for each such charge. Renter agrees that all charges, as outlined by the paragraph and throughout this Agreement, may be deducted from Renter's Security Deposit. To the extent that the Security Deposit does not cover all damage costs, Renter agrees to pay Company on the return of the Vehicle for any and all damage to the Vehicle exceeding the Security Deposit. In the event that the vehicle is totaled, the renter is responsible for the deductible on the Insurance of \$2500.00. NEITHER RENTER NOR ANY OTHER PERSON IS AUTHORIZED TO REPAIR OR WORK ON SAID VEHICLE WITHOUT WRITTEN OR VERBAL APPROVAL FROM COMPANY. I Accept Responsibility For Any And All Cost/Damage To The Vehicle. Renter's Initials: [Signature]
10. **Cleaning Fee.** Vehicles returned with excessive dirt, mud or trash on or in the Vehicle(s) rented, will be charged a \$75.00 cleaning fee.
11. **Late Return/Extra Usage: Fuel Costs.** If Renter returns the Vehicle after the scheduled "Time In" indicated above, the Renter will be charged a late fee of \$75 per half hour per Vehicle. Renter agrees to pay for all oil and gas consumed by the Vehicle for the use of the Vehicle by Renter. In the event Renter retains the Vehicle for an additional time period such retention shall be construed as a continuance of this lease, at the same rental rate described above, and under the same terms and conditions stated herein, until the Vehicle is returned to Company. Any sums owing by Renter for such extended rental shall be paid immediately upon return of the Vehicle, and may be withheld by Company from the Security Deposit or charged on Renter's credit/debit card or cash.
12. **Recovery/Rescue Costs.** Renter is responsible for any recovery costs, rescue costs or costs related to getting Vehicles unstuck, including, but not limited to, a \$75 per half hour labor charge, plus fuel and oil for ATVs used in the recovery.
13. **Rental Deposit: Charge Authorization.** I authorize the Company to charge my Credit or Debit Card ("Charge Card") for the rented Vehicle listed in this Agreement. If applicable, I also authorize the Company to charge my Charge Card for damages, cleaning and other fees in accordance with the provisions herein. In the event that my Charge Card will not cover all charges, I authorize the Company to bill me, and/or charge a secondary credit or debit card or make arrangements for payment to cover all charges within 30 days.
14. **Weather Conditions.** Company is not responsible for weather conditions, weather changes or unpredictable storms. Company does not refund rental amounts paid due to weather conditions.
15. **Fuel.** Renter is required to replace used fuel. If Renter does not replace fuel, Company will refund the Vehicle at \$5.50 per gallon and charge Renter's Charge Card on file for the replacement fuel cost. Renter Replaces Fuel. [Signature] Sandbar Replaces Fuel - [Signature]
16. **Alterations/Changes to Agreement.** Renter shall not change or alter any portion or part of this Agreement. Any attempt by Renter to alter this Agreement shall be of no effect and Renter shall forfeit the rental deposit paid and all rental privileges.
17. **Refund/Cancellation of Rental Policy.** In the event of a mechanical failure through no fault of Renter, Company will issue a Rental Credit Voucher (if paid by credit card) or supply Renter with another Vehicle that is available. If Renter cancels any part of the rental, damages the rental beyond repair or an unforeseen incident weather has caused the rental to end early, there will be no credit or refund for time unused. Rental Credit Vouchers are valid for 12 months beyond issue date.
18. **Over Night Rentals.** Renter is fully responsible for the Vehicle. Vehicle is not allowed to be driven off road after sunset and before sunrise. After hour emergency calls will be billed at \$150 an hour.
19. **Notification of Problems.** In the event that there is a problem with the Vehicle, mechanical or otherwise, Renter must immediately notify Company of the problem. If Renter fails to notify Company, any and all issues with the Vehicle will be deemed the fault of the Renter.
20. **Miscellaneous.** This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representative, successors and assigns of the Renter. This Agreement and any disputes arising there under shall be governed by the laws of Arizona. In case of any failure to faithfully perform the terms and covenants set forth herein, the Renter party shall pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach, whether or not the rental period has earlier terminated or any lawsuit is filed or similar action taken to accomplish the result sought or obtained. No change or addition to this Agreement shall be effective or binding unless evidenced in writing signed by the Company and the party agreeing to perform there under. Renter agrees that if any portion of this agreement is found to be void or unenforceable, the remaining portions shall remain in full force and effect.
21. The parties acknowledge that Renter has deposited the Security Deposit listed in this Agreement by cash or a signed VISA, MASTERCARD or DISCOVER credit card. In the event of any damage to the Vehicle or to others or their property, Company shall charge the cost to repair such damage to the Renter's credit card and/or shall retain all or part of the security deposit to be applied toward any damage incurred. Renter authorizes payment to Company of the amount to be determined by Company upon return of the rented Vehicle, for any damages to or arising from use of the rented Vehicle.
22. Renter represents that he/she has carefully read and understands and agrees to each of the terms of this Agreement.

RENTER PLEASE NOTE: YOU ARE LIABLE AND RESPONSIBLE FOR ANY AND ALL TERMS AND CONDITIONS IN THIS CONTRACT EVEN IF YOU DON'T TAKE THE TIME TO READ IT.

RENTER'S Initials, Print & Signature indicates agreement to all terms & conditions set forth in this contract. Renter has read, understands all of the terms, conditions and rules set forth above, and agrees to all terms without reservation.

Renter affirms that Renter is not impaired or under the influence of any drugs, medications, or alcohol of any kind, that would keep Renter from understanding or mislead Renter's judgment with regard to signing this contract/rental agreement.

Renter: Print name: [Signature] Sign: [Signature] Date: 10/18/16
Renter(s) have read and verified the information on this page: Renter [Signature] / Renter 2: [Signature]

EXHIBIT B

PARTICIPANT AGREEMENT, RELEASE AND ASSUMPTION OF RISK

All participants, including drivers AND passengers, must sign this Agreement.

In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the undersigned (hereinafter, "I" or "participant") hereby agree to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. **Assumption of Risk.** I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY, OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY. I ALSO UNDERSTAND THAT MY RISK OF INJURY MAY BE INCREASED DUE TO MY OWN PHYSICAL CONDITION, AND THE PHYSICAL EXERTION ASSOCIATED WITH THIS ACTIVITY. I ACKNOWLEDGE THAT ACCIDENTS OR ILLNESS CAN OCCUR IN REMOTE PLACES WITHOUT MEDICAL FACILITIES OR THE AVAILABILITY OF IMMEDIATE MEDICAL ATTENTION IN THE EVENT OF AN INJURY. I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS. **THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:**

slips and falls, riding on uneven and/or snow covered terrain, changing weather conditions and variations in elevation; injury resulting from improper lifting or carrying; injury resulting from being jolted, jarred, bounced, thrown about and otherwise shaken during rides; injury resulting from contact with other passengers or equipment; injury resulting from items or conditions on the trail such as holes, bumps, ruts, obstacles, tree limbs and branches or rocks; injury resulting from loss of control of the vehicle, falls from the vehicle, collision with other vehicles, participants, trees, rocks, and other manmade or natural obstacles; injury resulting from exposure to temperature and weather extremes which could cause hypothermia, hyperthermia (heat-related illness), heat exhaustion, sunburn, dehydration; and exposure to potentially dangerous wild animals, insect bites, and hazardous plant life, equipment failure, burns, mechanical and/or equipment problems.

I understand that Company employees have difficult jobs to perform. They seek to provide for the safety of all participants, but their ability to do so is limited by not only the inherent risks and uncertainties related to the use of the Vehicle or the Vehicle itself, weather and conditions, but also by the extent to which participants follow instructions and rules, whether written or orally expressed by Company employees. I agree to follow ALL instructions and rules set forth by the Company and its employees, including, but not limited to those set forth on Exhibit A hereto.

2. **Waiver of Claims; Indemnification.** I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of Company's Vehicles, equipment or facilities, including any such claims which allege negligent acts or omissions of Company.

3. **Insurance.** I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

4. **Pregnant Participants.** Female drivers/passengers who are, or believe or suspect that they are pregnant, MUST have a doctor's release to participate in said activity prior to riding/driving a rented Vehicle.

5. **Miscellaneous.** This Agreement shall be governed by and construed under the laws of the State of Arizona, without regard to its conflict of laws principles. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of the participant. I hereby waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. I agree that if any portion of this agreement is found to be void or unenforceable, the remaining document shall remain in full force and effect. I agree to pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against the Company on the basis of any claim from which I have released them herein.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

- ☒ By checking this Box I am declining to wear a helmet.
☒ By checking this box I will use a helmet that is being provided by "Company".
☐ By checking this Box I will be providing my own personal helmet that is Snell and Dot approved.

Signature of Participant

Print Name

Address

Phone

Date

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION

(Must be completed for participants under the age of 18)

In consideration of

(print minor's name)

being permitted by Company to participate in its equipment and facilities, I further agree to indemnify and hold harmless Company from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent or Guardian

Print Name

Date

PARTICIPANT AGREEMENT, RELEASE AND ASSUMPTION OF RISK

All participants, including drivers AND passengers, must sign this Agreement.

In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the undersigned (hereinafter, "I" or "participant") hereby agree to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. **Assumption of Risk.** I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY, OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY. I ALSO UNDERSTAND THAT MY RISK OF INJURY MAY BE INCREASED DUE TO MY OWN PHYSICAL CONDITION, AND THE PHYSICAL EXERTION ASSOCIATED WITH THIS ACTIVITY. I ACKNOWLEDGE THAT ACCIDENTS OR ILLNESS CAN OCCUR IN REMOTE PLACES WITHOUT MEDICAL FACILITIES OR THE AVAILABILITY OF IMMEDIATE MEDICAL ATTENTION IN THE EVENT OF AN INJURY. I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS. THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:

slips and falls, riding on uneven and/or snow covered terrain, changing weather conditions and variations in elevation; injury resulting from improper lifting or carrying; injury resulting from being jolted, jarred, bounced, thrown about and otherwise shaken during rides; injury resulting from contact with other passengers or equipment; injury resulting from items or conditions on the trail such as holes, bumps, ruts, obstacles, tree limbs and branches or rocks; injury resulting from loss of control of the vehicle, falls from the vehicle, collision with other vehicles, participants, trees, rocks, and other manmade or natural obstacles; injury resulting from exposure to temperature and weather extremes which could cause hypothermia, hyperthermia (heat related illness), heat exhaustion, sunburn, dehydration; and exposure to potentially dangerous wild animals, insect bites, and hazardous plant life, equipment failure, burns, mechanical and/or equipment problems.

I understand that Company employees have difficult jobs to perform. They seek to provide for the safety of all participants, but their ability to do so is limited by not only the inherent risks and uncertainties related to the use of the Vehicle or the Vehicle itself, weather and conditions, but also by the extent to which participants follow instructions and rules, whether written or orally expressed by Company employees. I agree to follow ALL instructions and rules set forth by the Company and its employees, including, but not limited to those set forth on Exhibit A hereto.

2. **Waiver of Claims; Indemnification.** I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of Company's Vehicles, equipment or facilities, including any such claims which allege negligent acts or omissions of Company.

3. **Insurance.** I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

4. **Pregnant Participants.** Female drivers/passengers who are, or believe or suspect that they are pregnant, **MUST** have a doctor's release to participate in said activity prior to riding/driving a rented Vehicle.

5. **Miscellaneous.** This Agreement shall be governed by and construed under the laws of the State of Arizona, without regard to its conflict of laws principles. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of the participant. I hereby waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. I agree that if any portion of this agreement is found to be void or unenforceable, the remaining document shall remain in full force and effect. I agree to pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against the Company on the basis of any claim from which I have released them herein.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

☒ By checking this Box I am declining to wear a helmet.

☐ By checking this box I will use a helmet that is being provided by "Company".

☐ By checking this Box I will be providing my own personal helmet that is Snell and Dot approved.

Signature of Participant Shawn Banger Print Name Shawn Banger

Address 3030 3rd Ave NE Owatonna MN 55060

Phone 507 573 3834 Date 10/18/16

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION

(Must be completed for participants under the age of 18)

In consideration of _____ (print minor's name)

("Minor") being permitted by Company to participate in its equipment and facilities, I further agree to indemnify and hold harmless Company from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent or Guardian: _____ Print Name: _____

Date: _____

PARTICIPANT AGREEMENT, RELEASE AND ASSUMPTION OF RISK

All participants, including drivers AND passengers, must sign this Agreement.

In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the undersigned (hereinafter, "I" or "participant") hereby agree to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. **Assumption of Risk.** I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY, OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY. I ALSO UNDERSTAND THAT MY RISK OF INJURY MAY BE INCREASED DUE TO MY OWN PHYSICAL CONDITION, AND THE PHYSICAL EXERTION ASSOCIATED WITH THIS ACTIVITY. I ACKNOWLEDGE THAT ACCIDENTS OR ILLNESS CAN OCCUR IN REMOTE PLACES WITHOUT MEDICAL FACILITIES OR THE AVAILABILITY OF IMMEDIATE MEDICAL ATTENTION IN THE EVENT OF AN INJURY. I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS. **THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:**

slips and falls, riding on uneven and/or snow covered terrain, changing weather conditions and variations in elevation; injury resulting from improper lifting or carrying; injury resulting from being jolted, jarred, bounced, thrown about and otherwise shaken during rides; injury resulting from contact with other passengers or equipment; injury resulting from items or conditions on the trail such as holes, bumps, ruts, obstacles, tree limbs and branches or rocks; injury resulting from loss of control of the vehicle, falls from the vehicle, collision with other vehicles, participants, trees, rocks, and other manmade or natural obstacles; injury resulting from exposure to temperature and weather extremes which could cause hypothermia, hyperthermia (heat related illness), heat exhaustion, sunburn, dehydration; and exposure to potentially dangerous wild animals, insect bites, and hazardous plant life, equipment failure, burns, mechanical and/or equipment problems.

I understand that Company employees have difficult jobs to perform. They seek to provide for the safety of all participants, but their ability to do so is limited by not only the inherent risks and uncertainties related to the use of the Vehicle or the Vehicle itself, weather and conditions, but also by the extent to which participants follow instructions and rules, whether written or orally expressed by Company employees. I agree to follow ALL instructions and rules set forth by the Company and its employees, including, but not limited to those set forth on Exhibit A hereto.

2. **Waiver of Claims; Indemnification.** I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of Company's Vehicles, equipment or facilities, including any such claims which allege negligent acts or omissions of Company.

3. **Insurance.** I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

4. **Pregnant Participants.** Female drivers/passengers who are, or believe or suspect that they are pregnant, MUST have a doctor's release to participate in said activity prior to riding/driving a rented Vehicle.

5. **Miscellaneous.** This Agreement shall be governed by and construed under the laws of the State of Arizona, without regard to its conflict of laws principles. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of the participant. I hereby waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. I agree that if any portion of this agreement is found to be void or unenforceable, the remaining document shall remain in full force and effect. I agree to pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against the Company on the basis of any claim from which I have released them herein.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

☒ By checking this Box I am declining to wear a helmet.

☐ By checking this box I will use a helmet that is being provided by "Company".

☐ By checking this Box I will be providing my own personal helmet that is Snell and Dot approved.

Signature of Participant [Signature] Print Name Jade Berger

Address 3030 3rd Ave NE Austin, MN 55400

Phone (650) 575-1217 Date 10/18/16

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION
(Must be completed for participants under the age of 18)

In consideration of _____ (print minor's name)
("Minor") being permitted by Company to participate in its equipment and facilities, I further agree to indemnify and hold harmless Company from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent or Guardian: _____ Print Name: _____

Date: _____

EXHIBIT A**Driver/Rider Usage Rules:**

1. I/We will not drink and drive or allow a driver to drink.
2. I/We will only allow the authorized drivers on the Rental Agreement to drive the rental Vehicle.
3. I/We will not over load any part of the rental Vehicle (i.e.; more people on the vehicle than the number of seats on the vehicle), carrying excessive equipment or towing of equipment.
4. I/We will not ride on private property or areas stating that no driving or off road vehicles are allowed.
5. I/We will follow and obey all traffic laws and rules when driving on all paved roads and off roads that are located on BLM land.
6. I/We will not drive the rental Vehicle up or down or drive along the side of a hill that has more than a 15% incline or decline.
7. I/We will not drive the rental Vehicle in a reckless manner, such as (excessive speeding on trails, roads, or sliding the Vehicle sideways or doing donuts or burn outs, or racing or driving the rental Vehicle in an unauthorized area.
8. I/We will only drive the rental Vehicle on designated trails, or previously ridden trails or roads, but not to exceed my driving ability. I/We will not make our own trail. You are required to stay on existing trails only.
9. I/We by Arizona Law are/are required to have all passengers under the Age of 18 wear a helmet.
10. I/We will not ride in any Sand Dune areas. I will only ride in areas the is approved by the rental company.
11. I/We will not jump the rental Vehicle.
12. I/We will not roll or tip the rental Vehicle over.
13. I/We will make sure that all riders/passengers have their seat belts buckled at all times prior to driving the rental Vehicle.
14. I/We will make sure that all riders/passengers wear eye protection at all times prior to driving the rental Vehicle.
15. As the driver of the rental Vehicle I am responsible for everything and anything that happens with respect to the rental Vehicle and its use, and with respect to any passengers.
16. I/We will return the rental vehicle(s) full of fuel or be subject to refueling cost.
17. No Refunds are allowed. Credits only. If negligence or driver is found to be careless no credit will be allowed.
18. Driver Age Limits:
 - A) Polaris RZR 800 - Minimum age is 25 +
 - B) Polaris RZR 900 - Minimum age is 25 +
 - C) Polaris RZR 1000 - Minimum age is 30+ with experience Only and is approved by the rental company.
19. Excessive Usage to the rental Vehicle may, can or will include any of the following.
 - A) Tires/Wheels/Shocks repair or replacement - examples are dented bent, flat or punctured tires, chunked, hub broken, axles, drive shafts, a-arms, tie-rods etc. - Cost start at \$95
 - B) Engine damage or loss, examples - such as knocking, overheating, won't start, has trouble running, Vehicle will not go in forward or reverse or neutral, valve or head issues, transmission or drive gears etc. Parts + Labor Start @(\$95/hr)
 - C) Exterior marks or fender, roll bar damage of any kind, such as scratches, chips, holes, chunks, missing or dented areas and or parts. Repairs Parts Replacement Value
 - D) Interior damage such as cigarette burns, stains of any kind, tears and any broken equipment. Burns \$100 per hole, Fabric or any repairs will be a repair or replacement cost.
 - E) Loss of equipment such as anything that is sent out with the rental Vehicle safety equipment, ropes of any kind, fire extinguisher, flags, air horns, ignition or lock key(s) - Cost of replacement at current value.
 - F) Complete loss of rented equipment such as crashed, stolen, abandonment or non-return at return time. Cost of current replacement value. Abandonment will result in loss of deposit plus damages, non-return will be late charges and without notification within 2 hours will be reported stolen.
 - G) Any additional rented or loaned equipment, such as ropes, ice chest, goggles, and helmets - Replacement cost
 - H) Recovery Cost \$75 per hour + .09cents per mile + any additional equipment need to recover the rental Vehicle + damages.
 - I) In the event that the machine is tip or rolled over, renter will automatically be charged full replacement cost of the roll cage and any additional damage + labor.

If any of these Driver Usage Rules are violated, the renter of the Vehicle will lose his or her rental deposit and will be responsible for any and all damages arising from such violation, and any participant acting in violation of these Driver Usage Rules will be responsible for any and all damages arising from such violation.

By signing below, participant certifies that participant understands and agrees to all of the terms, rules and conditions set forth in this Agreement without exception. participant affirms that participant is not involved or under the

1600 Countryshire
Lake Havasu City, AZ 86403
928-854-4242

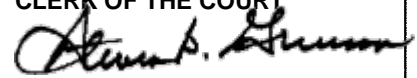
- G. Use of alcoholic beverages or drugs while riding in or operating the Vehicle;
 - H. No use of the rented vehicle in or at a competition track, park or off road race.
 - I. Working on or attempting to repair the Vehicle by Renter, any passenger or any other person without the prior approval of the Company;
 - J. Failing to notify the Company of any accident involving the Vehicle or injury to any driver or passenger during the operation of the Vehicle.
8. **Damages:** All damages/repairs to any part of the vehicle are the renter(s) responsibility and shall be paid for prior to leaving at the end of the rental. Insurance does not cover flat tires, replacement of the tires, seats, wheels, body parts, steering parts, suspension parts, roof, mirrors or damages to the roll cage.
9. **Condition of Vehicle upon Return:** Renter must return the Vehicle to our rental office, on the date and time specified in this Agreement, and in the same condition that Renter received it, except for ordinary wear. Renter is responsible for all damage to, or loss or theft of, the Vehicle, including damage caused by weather, road conditions and acts of nature, whether or not Renter is at fault. It is Renter's responsibility to thoroughly inspect the Vehicle for any existing damage before the rental commences and to ensure any

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February, 2018, that I caused to be served a true and accurate copy of the foregoing **ANSWER OF SANDBAR POWERSPORTS, LLC TO PLAINTIFFS' AMENDED COMPLAINT AND COUNTERCLAIM AND CROSSCLAIM** by sending a copy of the same via Odyssey eFile NV, the Court's electronic service program to the following:

Counsel of Record	Phone/Fax Nos.	Party
Chad A. Bowers, Esq. CHAD A, BOWERS, LTD. 3202 West Charleston Blvd. Las Vegas, NV 89102	T: 702-457-1001 F: 702-457-8006 E: bowers@laywer.com	Plaintiffs
Kyle W. Farrar (<i>Pro Hac Vice</i>) Kaster, Lynch, Farrar & Ball, LLP 1010 Lamar, Suite 1600 Houston, Texas 77002	T: 713-221-8300 F: 713-221-8301 E: kyle@fbtrial.com	
Jennifer Willis Arledge, Esq. Wilson Elser Moskowitz Edelman & Dicker LLP 300 South 4 th Street, 11 th Floor Las Vegas, NV 89101	T: 702-727-1400 F: 702-727-1401 E: Jennifer.arledge@wilsonelser.com	Defendant/Cross- Defendant, Polaris Industries, Inc.


An employee of LITCHFIELD CAVO LLP



AACC
GRIFFITH H. HAYES, ESQ.
Nevada Bar No. 7374
MARISA A. POCCI, ESQ.
Nevada Bar No. 10720
KEIVAN A. ROEBUCK, ESQ.
Nevada Bar No. 14110
LITCHFIELD CAVO LLP
3993 Howard Hughes Parkway, Suite 100
Las Vegas, Nevada 89169
Telephone: (702) 949-3100
Facsimile: (702) 916-1776
Email: hayes@litchfieldcavo.com
Email: pocci@litchfieldcavo.com
Email: roebuck@litchfieldcavo.com

Attorneys for Defendant/Counter-Claimant/Cross-Claimant, Sandbar Powersports, LLC

DISTRICT COURT

CLARK COUNTY NEVADA

JOHN BORGER and SHERRI BORGER,

Plaintiffs,

v.

SANBAR POWERSPORTS, LLC, DOES I
through X, ROE CORPORATIONS XI through
XX, inclusive, and POLARIS INDUSTRIES,
INC.

Defendants.

SANBAR POWERSPORTS, LLC.

Counter-Claimant,

v.

JOHN BORGER and SHERRI BORGER,

Counter-Defendants.

SANBAR POWERSPORTS, LLC.

Cross-Claimant,

v.

POLARIS INDUSTRIES, INC.,

Cross-Defendant.

Case No.: A-17-751896-C

Dept.: XXV

**ANSWER, COUNTER-CLAIM AND
AMENDED CROSS-CLAIM OF
SANBAR POWERSPORTS, LLC TO
PLAINTIFFS' AMENDED COMPLAINT**

1 COME NOW Defendant, SANDBAR POWERSPORTS, LLC, erroneously sued and served
2 herein with Plaintiffs' original complaint as SANBAR POWERSPORTS, LLC (hereinafter
3 "SANDBAR") by and through its counsel of record, the law firm of Litchfield Cavo LLP, and hereby
4 files its Answer to Plaintiffs' Amended Complaint and admits, denies and alleges as follows:

5 **THE PARTIES**

6 1. Answering Paragraph 1 of Plaintiffs' Amended Complaint, SANDBAR is without
7 knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore
8 generally and specifically denies the same.

9 2. Answering Paragraph 2 of Plaintiffs' Amended Complaint, SANDBAR admits that it
10 is a domestic business entity with its principal place of business located at 5135 Camino Al Norte,
11 Suite 250, Las Vegas, Nevada 89031. SANDBAR further admits that it may be served via its
12 registered agent, Tax Management Group, LLC at 5135 Camino Al Norte, Suite 250, Las Vegas,
13 Nevada 89031. SANDBAR further admits that it was erroneously sued and served herein with
14 Plaintiffs' original complaint as SANBAR POWERSPORTS, LLC, and that it has appeared in this
15 case. Except as admitted, SANDBAR generally and specifically denies the remaining allegations
16 contained therein.

17 3. Answering Paragraph 3 of Plaintiffs' Amended Complaint, SANDBAR states that this
18 paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the
19 extent a response is required, SANDBAR generally and specifically denies all of the allegations
20 contained therein.

21 4. Answering Paragraph 4 of Plaintiffs' Amended Complaint, SANDBAR is without
22 knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore
23 generally and specifically denies the same.

24 5. Answering Paragraph 5 of Plaintiffs' Amended Complaint, SANDBAR states that this
25 paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the
26 extent a response is required, SANDBAR generally and specifically denies all of the allegations
27 contained therein.

28 ///

1 **FACTS**

2 6. Answering Paragraph 6 of Plaintiffs' Amended Complaint, SANDBAR admits that a
3 Polaris RZR was rented from SANDBAR on or about October 18, 2016. SANDBAR further admits
4 that Ms. Borger was injured on or about this date. Except as admitted, SANDBAR generally and
5 specifically denies the remaining allegations contained therein.

6 7. Answering Paragraph 7 of Plaintiffs' Amended Complaint, SANDBAR states that this
7 paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the
8 extent a response is required, SANDBAR generally and specifically denies all of the allegations
9 contained therein.

10 **COUNT I – NEGLIGENCE (SANDBAR)**

11 8. Answering Paragraph 8 of Plaintiffs' Amended Complaint, SANDBAR states that this
12 paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the
13 extent a response is required, SANDBAR generally and specifically denies all of the allegations
14 contained therein.

15 9. Answering Paragraph 9 of Plaintiffs' Amended Complaint, SANDBAR generally and
16 specifically denies all of the allegations contained therein.

17 **COUNT II – STRICT PRODUCT LIABILITY**

18 **DESIGN AND MARKETING DEFECTS (POLARIS)**

19 10. Answering Paragraph 10 of Plaintiffs' Amended Complaint, this paragraph does not
20 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
21 response is required, SANDBAR generally and specifically denies all of the allegations contained
22 therein.

23 11. Answering Paragraph 11 of Plaintiffs' Amended Complaint, this paragraph does not
24 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
25 response is required, SANDBAR generally and specifically denies all of the allegations contained
26 therein.

27 12. Answering Paragraph 12 of Plaintiffs' Amended Complaint, this paragraph does not
28 contain allegations against SANDBAR, and therefore a response is not required. To the extent a

1 response is required, SANDBAR generally and specifically denies all of the allegations contained
2 therein.

3 13. Answering Paragraph 13 of Plaintiffs' Amended Complaint, this paragraph does not
4 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
5 response is required, SANDBAR generally and specifically denies all of the allegations contained
6 therein.

7 **COUNT III – BREACH OF WARRANTY (POLARIS)**

8 14. Answering Paragraph 14 of Plaintiffs' Amended Complaint, this paragraph does not
9 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
10 response is required, SANDBAR generally and specifically denies all of the allegations contained
11 therein.

12 15. Answering Paragraph 15 of Plaintiffs' Amended Complaint, this paragraph does not
13 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
14 response is required, SANDBAR generally and specifically denies all of the allegations contained
15 therein.

16 16. Answering Paragraph 16 of Plaintiffs' Amended Complaint, this paragraph does not
17 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
18 response is required, SANDBAR generally and specifically denies all of the allegations contained
19 therein.

20 **COUNT IV – NEGLIGENT DESIGN AND MARKETING (POLARIS)**

21 17. Answering Paragraph 17 of Plaintiffs' Amended Complaint, this paragraph does not
22 contain allegations against SANDBAR, and therefore a response is not required. To the extent a
23 response is required, SANDBAR generally and specifically denies all of the allegations contained
24 therein.

25 **DAMAGES**

26 18. Answering Paragraph 18 of Plaintiffs' Amended Complaint, SANDBAR admits Ms.
27 Borger was injured on or about October 18, 2016. Except as admitted, SANDBAR generally and
28 specifically denies the remaining allegations contained therein.

1 19. Answering Paragraph 19 of Plaintiffs' Amended Complaint, SANDBAR states that this
2 paragraph contains a legal conclusion/statement and therefore no response is required thereto. To the
3 extent a response is required, SANDBAR generally and specifically denies all of the allegations
4 contained therein.

5 20. Answering Paragraph 20 of Plaintiffs' Amended Complaint, SANDBAR generally and
6 specifically denies all of the allegations contained therein.

7 21. Answering Paragraph 21 of Plaintiffs' Amended Complaint, SANDBAR generally and
8 specifically denies all of the allegations contained therein.

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Claim)**

11 SANDBAR alleges that Plaintiffs' Amended Complaint, and each and every cause of action
12 therein, fails to state a claim against SANDBAR upon which relief can be granted.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Open and Obvious)**

15 SANDBAR is informed and believes and thereon alleges that the condition which allegedly
16 caused the injuries and damages alleged in Plaintiffs' Amended Complaint was open and obvious, and
17 Plaintiffs' recovery against SANDBAR should therefore be barred.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(Comparative Negligence of Plaintiffs)**

20 SANDBAR alleges that the damages suffered by the Plaintiffs, if any, was either partially or
21 completely proximately caused by the negligence of Plaintiffs. SANDBAR further alleges that when
22 Plaintiffs' negligence is compared to any negligence allegedly committed by SANDBAR, Plaintiffs
23 own negligence exceeds any alleged negligence of SANDBAR, thereby barring recovery for any
24 damages allegedly suffered.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Failure to Mitigate)**

27 SANDBAR is informed and believes and thereon alleges that as to each alleged cause of action,
28 Plaintiffs have failed, refused, and neglected to take reasonable steps to mitigate their alleged damages,

1 if any, thus barring or diminishing Plaintiffs recovery herein.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 **(Laches)**

4 SANDBAR is informed and believes, and thereon alleges, that the claims of the Plaintiffs are
5 reduced, modified and/or barred by the doctrine of Laches.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(Statute of Limitations)**

8 SANDBAR is informed and believes, and thereon alleges, that Plaintiffs' claims for relief are
9 barred in whole or in part by the applicable statute of limitations.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 **(Negligence/Strict Liability/Breach/Misconduct of Others)**

12 SANDBAR alleges that the damages suffered by the Plaintiffs, if any, were the direct and
13 proximate result of the negligence, strict liability, breach of contract and/or misconduct of parties,
14 persons, corporations and/or entities other than SANDBAR, and that the liability of SANDBAR, if
15 any, is limited in direct proportion to the percentage of fault actually attributable to SANDBAR.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 **(No Punitive Damages)**

18 SANDBAR alleges that Plaintiffs' claims for punitive damages are barred to the extent that
19 they are not available and/or because any alleged unlawful conduct was not knowing, willful or
20 malicious.

21 **NINTH AFFIRMATIVE DEFENSE**

22 **(Express and Implied Assumption of Risk)**

23 SANDBAR alleges that the Plaintiffs, orally and/or in writing, expressly assumed the risks and
24 hazards resulting in the injuries sustained, if any, in that at the time and prior to the time of the incident,
25 Plaintiffs knew of the danger involved, but, despite such knowledge, persisted in such conduct,
26 although free to stop and discontinue the same. The injuries alleged by Plaintiffs in the Amended
27 Complaint, if any, were caused by and arose out of such assumed risk.

28 ///

1 **TENTH AFFIRMATIVE DEFENSE**

2 **(Express/Implied Malice)**

3 SANDBAR denies at any time acting either with express or implied malice in any way in
4 regards to the Plaintiffs, thereby barring a claim for punitive damages as a matter of law.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 **(Punitive Damages Unconstitutional)**

7 Nevada Revised Statute 42.010 does not provide adequate safeguards for its application and is
8 therefore void for vagueness under the due process clause of the 14th Amendment of the United States
9 Constitution and the Nevada Constitution, Article 1, Section VII.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 **(Bifurcation)**

12 SANDBAR is entitled, in the interest of a fair trial, to a bifurcated proceeding in which
13 evidence of financial worth is introduced to the jury after a preliminary finding of punitive liability.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 **(Burden of Proof)**

16 Fairness and constitutional due process require that punitive liability and damages be proven
17 by clear and convincing evidence.

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 **(Reduction of Damages)**

20 Punitive damages, if any are awarded, must be reduced by reason of the fault of the Plaintiffs
21 and the circumstances under which this action arose.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 **(Waiver)**

24 SANDBAR is informed and believes that Plaintiffs, orally and/or in writing, waived all claims
25 against SANDBAR, thereby barring any recovery by Plaintiffs.

26 **SIXTEENTH AFFIRMATIVE DEFENSE**

27 **(Release)**

28 SANDBAR is informed and believes that Plaintiffs, orally and/or in writing, released

SANDBAR for any claims, thereby barring any recovery by Plaintiffs.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Indemnity)

SANDBAR is informed and believes and thereon alleges that Plaintiffs, orally and/or in writing, agreed to defend, indemnify and hold harmless SANDBAR for any and all claims and damages arising out of the rental of the vehicle at issue in the Amended Complaint on file herein, thereby barring or diminishing Plaintiffs' claims against SANDBAR.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Breach of Contract)

SANDBAR is informed and believes and thereon alleges that Plaintiffs breached the contract between Plaintiffs and SANDBAR, thereby barring or diminishing Plaintiffs' recovery therein.

NINETEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

SANDBAR is informed and believes, and thereon alleges, that the claims of the Plaintiffs are reduced, modified and/or barred by the doctrine of Laches.

TWENTIETH AFFIRMATIVE DEFENSE

(Supervening or Intervening Cause)

SANDBAR is informed and believes, and thereon alleges, that the claims of the Plaintiffs are reduced, modified and/or barred by a supervening and/or intervening cause.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Reservation of Rights)

Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available for Defendants after reasonable inquiry.

PRAYER FOR RELIEF

WHEREFORE, based upon the above and foregoing, SANDBAR respectfully requests this Court for relief as follows:

1. That Plaintiffs take nothing by way of their Amended Complaint;
2. That Plaintiffs' Amended Complaint be dismissed with prejudice;

1 3. That SANDBAR be awarded all costs incurred in the defense of this action, including
2 reasonable attorneys' fees; and

3 4. For such other relief as this Court deems just and proper under the circumstances.

4 **COUNTER-CLAIM OF SANDBAR POWERSPORTS, LLC**

5 Counter-Claimant, SANDBAR POWERSPORTS, LLC ("SANDBAR" or "Counter-
6 Claimant") by and through its counsel of record of the law firm of Litchfield Cavo LLP, hereby alleges
7 as follows:

8 **GENERAL ALLEGATIONS**

9 1. Counter-Claimant is and was a limited liability company organized, existing and
10 formed under and in accordance with the law of the State of Nevada and authorized to conduct business
11 in the State of Nevada.

12 2. Counter-Defendant, JOHN BORGER, is and was a resident of Owatonna, Minnesota.

13 3. Counter-Defendant, SHERRI BORGER, is and was a resident of Owatonna,
14 Minnesota.

15 4. Counter-Claimant is informed and believes and thereon alleges that Counter-
16 Defendants are a married couple and the natural parents and legal guardians of their minor son, F.B.

17 5. Counter-Claimant refers to and incorporates herein each and every allegation made by
18 Plaintiffs/Counter-Defendants contained in Plaintiffs' Amended Complaint for the sole purpose of
19 establishing the fact that Plaintiffs/Counter-Defendants have commenced suit against Counter-
20 Claimant, but without admitting, in whole or in part, any of the allegations contained in Plaintiffs'
21 Amended Complaint.

22 6. On or about October 18, 2016, Counter-Defendants rented a 2017 Polaris RZR XP4
23 900 (the "RZR") from Counter-Claimant.

24 7. Prior to taking possession of the RZR, Counter-Defendants participated in an
25 inspection of the vehicle with a Counter-Claimant employee.

26 8. Prior to taking possession of the RZR, Counter-Defendants received an orientation of
27 the RZR by a Counter-Claimant employee, during which they were shown how to work the RZR.

28 9. During the orientation, Counter-Defendants were told that they should drive slowly

1 and, if necessary, stop the vehicle and inspect the trail on foot to make sure it was safe before
2 proceeding in the RZR.

3 10. Counter-Defendants were told verbally and in writing that their children, ages 17 and
4 19, were not allowed or authorized to drive the RZR, as the company required all drivers to be at least
5 25 years old.

6 11. Prior to driving the vehicle away from Counter-Claimant's rental location, Counter-
7 Defendants read and voluntarily signed a number of documents, including but not limited to:

- 8 a. The Rental Contract, attached hereto as Exhibit A.
9 b. The Participant Agreement, Release and Assumption of Risk agreement ("Release
10 and Assumption of Risk Agreement"), attached hereto as Exhibit B.

11 12. The Rental Contract was initialed in various places by both Counter-Defendants and
12 signed in its entirety individually by Counter-Defendants.

13 13. The Rental Agreement, signed by Counter-Defendants, stated, in part, as follows:

14 **READ THE FOLLOWING SECTIONS FULLY AND CAREFULLY PRIOR TO**
15 **SIGNING. THIS IS A LEGALLY VALID AND BINDING OBLIGATION TO**
16 **RELEASE COMPANY FROM ALL KNOWN AND UNKNOWN RISKS, AND TO**
17 **INDEMNIFY COMPANY AGAINST CLAIMS BROUGHT AGAINST IT**
18 **BASED UPON YOUR USE OF THE VEHICLE. THIS INSTRUMENT**
19 **AFFECTS IMPORTANT LEGAL RIGHTS.**

20 *See, Exhibit A.*

21 14. By their signatures, Counter-Defendants acknowledged and confirmed that they read
22 the Rental Agreement and understood that they were releasing and discharging Counter-Claimant from
23 any and all claims arising out of their use, misuse or abuse of the RZR. *See, Exhibit A.*

24 15. By their signatures, Counter-Defendants agreed to protect Counter-Claimant, and to
25 defend and indemnify and hold harmless Counter-Claimant from any claims, losses, causes of action,
26 and expenses, including legal expenses and reasonable attorneys' fees arising in any way out of the
27 use, maintenance and operation of the RZR. *See, Exhibit A.*

28 16. By their signatures, Counter-Defendants acknowledged, confirmed and agreed that
they had been fully instructed, and fully understood how to operate the RZR in a safe and proper
manner; that they, at all times, agreed to observe and cause to be observed by all users of the Razer all

proper safety precautions in the use and operation of the RZR; and, that they would be responsible at all times for the safety of any and all riders and passengers or any other individuals on or near the RZR. *See*, Exhibit A.

17. By their signatures, Counter-Defendants acknowledged, agreed and confirmed that they were aware of, and understood that “Prohibited Actions” included, but were not limited to the following:

- a. Reckless driving such as jumping, driving too fast, rock crawling, sliding or spinning in circles/doing donuts in the vehicle;
- b. Riders under the age of 18 riding without a helmet and eye protection;
- c. Allowing an unauthorized driver to drive the vehicle with [sic] approval from Counter-Claimant.

See, Exhibit A.

18. Above Counter-Defendants’ signatures, the Rental Agreement stated as follows:

RENTER PLEASE NOTE: YOU ARE LIABLE AND RESPONSIBLE FOR ANY AND ALL TERMS AND CONDITIONS IN THIS CONTRACT EVEN IF YOU DON’T TAKE THE TIME TO READ IT.

See, Exhibit A.

19. The Release and Assumption of Risk Agreements signed by Counter-Defendants, stated in part as follows:

- a. In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as “Company”), the undersigned (hereinafter “I” or “participant”) hereby agree [sic] to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:
- b. **Assumption of Risk.** I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY . . . I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS.
- c. **Waiver of Claims; Indemnification.** I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of the Company’s Vehicles, equipment or facilities, including any such claims which allege negligent

1 acts or omissions of Company.

2 See, Exhibit B.

3 20. The Release and Assumption of the Risk Agreements specifically noted that the risks
4 being voluntarily assumed by Counter-Defendants included, but were not limited to, injury resulting
5 from being jolted, jarred, bounced, thrown about and otherwise shaken during rides, injuries resulting
6 from items or conditions on the trail such as holes bumps, ruts, obstacles, tree limbs and branches or
7 rocks, and injury resulting from loss of control of the vehicle. See, Exhibit B.

8 21. Counter-Defendants also specifically acknowledged that Counter-Claimant and its
9 employees' ability to provide for the safety of participants such as Counter-Defendants and their
10 children is limited by the inherent risks and uncertainties related to the use of the RZR, the RZR itself,
11 weather conditions and the extent to which participants follow instructions and rules, whether written
12 or orally expressed by Counter-Claimant's employees. See, Exhibit B.

13 22. Directly above the portion of the Release and Assumption of the Risk Agreement
14 signed by Counter-Defendants, the document states as follows:

15 By signing this document, I acknowledge that if anyone is hurt or property is
16 damaged during my participation in this activity, I may be found by a court of law
to have waived my right to maintain a lawsuit against the Company on this basis of
17 any claim from which I have released them herein.

18 I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

19 See, Exhibit B.

20 23. The Release and Assumption of the Risk Agreement was accompanied by exhibit A to
21 the Agreement, setting forth instructions and rules, which Counter-Defendants and their children
22 acknowledged and agreed to follow.

23 24. The Driver/Rider Usage Rules set forth in exhibit A to the Release and Assumption of
24 Risk Agreement included, but were not limited to, the following:

- 25 a. only the authorized drivers on the Rental Agreement were allowed to drive the
26 rental vehicle;
- 27 b. all passengers under the Age of 18 were required to wear a helmet as required by
28 Arizona law;

1 c. as the drivers of the rental vehicle, Counter-Defendants acknowledged that they
2 were responsible for everything and anything that happens with respect to the rental
3 vehicle and its use, and with respect to any passengers;

4 d. the minimum driver age limit for the Polaris RZR 900 was 25+

5 *See, Exhibit B.*

6 25. Counter-Defendants, agreed and acknowledged their understanding that, if any of the
7 Driver/Rider Usage Rules were violated, as the renter(s) of the Vehicle, they would lose the rental
8 deposit and would be responsible for any and all damages arising from such violation, and any
9 participant acting in violation of these Driver Usage Rules would be responsible for any and all
10 damages arising from such violation. *See, Exhibit B.*

11 26. Counter-Defendants were given a helmet for their minor son, F.B., to wear pursuant to
12 the rules to which they had agreed.

13 27. On behalf of his minor son, Counter-Defendant, JOHN BORGER, agreed that F.B.
14 would use the helmet being provided by Counter-Claimant. *See, Exhibit B.*

15 28. Counter-Defendants each acknowledged on the Release and Assumption of the Risk
16 Agreement their own refusals to wear a helmet. *See, Exhibit B.*

17 29. Counter-Defendant, SHERRI BORGER, signed an "Addendum to Dealer's Rental
18 Insurance Agreement," in which she declined to purchase the optional SLI (Supplemental Liability
19 Insurance) and PAI/PEI (Personal Effects/Personal Accident Insurance) coverage.

20 30. Counter-Defendant, JOHN BORGER, signed a "Pre Rental Check Out," agreeing and
21 acknowledging that he "understands and knows where all the controls are and how they work;" and
22 that he has "read and [has] been given basic ATV riding instructions."

23 31. Counter-Defendants were not compelled to participate in the activity involving the
24 RZR, reviewed the Agreements, and voluntarily signed the Agreements.

25 32. On October 18, 2016, at approximately 10:25 a.m., shortly after signing the Rental
26 Agreement and Release and Assumption of the Risk Agreement and taking possession of the rented
27 RZR, an employee of Counter-Claimant received a call in which Counter-Defendant, JOHN
28 BORGER, explained that he had tipped over the RZR, that Counter-Defendant, SHERRI BORGER,'s

1 arm was under the RZR and that the arm was barely attached. He advised that they were in Bison
2 Wash.

3 33. The Counter-Claimant employee called 911 and Counter-Defendant, JOHN BORGER,
4 was given instructions regarding activation of the GPS system to allow emergency personnel to find
5 them.

6 34. Counter-Claimant's employees immediately went to Bison Wash, where emergency
7 personnel were already on scene.

8 35. Counter-Defendants and their children were located and medical personnel attended to
9 Counter-Defendants.

10 36. Counter-Claimant is informed and believes and thereon alleges that Counter-
11 Defendant, JOHN BORGER, advised that he had driven across a small incline, was coming back down
12 and was going too fast when he started to make a turn and the RZR flipped on its side.

13 37. Counter-Claimant is informed and believes and thereon alleges that Counter-
14 Defendant, JOHN BORGER, advised Sgt. John Kole of the Mohave County Sheriffs' Office that he,
15 JOHN BORGER, had been driving the RZR, turned left, and the machine rolled over on its right side.

16 38. Counter-Claimant is informed and believes and thereon alleges that Counter-
17 Defendant, JOHN BORGER, advised Sgt. Kole that inexperience in driving the machine is what
18 caused the accident.

19 39. Counter-Claimant is informed and believes and thereon alleges that Counter-
20 Defendant, JOHN BORGER, advised Sgt. Kole that he was not sure how fast he had been driving
21 when the accident occurred, but thought he may have been going about 20 miles per hour.

22 40. Counter-Claimant is informed and believes and thereon alleges that Lake Havasu City
23 Police Department's Officer Murdock advised Sgt. Kole that Counter-Defendant, JOHN BORGER's,
24 two children had been riding in the back seat and that Counter-Defendant, SHERRI BORGER, had
25 been in the front passenger seat at the time of the accident.

26 41. Counter-Claimant is informed and believes and thereon alleges that Sgt. Kole also
27 spoke to Counter-Defendant, JOHN BORGER's, minor son, F.B, and daughter, Jade Borger, at the
28 scene of the accident.

1 42. Counter-Claimant is informed and believes and thereon alleges that F.B. corrected Sgt.
2 KOLE's understanding of the location of the accident, but did not correct Sgt. KOLE's understanding that
3 his father, Counter-Defendant, JOHN BORGER, had been driving. F.B. advised Sgt. KOLE that he had
4 been sitting in the back seat at the time of the accident.

5 43. Counter-Claimant is informed and believes and thereon alleges that Counter-
6 Defendant, SHERRI BORGER, was transported by helicopter to the hospital.

7 44. Counter-Claimant is informed and believes and thereon alleges that Counter-
8 Defendant, JOHN BORGER, was transported away from the scene by medical personnel in an ATV-
9 type vehicle.

10 45. Upon retrieving the RZR, Counter-Claimant's employee, David Lehmitz, noted that
11 the RZR was in high gear and in 4-wheel drive mode.

12 46. Counter-Defendant, SHERRI BORGER, suffered serious injuries at the time her son
13 was driving the RZR.

14 47. Counter-Claimant is informed and believes and thereon alleges that on October 25,
15 2016, Counter-Defendant, SHERRI BORGER, advised Sgt. KOLE that she was not sure of the seating
16 position of her children prior to the accident, but that he should speak to Counter-Defendant, JOHN
17 BORGER, to obtain that information.

18 48. Counter-Claimant is informed and believes and thereon alleges that on October 26,
19 2016, Sgt. KOLE was able to reach Counter-Defendant, JOHN BORGER, on his cell phone. At that
20 time, Counter-Claimant is informed and believes and thereon alleges that, Counter-Defendant, JOHN
21 BORGER, admitted that upon arriving in the area off of Bison Road, he and his son, F.B., switched
22 seats, placing F.B. in the driver's seat and Counter-Defendant, JOHN BORGER, in the back
23 passenger-side seat, behind his wife and next to his daughter at the time of the accident.

24 49. Counter-Claimant is informed and believes and thereon alleges that Counter-
25 Defendant, JOHN BORGER, advised Sgt. KOLE that F.B. drove for a few minutes on the flat area, then
26 turned left, at which time the RZR went over onto its right side, perhaps the result of the tire getting
27 caught on a rock.

28 50. Counter-Claimant is informed and believes and thereon alleges that Counter-

1 Defendant, JOHN BORGER, advised that at the time of the accident, his minor son, F.B., was driving
2 approximately 25-30 miles per hour.

3 51. Counter-Claimant is informed and believes and thereon alleges that Counter-
4 Defendant, JOHN BORGER, advised that the helmet found in the vehicle was intended for his son
5 who was under 18, but that it was not used.

6 52. Counter-Claimant is informed and believes and thereon alleges that on November 4,
7 2016, Counter-Defendant, JOHN BORGER, again confirmed to Sgt. Kole that his son, F.B., had been
8 driving the RZR at the time of the accident.

9 53. Counter-Claimant is informed and believes and thereon alleges that F.B. was under the
10 age of 18 at the time of the accident.

11 54. Counter-Claimant is informed and believes and thereon alleges that F.B. was not an
12 authorized driver of the RZR.

13 COUNT I

14 (Express/Contractual Indemnity)

15 55. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
16 through 54 of this Counter-claim as though fully set forth herein.

17 56. Counter-Defendants, expressly agreed to protect Counter-Claimant. Specifically,
18 Counter-Defendants expressly agreed to defend, indemnify and hold harmless Counter-Claimant from
19 and against any demands, claims, losses, causes of action, expenses, legal expenses, and attorneys'
20 fees which are in any way connected with, or in any way arising out of the use, maintenance and
21 operation of the RZR.

22 57. Counter-Claimant was not negligent in any way and no act or omission by Counter-
23 Claimant caused the accident at issue. However, even if any act or omission of Counter-Claimant
24 caused or contributed to the accident, Counter-Defendants agreed to protect Counter-Claimant and
25 expressly agreed to defend, indemnify and hold harmless Counter-Claimant for all claims, demands
26 or causes of action, including any such claims which allege negligent acts or omissions of Counter-
27 Claimant.

28 58. Counter-Claimant denies any liability for the damages and injuries alleged by

1 Plaintiffs. However, to the extent that Counter-Claimant is found to have any liability, pursuant to the
2 terms of the Rental Agreement and the Release and Assumption of the Risk Agreement (collectively
3 referred to herein as the "Agreements"), Counter-Claimant is informed and believes and thereon
4 alleges that it has defense and indemnity rights from Counter-Defendants for the injuries and damages
5 alleged by Plaintiffs.

6 59. By this action, Counter-Claimant tenders the defense and indemnity of Plaintiffs'
7 claims to Counter-Defendants.

8 60. Pursuant to the terms of the Agreements entered into between Counter-Claimant and
9 Counter-Defendants, Counter-Defendants, and each of them, have the duty to defend, indemnify and
10 hold harmless Counter-Claimant in the action filed by Plaintiffs.

11 61. It has been necessary for Counter-Claimant to retain the services of legal counsel to
12 defend Plaintiffs' action and bring this action. Counter-Claimant is entitled to recover attorneys' fees
13 and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the contractual
14 provisions of the Agreements.

15 COUNT II

16 (Implied Indemnity)

17 62. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
18 through 61 of this Counter-claim as though fully set forth herein.

19 63. Counter-Claimant is informed and believes and thereon alleges that Counter-Defendants
20 entered into written, oral and/or implied agreements with Counter-Claimant.

21 64. By reason of the foregoing, to the extent that Plaintiffs recover against Counter-
22 Claimant, Counter-Claimant is entitled to implied contractual indemnity from Counter-Defendants,
23 and each of them, for injuries and damages sustained by Plaintiffs, if any, for any sums paid by way
24 of settlement or, in the alternative, for judgment rendered against Counter-Claimant based upon
25 Plaintiff's Amended Complaint.

26 65. It has been necessary for Counter-Claimant to retain the services of legal counsel to
27 defend Plaintiffs' action and to bring this action. Counter-Claimant is entitled to recover attorneys'
28 fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the

1 contractual provisions of the Agreements.

2 **COUNT III**

3 **(Breach of Contract)**

4 66. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
5 through 65 of this Counter-claim as though fully set forth herein.

6 67. Counter-Claimant and Counter-Defendants entered into Agreements as described
7 herein. *See*, Exhibits A and B.

8 68. Counter-Defendants voluntarily agreed to the terms and conditions of the RZR rental
9 as set forth in the Agreements.

10 69. Counter-Claimant has fully performed all conditions, covenants and promises required
11 by it to be performed in accordance with the terms and conditions of said Agreements.

12 70. Counter-Claimant is informed and believes and thereon allege that Counter-
13 Defendants, and each of them, breached terms, condition and duties set forth in said Agreements,
14 including, but not limited to: (1) allowing an unauthorized driver to drive the RZR in violation of the
15 terms of the written Agreements and verbal instructions; (2) allowing a person under the age of 25 to
16 drive the RZR in violation of the terms of the written Agreements and verbal instructions; (3) failing
17 to require F.B. to wear a helmet in violation of the terms of the written Agreements and verbal
18 instructions; (4) driving the RZR in a reckless manner in violation of the written Agreements and
19 verbal instructions; and, (5) by bringing suit against Counter-Claimant in violation of their assumption
20 of the risks associated with the off-road vehicle activity, in violation of their waiver of liability as to
21 Counter-Claimant, and in violation of their agreement to accept responsibility for everything and
22 anything that happens with respect to the RZR and/or the passengers.

23 71. As a direct and proximate result of Counter-Defendants' breaches of contract, Counter-
24 Claimant has been damaged in a sum which is currently unascertainable. Counter-Claimant will seek
25 leave of court to amend this Counter-claim once such sum can be reasonably ascertained.

26 72. As a direct and proximate result of the breaches of contract by Counter-Defendants,
27 and each of them, Counter-Claimant has incurred and will continue to incur costs and expenses
28 including, but not limited to, litigation costs, attorneys' fees and consultants' fees in connection with

1 the Amended Complaint filed by Plaintiffs in the action on filed herein to the general damage of
2 Counter-Claimant, as will be shown according to proof at the time of the trial of this matter. Counter-
3 Claimant will seek recovery of the legal fees incurred in defending Counter-Claimant.

4 **COUNT IV**

5 **(Equitable Indemnity)**

6 73. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
7 through 72 of this Counter-claim as though fully set forth herein.

8 74. Counter-Claimant is informed and believes and hereon alleges that any and all injuries
9 and damages alleged by Plaintiffs in the Amended Complaint were caused by Counter-Defendants,
10 and each of them, arising out of and in connection with their own negligence, negligent entrustment
11 and breaches of the contractual terms of the Agreements.

12 75. Counter-Claimant is informed and believes and hereon alleges that Counter-
13 Defendants agreed to be responsible for any and all injury and damage arising out of the rental and
14 use of the RZR.

15 76. In equity and good conscience, if Plaintiffs recover against Counter-Claimant herein,
16 by way of sums paid by settlement or by judgment rendered against Counter-Claimant based upon
17 Plaintiffs' Amended Complaint, then Counter-Claimant is entitled to an equitable indemnity
18 apportionment of the liability and contribution among and from the Counter-Defendants, and each of
19 them, according to their respective faults for the injuries and damages allegedly sustained by Plaintiffs,
20 if any.

21 77. It has been necessary for Counter-Claimant to retain the services of legal counsel to
22 defend Plaintiffs' action and to bring this action. Counter-Claimant is entitled to recover its attorneys'
23 fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the
24 contractual provisions of the Agreements.

25 **COUNT V**

26 **(Negligence)**

27 78. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
28 through 77 of this Counter-claim as though fully set forth herein.

79. Counter-Defendants, and each of them, owed a contractual and/or legal duty to Counter-Claimant and others, including Plaintiffs, to exercise due and reasonable care in the use of the RZR.

80. Counter-Defendants failed to act reasonably and failed to exercise due and reasonable care in the use of the RZR.

81. Counter-Defendants failed to act reasonably and failed to exercise due and reasonable care by entrusting the RZR to an unauthorized and minor driver, F.B.

82. By failing to use due and reasonable care, Counter-Defendants breached their duty owed to Counter-Claimant and others, including Plaintiffs.

83. The acts and omissions of Counter-Defendants, and each of them, were the direct and proximate cause of any and all injuries and damages, if any, incurred by Plaintiffs and Counter-defendant.

84. Counter-Claimant is informed and believes and thereon allege that Plaintiffs' damages, if any, were proximately caused by Counter-Defendants, and each of them, and that Counter-Defendants are liable for the damages sound by Plaintiffs in the Amended Complaint.

85. The breaches of the aforementioned duties by each Counter-defendant, as described in the preceding paragraphs, were and are the actual and proximate cause of damages to Counter-Claimant in excess of \$15,000.00.

86. It has been necessary for Counter-Claimant to retain the services of legal counsel to defend Plaintiffs' action and bring this action. Counter-Claimant is entitled to recover its attorneys' fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the contractual provisions of the Agreements.

COUNT VI

(Contribution)

87. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1 through 86 of this Counter-claim as though fully set forth herein.

88. Based upon the acts and/or omissions of Counter-Defendants, and each of them, if a judgment is rendered on behalf of Plaintiffs, Counter-Claimant is entitled to contribution from each of

1 the Counter-Defendants in an amount proportionate to the amount of negligence and/or fault
2 attributable to each of the Counter-Defendants.

3 89. It has been necessary for Counter-Claimant to retain the services of legal counsel to
4 defend Plaintiffs' action and bring this action. Counter-Claimant is entitled to recover its attorneys'
5 fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the
6 contractual provisions of the Agreements.

7 **COUNT VII**

8 **(Negligent Entrustment)**

9 90. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
10 through 89 of this Counter-claim as though fully set forth herein.

11 91. Counter-Defendants allowed F.B. to drive the RZR contrary to the Agreements and
12 contrary to verbal instructions by Counter-Claimant employees.

13 92. Counter-Claimant is informed and believes and thereon alleges that the injuries, harm,
14 and damages, if any, were incurred by Plaintiffs as a result of the use of the vehicle by F.B. in a
15 negligent and reckless manner, which because of youth and inexperience, Counter-Defendants knew,
16 or had reason to know, was likely.

17 93. Allowing F.B. to drive the RZR involved an unreasonable risk of harm to others.

18 94. Counter-Defendants, as the renters and authorized drivers of the RZR, had the right,
19 power and duty to prohibit the use of the RZR by F.B.

20 95. Counter-Defendants knew, or had reason to know, that because of youth, inexperience,
21 the Driver/Rider Usage Rules, and the Agreements with Counter-Claimant, F.B. was likely to drive
22 the RZR in a negligent and reckless manner.

23 96. Plaintiffs' injury, damages and harm, if any, were a direct result of Counter-Defendants
24 negligently entrusting F.B., who operated the RZR in a negligent and reckless manner.

25 97. The breaches of the aforementioned duties by each Counter-Defendant, as described in
26 the preceding paragraphs, were and are the actual and proximate cause of damages to Counter-
27 Claimant in excess of \$15,000.00.

28 98. It has been necessary for Counter-Claimant to retain the services of legal counsel to

1 defend Plaintiffs' action and bring this action. Counter-Claimant is entitled to recover its attorneys'
2 fees and costs incurred herein pursuant to law (including but not limited to NRS 18.010) and the
3 contractual provisions of the Agreements.

4 **COUNT VIII**

5 **(Declaratory Relief)**

6 99. Counter-Claimant repeats and re-alleges the allegations contained in paragraphs 1
7 through 98 of this Counter-claim as though fully set forth herein.

8 100. At all times, Counter-Claimant has been in compliance with the terms of the
9 Agreements.

10 101. Counter-Defendants' actions constitute negligence, breach of contract, express
11 assumption of the risk, waiver, a duty to defend Counter-Claimant in any action brought arising out
12 of Counter-Defendants' use of the RZR and a duty to indemnify and hold harmless Counter-Claimant
13 for any liability arising out of Counter-Defendants' use of the RZR.

14 102. Counter-Claimant contends that it is entitled to indemnity and contribution from
15 Counter-Defendants based upon the legal theories set forth herein.

16 103. Counter-Claimant seeks a judicial determination of its rights under the Agreements and
17 a finding by this Court that Counter-Defendants are required to defend and indemnify Counter-
18 Claimant for any claims, suits, or liabilities arising out of Counter-Defendants use or misuse of the
19 RZR.

20 104. Counter-Claimant seeks a judicial determination that, pursuant to the terms of the
21 Agreements, Plaintiffs/Counter-Defendants, and each of them, have released and waived any and all
22 claims against Defendant/Counter-defendant arising out of or relating to Plaintiffs'/Counter-
23 Defendants' use of the RZR.

24 105. Counter-Claimant seeks a judicial determination that, pursuant to the terms of the
25 Agreements, Plaintiffs/Counter-Defendants expressly, voluntarily and contractually assumed the risk
26 of any and all injuries and damages arising out of their use of the RZR.

27 106. There exists a bona fide, actual, present and practical need for a legal determination by
28 this Court of the respective rights, duties and obligations of Counter-Claimant and Counter-Defendants

1 in connection with the matter herein alleged.

2 107. Counter-Claimant and Counter-Defendants have an actual, present controversy in the
3 subject matter described herein.

4 108. This issue is ripe for judicial determination because it presents an existing controversy
5 as to the parties' rights and obligations at issue herein.

6 109. Accordingly, Counter-Claimant is entitled to a declaratory judgment that (a)
7 Plaintiffs/Counter-Defendants have waived their ability to bring this action against Counter-Claimant;
8 (b) Plaintiffs/Counter-Defendants expressly and impliedly assumed the risks of injury and damage
9 arising out of their use of the RZR; (c) Plaintiffs/Counter-Defendants are in breach of the Rental
10 Agreement and the Release and Assumption of the Risk Agreement; and (d) Plaintiffs/Counter-
11 Defendants are required to defend and indemnify Counter-Claimant for any and all liabilities arising
12 out of Counter-Defendants' use of the RZR.

13 110. Counter-Claimant has been required to retain the services of an attorney to defend the
14 Amended Complaint and to prosecute this action and is therefore entitled to recover its reasonable
15 attorneys' fees and costs as a result.

16 **WHEREFORE**, Counter-Claimant prays for judgment against Counter-Defendants, and each
17 of them, as follows:

- 18 1. For general and special damages in excess of \$15,000.00;
- 19 2. For indemnity, all damages and/or economic losses that Plaintiffs and/or any other
20 parties recover against Counter-Claimant by way of judgment, order, settlement, compromise or trial;
- 21 3. For reasonable attorneys' fees, costs, and expert costs and expenses pursuant to
22 statutory and contract law and the terms of the Agreements;
- 23 4. For pre-judgment interest;
- 24 5. For post-judgment interest;
- 25 6. For consequential damages in excess of \$15,000.00;
- 26 7. For incidental damages in excess of \$15,000.00;
- 27 8. For contribution pursuant to NRS 17.225;
- 28 9. For a declaration of the rights and obligations of the parties, including but not limited

to, a declaration that Counter-Defendants are required to defend and indemnify Counter-Claimant for any claim, suit or liability arising out of Counter-Defendants' rental and use of the RZR; and

10. For such other and further relief as the court may deem just, equitable and proper.

CROSS-CLAIM OF SANDBAR POWERSPORTS, LLC

Cross-Claimant, SANDBAR POWERSPORTS, LLC ("SANDBAR" or "Cross-Claimant") by and through its counsel of record, the law firm of Litchfield Cavo LLP, and hereby files its Cross-Claim against POLARIS INDUSTRIES, INC. ("POLARIS" or "Cross-Defendant"), hereby affirmatively alleges and states as follows:

GENERAL ALLEGATIONS

1. Cross-Claimant is and was a limited liability company organized, existing and formed under and in accordance with the law of the State of Nevada and authorized to conduct business in the State of Nevada.

2. Plaintiff, JOHN BORGER, is and was a resident of Owatonna, Minnesota.

3. Plaintiff, SHERRI BORGER, is and was a resident of Owatonna, Minnesota.

4. Cross-Claimant is informed and believes and thereon alleges that Cross-Defendant is a Delaware Corporation with its principal place of business in Medina, Minnesota, but doing business in and throughout the State of Nevada. It may be served via its registered agent, CS Services of Nevada located at 2215-B Renaissance Drive, Las Vegas, Nevada 89119.

5. Cross-Claimant refers to and incorporates herein each and every allegation made by Plaintiffs contained in Plaintiffs' Amended Complaint for the sole purpose of establishing the fact that Plaintiffs have commenced suit against Cross-Claimant and Cross-Defendant, but without admitting, in whole or in part, any of the allegations contained in Plaintiffs' Amended Complaint.

6. On or about October 18, 2016, Plaintiffs JOHN BORGER and SHERRI BORGER rented a 2017 Polaris RZR XP4 900 (the "RZR") from Cross-Claimant.

7. Plaintiff, SHERRI BORGER, suffered serious injuries as a result of renting the RZR.

8. Cross-Defendant is the manufacturer, designer, and/or seller of the RZR.

///

///

1 **COUNT I**

2 **(Express Indemnity)**

3 9. Cross-Claimant repeats and re-alleges the allegations contained in paragraphs 1
4 through 8 of this Cross-Claim as though fully set forth herein.

5 10. Plaintiffs' causes of action against Cross-Claimant sets forth claims for recovery under
6 theories of "product liability," as defined in ARS 12-681(5).

7 11. Cross-Claimant is considered a "seller" of the RZR that is alleged to be defective in
8 Plaintiffs' Amended Complaint in accordance with ARS 12-681(7).

9 12. Cross-Defendant is a manufacturer of the RZR that is alleged to be defective in
10 Plaintiffs' Amended Complaint in accordance with ARS 12-681(1).

11 13. Cross-Defendant has an immediate duty to defend Cross-Claimant pursuant to ARS
12 12-684 against the claims asserted against Cross-Claimant by Plaintiffs.

13 14. On or about January 15, 2018, Cross-Claimant tendered its defense in this action to
14 POLARIS.

15 15. On or about January 25, 2018, Cross-Defendant wrongfully rejected Cross-Claimant's
16 tender of defense.

17 16. No defenses to the statutory indemnity provided to a seller by a manufacturer under
18 ARS 12-684 are present.

19 17. As a result of the foregoing, pursuant to ARS 12-684, POLARIS is responsible for
20 indemnifying Cross-Claimant for costs and attorneys' fees incurred in this action, as well as any
21 judgment entered in favor of Plaintiffs for any claim, suit or liability arising out of Plaintiffs' rental
22 and use of the RZR.

23 **COUNT II**

24 **(Contribution)**

25 18. Cross-Claimant repeats and re-alleges the allegations contained in paragraphs 1
26 through 17 of this Cross-Claim as though fully set forth herein.

27 19. If a judgment is rendered on behalf of Plaintiffs against Cross-Claimant, Cross-
28 Claimant is entitled to apportionment of the liability and contribution among and from Cross-

1 Defendant in an amount proportionate to the amount of fault attributable to Cross-Defendant.

2 20. Cross-Claimant has been required to retain the services of an attorney to defend and to
3 prosecute this action and is therefore entitled to recover its reasonable attorneys' fees and costs as a
4 result.

5 **COUNT III**

6 **(Declaratory Relief Regarding Duty to Defend and Indemnify)**

7 21. Cross-Claimant repeats and re-alleges the allegations contained in paragraphs 1
8 through 20 of this Cross-Claim as though fully set forth herein.

9 22. There exists a bona fide, actual, and present controversy and practical need for a legal
10 determination by this Court of the respective rights, duties and obligations of Cross-Claimant and
11 Cross-Defendant in connection with the matters herein alleged, as Cross-Claimant is informed and
12 believes that Cross-Defendant denies that it has duties and obligations herein alleged by Cross-
13 Claimant.

14 23. By reason of the matters alleged herein, Cross-Claimant is entitled to a declaratory
15 judgment that Cross-Defendant has an immediate duty to defend and indemnify Cross-Claimant for
16 any claim, suit or liability, judgment, damages or fees and costs arising out of Plaintiffs' rental and
17 use of the RZR.

18 24. Cross-Claimant has been required to retain the services of an attorney to defend and to
19 prosecute this action and is therefore entitled to recover its reasonable attorneys' fees and costs as a
20 result.

21 **WHEREFORE**, Cross-Claimant prays for judgment against Cross-Defendant as follows:

- 22 1. For general and special damages in excess of \$15,000.00;
- 23 2. For indemnity for all damages and/or economic losses that Plaintiffs and/or any other
24 parties recover against Cross-Claimant by way of judgment, order, settlement, compromise or trial;
- 25 3. For reasonable attorneys' fees, costs, and expert costs and expenses pursuant to
26 statutory law;
- 27 4. For pre-judgment interest;
- 28 5. For post-judgment interest;

EXHIBIT A

Renter's Name and Address Sherri Dwyer 8030 3rd Ave NE Owajon, WA 9935000	Renter's Cell Phone 501 513 3021
Riding Area Lake Havasu	2nd Coll No. P2L 900 4/5/2008

Sandbar Powersports, LLC ("Company") agrees to rent the following vehicle, a new or recent model Polaris, including all parts and accessories thereto ("Vehicle") to Renter, upon the condition that Renter agrees to all terms and conditions set forth below, including the release of claims, and evidences Renter's agreement with his/her signature in the space provided. As used herein, the term "Renter" shall include the person listed above and signing this Agreement, as well as all other persons using the rented Vehicle as an operator or as a passenger.

The Vehicle shall be rented for the time period and rate specified as follows (TO BE COMPLETED BY STAFF):

Licensed Rider: <u>P2L 4/5/2008</u>	Driver's License Number: <u>500000000</u>	Date of Issue: <u>5/00</u>
Number of Passengers: <u>4</u>	Age of Renter/Driver: <u>50</u>	Vehicle Mileage Out: <u>1000</u>
Time Out: <u>See Copy</u>	Time Due In (Scheduled / Actual): <u>See Copy</u>	Mileage In: <u>1000</u>
Card #: <u>See Copy</u>	Exp: <u>See Copy</u>	Rental Deposit: \$ <u>1000</u>
Insurance per day: \$ <u>15</u>	Day(s) Rented: <u>1.5</u>	Rental Rate: \$ <u>225</u>
Rental Rate: \$ <u>380</u>	Tax: \$ <u>29.44</u>	Total Rental: \$ <u>409.44</u>
Late/Excessive Usage Fees: \$ <u>0</u>		

READ THE FOLLOWING SECTIONS FULLY AND CAREFULLY PRIOR TO SIGNING. THIS IS A LEGALLY VALID AND BINDING OBLIGATION TO RELEASE COMPANY FROM ALL KNOWN AND UNKNOWN RISKS, AND TO INDEMNIFY COMPANY AGAINST CLAIMS BROUGHT AGAINST IT BASED UPON YOUR USE OF THE VEHICLE. THIS INSTRUMENT AFFECTS IMPORTANT LEGAL RIGHTS.

TERMS AND CONDITIONS

- Release and Waiver of Claims; Indemnification.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Renter does hereby remise, release, and forever discharge Company, and its agents, servants, successors, heirs, executors, administrators, personal representatives and owners from which boat is leased, of and from all, and all manner of, actions, causes of action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and demands whatsoever in law or equity, which Renter ever had, now has, or which Renter's heirs, executors, administrators or personal representatives hereafter can, shall, or may have for or by reason of any matter, cause, or thing whatsoever arising out of this Agreement; out of the use, misuse, or abuse of the Vehicle, or in any way arising out of the rental relationship between Renter and Company. Renter agrees to hold harmless the Company and to defend and indemnify Company for, from any against all claims, losses, causes of action, and expenses, including legal expenses and reasonable attorneys' fees whether incurred by the Renter or by those making claim against the Renter, arising in any way out of the use, maintenance and operation of the leased Vehicle.
- Assumption of Risk.** Renter acknowledges that the activities for which the Vehicle is designed include inherent dangers, including the risk of bodily injury, dismemberment and/or death. Renter hereby assumes the risk of any harm, accident or damage which may be done to or suffered by the Renter, any person who operates, is a passenger in or uses the rented Vehicle or to the personal property of any of them arising out of the use of the Vehicle, including damage caused by any defects in the Vehicle or damage caused by negligence of the Company. Renter hereby forever releases and waives any and all claims which may arise against the Company and its agents for injuries or damage which may be sustained, arising in any way out of the operation or use of the leased Vehicle during the rental term. It is Renter's responsibility to remove all personal property from the Vehicle upon its return. Company shall not be responsible for any personal property of Renter or of others which may be lost or left on the Vehicle at the conclusion of the rental term.
- Insurance.** Renter certifies that Renter has adequate insurance to cover any injury or damage Renter may cause or suffer while participating, or else Renter agrees to bear the cost of such injury or damage.
- Vehicle Rented As Is.** Renter acknowledges that the Vehicle is rented AS IS. Company is not a manufacturer of this Vehicle and Company HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE LEASED VEHICLE, NOR OF ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. NO REFUNDS WILL BE GIVEN.
- Renter Obligations; Use Limitations.** Renter agrees to be responsible, financially and otherwise, for all Vehicles rented. The Vehicles may only be used on designated trails and legal riding areas. Renter further agrees not to sublease or rent or otherwise convey any interest in any of said Vehicle to others. Renter also agrees not to allow any persons to drive or operate the leased Vehicle who are approved by the company and or have not received the instructions for use of the rented Vehicle given by Company. All operators of the leased Vehicle must be at least 25 years of age for the Polaris Razor 800/900 and 30 + years of age for the Polaris Razor 1000 Xp with a valid driver's license and have signed the rental contract. I UNDERSTAND AND AGREE THAT IF I AM RENTING A VEHICLE I WILL NOT HAVE MORE THAN THREE PASSENGERS ON THE VEHICLE AT ANY GIVEN TIME. Renter's initials: SD
- Acceptable Use.** Renter acknowledges that he/she has been fully instructed and fully understands how to operate the Vehicle in a safe and proper manner. Renter shall at all times adhere to the precaution practices, rules and safety instructions specified by the Company. Renter agrees to observe and cause to be observed by all users of the Vehicle all proper safety precautions in the use and operation of the Vehicle, and agrees not to use or allow others to use the Vehicle in a manner other than as intended by the manufacturer. Renter shall be responsible at all times for the safety of any and all riders and passengers or any other individuals on or near the Vehicle and acknowledges that the Company will not be liable for any accidents caused by natural disasters or any accidents that are out of control of the Company.
- Prohibited Actions.** If Renter engages in one or more prohibited activities, he or she will be in violation of this Agreement, the vehicle will be repossessed at Renter's expense, without refund, and Renter will be charged a \$500 fine in addition to damages. Prohibited actions include:
 - The UTV/ATV is not licensed for or allowed to be driven down the Hwy 95.
 - Reckless driving such as jumping, driving too fast, rock crawling, sliding or spinning in circles/donuts in the vehicle.
 - Riders under the age of 18 riding without a helmet & eye protection.
 - Towing or allowing the Vehicle to be towed without verbal or written approval from Company.
 - Driving the Vehicle up or down any incline or decline of more than 15 degrees.
 - Allowing an unauthorized driver to drive the vehicle with approval from the Company.

Renter(s) have read and verified all information on this page: Renter 1: SD / Renter 2: AB

- C. Use of alcoholic beverages or drugs while riding in or operating the Vehicle;
- H. No use of the rented vehicle in or at a competition, track, park or off road race;
- I. Working on or attempting to repair the Vehicle by Renter, any passenger or any other person without the prior approval of the Company;
- J. Failing to notify the Company of any accident involving the Vehicle or injury to any driver or passenger during the operation of the Vehicle.
8. **Damages:** All damages/repairs to any part of the vehicle are the renter(s) responsibility and shall be paid for prior to leaving at the end of the rental. Insurance does not cover flat tires, replacement of the tires, seats, wheels, body parts, steering parts, suspension parts, roof, mirrors or damages to the roll cage.
9. **Condition of Vehicle upon Return:** Renter must return the Vehicle to our rental office, on the date and time specified in this Agreement, and in the same condition that Renter received it, except for ordinary wear. Renter is responsible for all damage to, or loss or theft of, the Vehicle, including damage caused by weather, road conditions and acts of nature, whether or not Renter is at fault. It is Renter's responsibility to thoroughly inspect the Vehicle for any existing damage before the rental commences and to ensure any damage is documented on the Vehicle rental checkout inspection. Any damage not documented on the form will be Renter's responsibility. Renter is responsible for the cost of the repair or the actual cash retail value of the Vehicle on the date of the loss if the Vehicle is not repairable or if we elect not to repair the Vehicle. Loss of Use, Diminished Value, and any administrative expenses we incur processing the claim. Renter is also responsible for any loss rental income that was caused by his or her negligence. Renter must report all accidents or incidents of theft and vandalism to us and the police as soon as the Renter discovers them. Renter is responsible for paying to the appropriate 3rd party all applicable costs and fees, including, but not limited to tolls, parking, traffic and toll violations, toll evasion fines, citations, other fees, penalties, forfeitures, court costs, towing, and storage charges occurring during the Rental Period. If Renter fails to pay the charging entities and we pay all or part of the charges on Renter's behalf, Renter will reimburse us for all such costs and, in addition, pay us an administrative fee of \$100 for each such charge. Renter agrees that all charges, as outlined by the paragraph and throughout this Agreement, may be deducted from Renter's Security Deposit. To the extent that the Security Deposit does not cover all damage costs, Renter agrees to pay Company on the return of the Vehicle for any and all damage to the Vehicle exceeding the Security Deposit. In the event that the vehicle is totaled, the renter is responsible for the deductible on the insurance of \$2500.00. NEITHER RENTER NOR ANY OTHER PERSON IS AUTHORIZED TO REPAIR OR WORK ON SAID VEHICLE WITHOUT WRITTEN OR VERBAL APPROVAL FROM COMPANY. I Accept Responsibility For Any And All Cost/Damage To The Vehicle. Renter's Initials: *[Signature]*
10. **Cleaning Fee:** Vehicles returned with excessive dirt, mud or trash on or in the Vehicle rented, will be charged a \$75.00 cleaning fee;
11. **Late Return/Extra Usage Fuel Costs:** If Renter returns the Vehicle after the scheduled "Time In" indicated above, the Renter will be charged a late fee of \$75 per half hour per Vehicle. Renter agrees to pay for all oil and gas consumed by the Vehicle for the use of the Vehicle by Renter. In the event Renter retains the Vehicle for an additional time period such retention shall be construed as a continuance of this lease, at the same rental rate described above, and under the same terms and conditions stated herein, until the Vehicle is returned to Company. Any sums owing by Renter for such extended rental shall be paid immediately upon return of the Vehicle, and may be withheld by Company from the Security Deposit or charged on Renter's credit/debit card or cash.
12. **Recovery/Rescue Costs:** Renter is responsible for any recovery costs, rescue costs or costs related to getting Vehicles unstuck, including, but not limited to, a \$75 per half hour labor charge, plus fuel and oil for ATVs used in the recovery.
13. **Rental Deposit/Charge Authorization:** I authorize the Company to charge my Credit or Debit Card ("Charge Card") for the rented Vehicle listed in this Agreement. If applicable, I also authorize the Company to charge my Charge Card for damages, cleaning and other fees in accordance with the provisions herein. In the event that my Charge Card will not cover all charges, I authorize the Company to bill me, and/or charge a secondary credit or debit card or make arrangements for payment to cover all charges within 30 days.
14. **Weather Conditions:** Company is not responsible for weather conditions, weather changes or unpredictable storms. Company does not refund rental amounts paid due to weather conditions.
15. **Fuel:** Renter is required to replace used fuel. If Renter does not replace fuel, Company will refund the Vehicle at \$5.50 per gallon and charge Renter's Charge Card on file for the replacement fuel cost. Renter Replaces Fuel *[initials]* / Sandbar Replaces Fuel *[initials]*
16. **Alterations/Changes to Agreement:** Renter shall not change or alter any portion or part of this Agreement. Any attempt by Renter to alter this Agreement shall be of no effect and Renter shall forfeit the rental deposit paid and all rental privileges.
17. **Refund/Cancellation of Rental Policy:** In the event of a mechanical failure through no fault of Renter, Company will issue a Rental Credit Voucher (if paid by credit card) or supply Renter with another Vehicle that is available. If Renter cancels any part of the rental, damages the rental beyond repair or an unforeseen incident weather has caused the rental to end early, there will be no credit or refund for time unused. Rental Credit Vouchers are valid for 90 days beyond issue date.
18. **Over Night Rentals:** Renter is fully responsible for the Vehicle. Vehicle is not allowed to be driven off road after sunset and before sunrise. After hour emergency calls will be billed at \$150 an hour.
19. **Notification of Problems:** In the event that there is a problem with the Vehicle, mechanical or otherwise, Renter must immediately notify Company of the problem. If Renter fails to notify Company, any and all issues with the Vehicle will be deemed the fault of the Renter.
20. **Miscellaneous:** This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representative, successors and assigns of the Renter. This Agreement and any disputes arising there under shall be governed by the laws of Arizona. In case of any failure to faithfully perform the terms and covenants set forth herein, the Renter party shall pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach, whether or not the rental period has earlier terminated or any lawsuit is filed or similar action taken to accomplish the result sought or obtained. No change or addition to this Agreement shall be effective or binding unless evidenced in writing signed by the Company and the party agreeing to perform there under. Renter agrees that if any portion of this agreement is found to be void or unenforceable, the remaining portions shall remain in full force and effect.
21. The parties acknowledge that Renter has deposited the Security Deposit listed in this Agreement by cash or a signed VISA, MASTERCARD or DISCOVER credit card. In the event of any damage to the Vehicle or to others or their property, Company shall charge the cost to repair such damage to the Renter's credit card and/or shall retain all or part of the security deposit to be applied toward any damage incurred. Renter authorizes payment to Company of the amount to be determined by Company upon return of the rented Vehicle, for any damages to or arising from use of the rented Vehicle.
22. Renter represents that he/she has carefully read and understands and agrees to each of the terms of this Agreement.

RENTER PLEASE NOTE: YOU ARE LIABLE AND RESPONSIBLE FOR ANY AND ALL TERMS AND CONDITIONS IN THIS CONTRACT EVEN IF YOU DON'T TAKE THE TIME TO READ IT.

RENTER'S Initials, Print & Signature indicates agreement to all terms & conditions set forth in this contract. Renter has read, understands all of the terms, conditions and rules set forth above, and agrees to all terms without reservation.

Renter affirms that Renter is not impaired or under the influence of any drugs, medications, or alcohol of any kind, that would keep Renter from understanding or making Renter's judgment with regard to signing this contract/rental agreement.

Renter: Print name: *[Signature]* Sign: *[Signature]* Date: *11/18/2016*

Renter(s) have read and described all information on this page: Renter *[Signature]* / Renter 2 *[Signature]*

EXHIBIT B

PARTICIPANT AGREEMENT, RELEASE AND ASSUMPTION OF RISK

All participants, including drivers AND passengers, must sign this Agreement.

In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the undersigned (hereinafter, "I" or "participant") hereby agree to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. Assumption of Risk. I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY, OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY. I ALSO UNDERSTAND THAT MY RISK OF INJURY MAY BE INCREASED DUE TO MY OWN PHYSICAL CONDITION, AND THE PHYSICAL EXERTION ASSOCIATED WITH THIS ACTIVITY. I ACKNOWLEDGE THAT ACCIDENTS OR ILLNESS CAN OCCUR IN REMOTE PLACES WITHOUT MEDICAL FACILITIES OR THE AVAILABILITY OF IMMEDIATE MEDICAL ATTENTION IN THE EVENT OF AN INJURY. I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS. **THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:**

slips and falls, riding on uneven and/or snow covered terrain, changing weather conditions and variations in elevation; injury resulting from improper lifting or carrying; injury resulting from being jolted, jarred, bounced, thrown about and otherwise shaken during rides; injury resulting from contact with other passengers or equipment; injury resulting from items or conditions on the trail such as holes, bumps, ruts, obstacles, tree limbs and branches or rocks; injury resulting from loss of control of the vehicle, falls from the vehicle, collision with other vehicles, participants, trees, rocks, and other manmade or natural obstacles; injury resulting from exposure to temperature and weather extremes which could cause hypothermia, hyperthermia (heat-related illness), heat exhaustion, sunburn, dehydration; and exposure to potentially dangerous wild animals, insect bites, and hazardous plant life, equipment failure, burns, mechanical and/or equipment problems.

I understand that Company employees have difficult jobs to perform. They seek to provide for the safety of all participants, but their ability to do so is limited by not only the inherent risks and uncertainties related to the use of the Vehicle or the Vehicle itself, weather and conditions, but also by the extent to which participants follow instructions and rules, whether written or orally expressed by Company employees. I agree to follow ALL instructions and rules set forth by the Company and its employees, including, but not limited to those set forth on Exhibit A hereto.

2. Waiver of Claims; Indemnification. I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of Company's Vehicles, equipment or facilities, including any such claims which allege negligent acts or omissions of Company.

3. Insurance. I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

4. Pregnant Participants. Female drivers/passengers who are, or believe or suspect that they are pregnant, MUST have a doctor's release to participate in said activity prior to riding/driving a rented Vehicle.

5. Miscellaneous. This Agreement shall be governed by and construed under the laws of the State of Arizona, without regard to its conflict of laws principles. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of the participant. I hereby waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. I agree that if any portion of this agreement is found to be void or unenforceable, the remaining document shall remain in full force and effect. I agree to pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against the Company on the basis of any claim from which I have released them herein.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

☒ By checking this Box I am declining to wear a helmet.
☒ By checking this box I will use a helmet that is being provided by "Company".
☐ By checking this Box I will be providing my own personal helmet that is Snell and Dot approved.
Signature of Participant [Signature] Print Name John F. Borlock
Address 3030 3rd AVE NE - CHANDLER MN 55800
Phone 507-573-3034 Date OCT 18 - 2010

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION

(Must be completed for participants under the age of 18)

In consideration of JOHN F. BORLOCK (print minor's name)
("Minor") being permitted by Company to participate in its equipment and facilities, I further agree to indemnify and hold harmless Company from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent or Guardian [Signature] Print Name John F. Borlock
Date 10-18-10

PARTICIPANT AGREEMENT, RELEASE AND ASSUMPTION OF RISK

All participants, including drivers AND passengers, must sign this Agreement.

In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the undersigned (hereinafter, "I" or "participant") hereby agree to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. **Assumption of Risk.** I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY, OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY. I ALSO UNDERSTAND THAT MY RISK OF INJURY MAY BE INCREASED DUE TO MY OWN PHYSICAL CONDITION, AND THE PHYSICAL EXERTION ASSOCIATED WITH THIS ACTIVITY. I ACKNOWLEDGE THAT ACCIDENTS OR ILLNESS CAN OCCUR IN REMOTE PLACES WITHOUT MEDICAL FACILITIES OR THE AVAILABILITY OF IMMEDIATE MEDICAL ATTENTION IN THE EVENT OF AN INJURY. I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS. THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:

slips and falls, riding on uneven and/or snow covered terrain, changing weather conditions and variations in elevation; injury resulting from improper lifting or carrying; injury resulting from being jolted, jarred, bounced, thrown about and otherwise shaken during rides; injury resulting from contact with other passengers or equipment; injury resulting from items or conditions on the trail such as holes, bumps, ruts, obstacles, tree limbs and branches or rocks; injury resulting from loss of control of the vehicle, falls from the vehicle, collision with other vehicles, participants, trees, rocks, and other manmade or natural obstacles; injury resulting from exposure to temperature and weather extremes which could cause hypothermia, hyperthermia (heat-related illness), heat exhaustion, sunburn, dehydration; and exposure to potentially dangerous wild animals, insect bites, and hazardous plant life, equipment failure, burns, mechanical and/or equipment problems.

I understand that Company employees have difficult jobs to perform. They seek to provide for the safety of all participants, but their ability to do so is limited by not only the inherent risks and uncertainties related to the use of the Vehicle or the Vehicle itself, weather and conditions, but also by the extent to which participants follow instructions and rules, whether written or orally expressed by Company employees. I agree to follow ALL instructions and rules set forth by the Company and its employees, including, but not limited to those set forth on Exhibit A hereto.

2. **Waiver of Claims; Indemnification.** I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of Company's Vehicles, equipment or facilities, including any such claims which allege negligent acts or omissions of Company.

3. **Insurance.** I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

4. **Pregnant Participants.** Female drivers/passengers who are, or believe or suspect that they are pregnant, MUST have a doctor's release to participate in said activity prior to riding/driving a rented Vehicle.

5. **Miscellaneous.** This Agreement shall be governed by and construed under the laws of the State of Arizona, without regard to its conflict of laws principles. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of the participant. I hereby waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. I agree that if any portion of this agreement is found to be void or unenforceable, the remaining document shall remain in full force and effect. I agree to pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against the Company on the basis of any claim from which I have released them herein.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

☒ By checking this Box I am declining to wear a helmet.

☐ By checking this box I will use a helmet that is being provided by "Company".

☐ By checking this box I will be providing my own personal helmet that is Snell and Dot approved.

Signature of Participant Sherrin Berger Print Name Sherrin Berger

Address 3030 3rd Ave NE Owatonna MN 55000

Phone 507 573 3034 Date 10/18/16

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION
(Must be completed for participants under the age of 18)

In consideration of _____ (print minor's name)

("Minor") being permitted by Company to participate in its equipment and facilities, I further agree to indemnify and hold harmless Company from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent or Guardian: _____ Print Name: _____

Date: _____

PARTICIPANT AGREEMENT, RELEASE AND ASSUMPTION OF RISK

All participants, including drivers AND passengers, must sign this Agreement.

In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the undersigned (hereinafter, "I" or "participant") hereby agree to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. **Assumption of Risk.** I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY, OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY. I ALSO UNDERSTAND THAT MY RISK OF INJURY MAY BE INCREASED DUE TO MY OWN PHYSICAL CONDITION, AND THE PHYSICAL EXERTION ASSOCIATED WITH THIS ACTIVITY. I ACKNOWLEDGE THAT ACCIDENTS OR ILLNESS CAN OCCUR IN REMOTE PLACES WITHOUT MEDICAL FACILITIES OR THE AVAILABILITY OF IMMEDIATE MEDICAL ATTENTION IN THE EVENT OF AN INJURY. I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS. THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:

slips and falls, riding on uneven and/or snow covered terrain, changing weather conditions and variations in elevation; injury resulting from improper lifting or carrying; injury resulting from being jolted, jarred, bounced, thrown about and otherwise shaken during rides; injury resulting from contact with other passengers or equipment; injury resulting from items or conditions on the trail such as holes, bumps, ruts, obstacles, tree limbs and branches or rocks; injury resulting from loss of control of the vehicle, falls from the vehicle, collision with other vehicles, participants, trees, rocks, and other manmade or natural obstacles; injury resulting from exposure to temperature and weather extremes which could cause hypothermia, hyperthermia (heat-related illness), heat exhaustion, sunburn, dehydration; and exposure to potentially dangerous wild animals, insect bites, and hazardous plant life, equipment failure, burns, mechanical and/or equipment problems.

I understand that Company employees have difficult jobs to perform. They seek to provide for the safety of all participants, but their ability to do so is limited by not only the inherent risks and uncertainties related to the use of the Vehicle or the Vehicle itself, weather and conditions, but also by the extent to which participants follow instructions and rules, whether written or orally expressed by Company employees. I agree to follow ALL instructions and rules set forth by the Company and its employees, including, but not limited to those set forth on Exhibit A hereto.

2. **Waiver of Claims; Indemnification.** I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of Company's Vehicles, equipment or facilities, including any such claims which allege negligent acts or omissions of Company.

3. **Insurance.** I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

4. **Pregnant Participants.** Female drivers/passengers who are, or believe or suspect that they are pregnant, MUST have a doctor's release to participate in said activity prior to riding/driving a rented Vehicle.

5. **Miscellaneous.** This Agreement shall be governed by and construed under the laws of the State of Arizona, without regard to its conflict of laws principles. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of the participant. I hereby waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. I agree that if any portion of this agreement is found to be void or unenforceable, the remaining document shall remain in full force and effect. I agree to pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against the Company on the basis of any claim from which I have released them hereto.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

☒ By checking this Box I am declining to wear a helmet.

☐ By checking this box I will use a helmet that is being provided by "Company".

☐ By checking this Box I will be providing my own personal helmet that is Snell and Dot approved.

Signature of Participant

Print Name

Address

Phone

Date

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION
(Must be completed for participants under the age of 18)

In consideration of _____ (print minor's name)

("Minor") being permitted by Company to participate in its equipment and facilities, I further agree to indemnify and hold harmless Company from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent or Guardian:

Print Name:

Date:

EXHIBIT A**Driver/ Rider Usage Rules:**

1. I/We will not drink and drive or allow a driver to drink.
2. I/We will only allow the authorized drivers on the Rental Agreement to drive the rental Vehicle.
3. I/We will not over load any part of the rental Vehicle (i.e., more people on the vehicle than the number of seats on the vehicle), carrying excessive equipment or towing of equipment.
4. I/We will not ride on private property or areas stating that no driving or off road vehicles are allowed.
5. I/We will follow and obey all traffic laws and rules when driving on all paved roads and off roads that are located on BLM land.
6. I/We will not drive the rental Vehicle up or down or drive along the side of a hill that has more than a 15% incline or decline.
7. I/We will not drive the rental Vehicle in a reckless manner, such as (excessive speeding on trails, roads, or riding the Vehicle sideways or doing donuts or burn outs, or racing or driving the rental Vehicle in an unauthorized area.
8. I/We will only drive the rental Vehicle on designated trails, or previously ridden trails or roads, but not to exceed my driving ability. I/We will not make our own trail. You are required to stay on existing trails only.
9. I/We by Arizona Law and/or required to have all passengers under the Age of 18 wear a helmet.
10. I/We will not ride in any Sand Dune areas. I will only ride in areas that is approved by the rental company.
11. I/We will not jump the rental Vehicle.
12. I/We will not roll or tip the rental Vehicle over.
13. I/We will make sure that all riders/passengers have their seat belts buckled at all times prior to driving the rental Vehicle.
14. I/We will make sure that all riders/passengers wear eye protection at all times prior to driving the rental Vehicle.
15. As the driver of the rental Vehicle I am responsible for everything and anything that happens with respect to the rental Vehicle and its use, and with respect to any passengers.
16. I/We will return the rental vehicle(s) full of fuel or be subject to refueling cost.
17. No Refunds are allowed. Credits only. If negligence or driver is found to be careless no credit will be allowed.
18. Driver Age Limits:
 - A) Polaris RZR 800 - Minimum age is 25 +
 - B) Polaris RZR 900 - Minimum age is 25 +
 - C) Polaris RZR 1000 - Minimum age is 30+ with experience Only and is approved by the rental company.
19. Excessive Usage to the rental Vehicle may, can or will include any of the following.
 - A) Tire/Wheel/Shocks repair or replacement - examples are dented bent, flat or punctured tires, chunked, hub broken, axles, drive shafts, a-arms, tie-rods etc. Cost start at \$95
 - B) Engine damage or loss, examples - such as knocking, overheating, won't start, has trouble running, Vehicle will not go in forward or reverse or neutral, valve or head issues, transmission or drive gears etc. Parts + Labor Start @(\$96hr)
 - C) Exterior marks or fender, roll bar damage of any kind, such as scratches, chips, holes, chunks, missing or dented areas and or parts. Repairs Parts Replacement Value
 - D) Interior damage such as cigarette burns, stains of any kind, tears and any broken equipment. Bums \$100 per hole, Fabric or any repairs will be a repair or replacement cost.
 - E) Loss of equipment such as anything that is sent out with the rental Vehicle safety equipment, ropes of any kind, fire extinguisher, flags, air horns, ignition or lock key(s) - Cost of replacement at current value.
 - F) Complete loss of rented equipment such as crashed, stolen, abandonment or non-return at return time. Cost of current replacement value. Abandonment will result in loss of deposit plus damages, non-return will be late charges and without notification within 2 hours will be reported stolen.
 - G) Any additional rented or loaned equipment, such as ropes, ice chest, goggles, and helmets - Replacement cost.
 - H) Recovery Cost \$75 per hour + .09cents per mile + any additional equipment need to recover the rental Vehicle + damages.
 - I) In the event that the machine is tip or rolled over, renter will automatically be charged full replacement cost of the roll cage and any additional damage + labor.

If any of these Driver Usage Rules are violated, the renter of the Vehicle will lose his or her rental deposit and will be responsible for any and all damages arising from such violation, and any participant acting in violation of these Driver Usage Rules will be responsible for any and all damages arising from such violation.

By signing below, participant certifies that participant understands and agrees to all of the terms, rules and conditions set forth in this Agreement without exception.

1600 Countryshire
Lake Havasu City, AZ 86403
928-854-4242

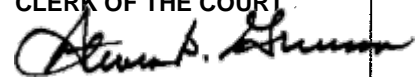
- G. Use of alcoholic beverages or drugs while riding in or operating the Vehicle;
- H. No use of the rented vehicle in or at a competition track, park or off road race.
- I. Working on or attempting to repair the Vehicle by Renter, any passenger or any other person without the prior approval of the Company;
- J. Failing to notify the Company of any accident involving the Vehicle or injury to any driver or passenger during the operation of the Vehicle.
8. **Damages:** All damages/repairs to any part of the vehicle are the renter(s) responsibility and shall be paid for prior to leaving at the end of the rental. Insurance does not cover flat tires, replacement of the tires, seats, wheels, body parts, steering parts, suspension parts, roof, mirrors or damages to the roll cage.
9. **Condition of Vehicle upon Return:** Renter must return the Vehicle to our rental office, on the date and time specified in this Agreement, and in the same condition that Renter received it, except for ordinary wear. Renter is responsible for all damage to, or loss or theft of, the Vehicle, including damage caused by weather, road conditions and acts of nature, whether or not Renter is at fault. It is Renter's responsibility to thoroughly inspect the Vehicle for any existing damage before the rental commences and to ensure any

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 2018, that I caused to be served a true and accurate copy of the foregoing **ANSWER, COUNTER-CLAIM AND AMENDED CROSS-CLAIM OF SANDBAR POWERSPORTS, LLC TO PLAINTIFFS' AMENDED COMPLAINT** by sending a copy of the same via Odyssey eFile NV, the Court's electronic service program to the following:

Counsel of Record	Phone/Fax Nos.	Party
Chad A. Bowers, Esq, CHAD A, BOWERS, LTD. 3202 West Charleston Blvd. Las Vegas, NV 89102	T: 702-457-1001 F: 702-457-8006 E: bowers@lawyer.com	Plaintiffs
Kyle W. Farrar (<i>Pro Hac Vice</i>) Kaster, Lynch, Farrar & Ball, LLP 1010 Lamar, Suite 1600 Houston, Texas 77002	T: 713-221-8300 F: 713-221-8301 E: kyle@fbtrial.com	
Jennifer Willis Arledge, Esq. Wilson Elser Moskowitz Edelman & Dicker LLP 300 South 4 th Street, 11 th Floor Las Vegas, NV 89101	T: 702-727-1400 F: 702-727-1401 E: Jennifer.arledge@wilsonelser.com	Defendant/Cross- Defendant, Polaris Industries, Inc.


An employee of LITCHFIELD & VAVO LLP



1 **NTSO**
2 **JENNIFER WILLIS ARLEDGE**
3 Nevada Bar No.: 8729
4 **WILSON, ELSE, MOSKOWITZ,**
5 **EDELMAN & DICKER LLP**
6 300 South 4th Street, 11th Floor
7 Las Vegas, NV 89101
8 (702) 727-1400; FAX (702) 727-1401
9 Jennifer.Arledge@wilsonelser.com
10 Attorneys for Defendant/Cross-Defendant
11 **POLARIS INDUSTRIES, INC.**

DISTRICT COURT

CLARK COUNTY, NEVADA

10 JOHN BORGER and SHERRI BORGER,

11 Plaintiffs,

12 vs.

13 SANDBAR POWERSPORTS, LLC, DOES I
14 through X; ROE CORPORATIONS XI through
15 XX, inclusive, and POLARIS INDUSTRIES, INC.,

15 Defendants.

16

SANDBAR POWERSPORTS, LLC,

17 Counter-Claimant,

18 v.

19 JOHN BORGER AND SHERRI BORGER,

20 Counter-Defendants.

21

SANDBAR POWERSPORTS, LLC,

22 Cross-Claimant,

23 v.

24 POLARIS INDUSTRIES, INC.

25 Cross-Defendant,
26
27
28

CASE NO: A-17-751896-C

DEPT NO: XXV

**NOTICE OF ENTRY OF STIPULATION
AND ORDER TO EXTEND DISCOVERY
DEADLINES**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED this 25th day of June, 2018.

BY: Jennifer W. Arledge
JENNIFER WILLIS ARLEDGE
 Nevada Bar No.: 8729
 300 South 4th Street, 11th Floor
 Las Vegas, NV 89101
 Attorneys for Defendant
POLARIS INDUSTRIES, INC.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on this 25th day of June, 2018, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES** as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;
- ☐ via hand-delivery to the addressees listed below;
- ☐ via facsimile;
- ☐ by transmitting via email the document listed above to the email address set forth below on this date before 5:00 p.m.

Chad Bowers, Esq.
CHAD A. BOWERS, LTD.
3202 W. Charleston Blvd.
Las Vegas, NV 89102
Attorneys for Plaintiff

Kyle W. Farrar
KASTER, LYNCH, FARRAR & BALL, LLP
1010 Lamar, Suite 1600
Houston, TX 77002
Attorneys for Plaintiff

Griffith H. Hayes, Esq.
Marisa A. Pocci, Esq.
Kevin A. Roebuck, Esq.
LITCHFIELD CAVO, LLP
3753 Howard Hughes Parkway, Suite 100
Las Vegas, NV 8919
Attorneys for Defendant
SANDBAR POWERSPORTS, LLC

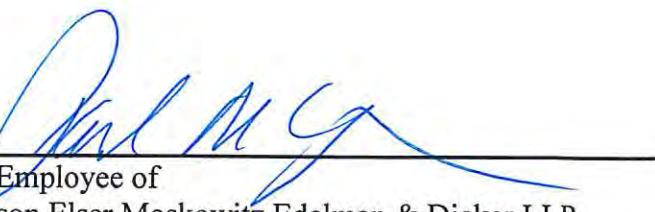
BY 
An Employee of
Wilson Elser Moskowitz Edelman & Dicker LLP

EXHIBIT “A”

EXHIBIT “A”

ORIGINAL

Electronically Filed
6/14/2018 11:42 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 **SAO**
2 **JENNIFER WILLIS ARLEDGE**
3 Nevada Bar No.: 8729
4 **WILSON, ELSE, MOSKOWITZ,**
5 **EDELMAN & DICKER LLP**
6 300 South 4th Street, 11th Floor
7 Las Vegas, NV 89101
8 (702) 727-1400; FAX (702) 727-1401
9 Jennifer.Arledge@wilsonelser.com
10 Attorneys for Defendant/Cross-Defendant
11 **POLARIS INDUSTRIES, INC.**

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **JOHN BORGER and SHERRI BORGER,**

11 **Plaintiffs,**

12 **vs.**

13 **SANDBAR POWERSPORTS, LLC, DOES I**
14 **through X; ROE CORPORATIONS XI through**
15 **XX, inclusive, and POLARIS INDUSTRIES, INC.,**

16 **Defendants.**

17 **And related claims.**

CASE NO: A-17-751896-C

DEPT NO: XXV

**STIPULATION AND ORDER TO
EXTEND DISCOVERY DEADLINES**

(FIRST REQUEST)

18 IT IS HEREBY STIPULATED by and between the parties herein through their undersigned
19 counsel of record that the discovery deadlines pursuant to the provisions of EDCR 2.35 in this case
20 be extended as set forth herein. This Stipulation is being entered into in good faith and not for the
21 purposes of delay.
22

23 **I. FACTS AND PROCEDURAL HISTORY**

24 Plaintiffs filed their initial Complaint on March 3, 2017, for damages allegedly arising out of
25 an off-road motor vehicle accident. The Parties submitted their Joint Case Conference Report on
26 August 8, 2017, and the Court issued a Scheduling Order on August 23, 2017. Defendant Polaris
27 Industries was subsequently named a party to the action on November 14, 2017, with the filing of
28

1323098v.1

1 Plaintiffs' Amended Complaint. Once Defendant Polaris became named in the action, the Parties
2 submitted an Amended Joint Case Conference Report with the expectation that a new Scheduling
3 Order would issue. Since a new Scheduling Order has not been issued, the Parties now stipulate to
4 an extension of time to conduct remaining discovery and continue the trial.

5 **II. SUMMARY OF DISCOVERY COMPLETED**

6 **Plaintiffs Have Served The Following Discovery To Date:**

- 7
- 8 1. 1st Set of Interrogatories to Defendant Sandbar Powersports;
 - 9 2. 2nd Set of Interrogatories to Defendant Sandbar Powersports;
 - 10 3. 1st Set of Interrogatories to Defendant Polaris Industries;
 - 11 4. 1st Set of Requests for Production to Defendant Sandbar Powersports;
 - 12 5. 2nd Set of Requests for Production to Defendant Sandbar Powersports;
 - 13 6. 1st Set of Requests for Production to Defendant Polaris Industries;
 - 14 7. 1st Set of Requests for Admission to Defendant Sandbar Powersports;
 - 15 8. 2nd Set of Requests for Admission to Defendant Sandbar Powersports;
 - 16 9. 1st Set of Requests for Admission to Defendant Polaris Industries.

17

18 **Defendant Sandbar Powersports Has Served The Following Discovery To Date:**

- 19
- 20 1. 1st Set of Interrogatories to Plaintiffs;
 - 21 2. 1st Set of Interrogatories to Defendant Polaris Industries;
 - 22 3. 1st Set of Requests for Production to Plaintiffs;
 - 23 4. 2nd Set of Requests for Production to Plaintiffs;
 - 24 5. 1st Set of Requests for Production to Defendant Polaris Industries;
 - 25 6. 1st Set of Requests for Admission to Plaintiffs;
 - 26 7. 1st Set of Requests for Admission to Defendant Polaris Industries.
- 27
- 28

Depositions Completed to Date:

1. David Lehmitz (April 9, 2018);
2. Jason Melton (April 9, 2018);
3. Tracy Waddington (April 10, 2018);
4. Polly Melton (April 10, 2018);
5. James Shellenback (May 29, 2018).

Other Discovery Completed To Date:

1. The Parties have served their initial disclosures of witnesses and documents and supplemental disclosures thereto;
2. The inspection of the subject Polaris RZR and the site of the subject accident was conducted on May 29, 2018.

III. DISCOVERY REMAINING TO BE COMPLETED

1. Supplemental disclosure of witnesses and documents;
2. Additional written discovery by the Parties;
3. Gathering medical and psychological treatment records of Plaintiffs;
4. Inspection of scene where incident occurred;
5. Initial and rebuttal expert designations;
6. Depositions of remaining percipient witnesses, expert depositions, and any other necessary witness depositions.

IV. REASONS WHY THE DISCOVERY REMAINING HAS NOT BEEN COMPLETED

As stated above, Defendant Polaris Industries only recently became a party to the action on November 14, 2017, with the filing of Plaintiffs' Amended Complaint. Prior to Defendant Polaris Industries becoming a party, Plaintiffs and Defendant Sandbar Powersports agreed on discovery dates, submitted their Joint Case Conference Report, and a Scheduling Order was issued.

1 Once Defendant Polaris Industries was added, the Parties submitted an Amended Joint Case
2 Conference Report anticipating a new Scheduling Order would be issued. Because a new
3 Scheduling Order has not issued, the Parties find it necessary to submit this present Stipulation in
4 order to extend the time to complete the remaining discovery.

5 **V. CURRENT SCHEDULE FOR COMPLETING DISCOVERY**

- | | | | |
|----|----|-------------------------------|-----------------|
| 6 | 1. | Close of Discovery | July 10, 2018 |
| 7 | 2. | Final Date to Amend Pleadings | March 12, 2018 |
| 8 | 3. | Initial Expert Disclosures | March 12, 2018 |
| 9 | 4. | Rebuttal Expert Disclosures | April 10, 2018 |
| 10 | 5. | Dispositive Motions | August 10, 2018 |

11 **VI. PROPOSED SCHEDULE**

12 The Parties propose the following discovery dates:

- | | | | |
|----|----|-------------------------------|------------------|
| 13 | 1. | Close of Discovery | February 1, 2019 |
| 14 | 2. | Final Date to Amend Pleadings | November 2, 2018 |
| 15 | 3. | Initial Expert Disclosures | November 2, 2018 |
| 16 | 4. | Rebuttal Expert Disclosures | December 3, 2018 |
| 17 | 5. | Dispositive Motions | March 4, 2019 |

18
19
20 ///

21
22 ///

23
24 ///

25
26 ///


VII. CURRENT TRIAL DATE

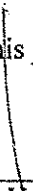
This matter is currently set to be tried to a jury on a five-week stack to begin on Monday, October 8, 2018, at 10:30 a.m. The requested discovery extension will require the current trial date to be moved. As such, the Parties hereby respectfully request that this Court re-set the trial date and pre-trial deadlines.

IT IS SO STIPULATED.

DATED this 6th day of June, 2018.

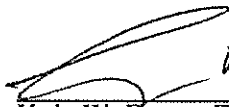
DATED this ____ day of June, 2018.



Chad A. Bowers, Esq.
Nevada Bar No. 7283
CHAD A. BOWERS, LTD
3202 W. Charleston Blvd.
Las Vegas, Nevada 89102
Telephone: (702) 457-1001
Attorney for Plaintiffs


Griffith H. Hayes, Esq.
Nevada Bar No. 7374
LITCHFIELD CAVO, LLP
3993 Howard Hughes Parkway, Suite 100
Las Vegas, Nevada 89169
Telephone: (702) 878-8778
Attorney for Defendant Sandbar Powersports, LLC

DATED this 6th day of June, 2018.

DATED this ____ day of June, 2018.

 bcr #7263
Kyle W. Farrar, Esq.
Admitted Pro Hac Vice
**KASTER, LYNCH,
FARRAR & BALL, LLP**
1010 Lamar, Suite 1600
Houston, Texas 77002
Telephone: (713) 221-8300
Attorney for Plaintiffs


Jennifer Willis Arledge, Esq.
Nevada Bar No. 8729
**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP**
300 South 4th Street, 11th Floor
Las Vegas, Nevada 89101
Telephone: (702) 727-1400
Attorney for Defendant, Polaris Industries, Inc.

VII. CURRENT TRIAL DATE

This matter is currently set to be tried to a jury on a five-week stack to begin on Monday, October 8, 2018, at 10:30 a.m. The requested discovery extension will require the current trial date to be moved. As such, the Parties hereby respectfully request that this Court re-set the trial date and pre-trial deadlines.

IT IS SO STIPULATED.

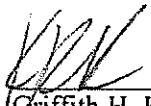
DATED this ____ day of June, 2018.

Chad A. Bowers, Esq.
Nevada Bar No. 7283
CHAD A. BOWERS, LTD
3202 W. Charleston Blvd.
Las Vegas, Nevada 89102
Telephone: (702) 457-1001
Attorney for Plaintiffs


DATED this ____ day of June, 2018.

Kyle W. Farrar, Esq.
Admitted Pro Hac Vice
**KASTER, LYNCH,
FARRAR & BALL, LLP**
1010 Lamar, Suite 1600
Houston, Texas 77002
Telephone: (713) 221-8300
Attorney for Plaintiffs

DATED this 5 day of June, 2018.


Griffith H. Hayes, Esq.
Nevada Bar No. 7374
LITCHFIELD CAVO, LLP
3993 Howard Hughes Parkway, Suite 100
Las Vegas, Nevada 89169
Telephone: (702) 878-8778
*Attorney for Defendant Sandbar
Powersports, LLC*

DATED this 6th day of June, 2018.


Jennifer Willis Arledge, Esq.
Nevada Bar No. 8729
**WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER, LLP**
300 South 4th Street, 11th Floor
Las Vegas, Nevada 89101
Telephone: (702) 727-1400
*Attorney for Defendant, Polaris Industries,
Inc.*

DATED this 6th June day of ~~May~~, 2018.

per written authority 6-6-18 JWA
Thomas Christopher Trent, Esq.

David J. Baluk, Esq.

Admitted Pro Hac Vice

JOHNSON, TRENT & TAYLOR, LLP

919 Milam Street, Suite 1500

Houston, Texas 77002

Telephone: (713) 860-0525

Attorney for Defendant, Polaris Industries, Inc.

ORDER


The Court, having reviewed and considered the above Stipulation, and good cause appearing
therefore, the discovery deadlines will be extended as follows:

Close of Discovery	February 1, 2019
Final Date to Amend Pleadings	November 2, 2018
Initial Expert Disclosures	November 2, 2018
Rebuttal Expert Disclosures	December 3, 2018
Dispositive Motions	March 4, 2019

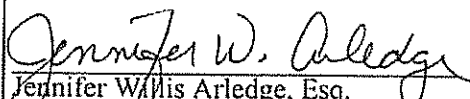
The trial date of October 8, 2018, will be vacated and reset in accordance with this
Stipulation. An amended trial order will follow.

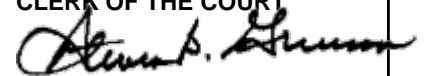
IT IS SO ORDERED.

Dated this 13th day of June, 2018.


DISTRICT COURT JUDGE
mk

Respectfully Submitted by:


Jennifer Willis Arledge, Esq.
Nevada Bar No. 8729
**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP**
300 South 4th Street, 11th Floor
Las Vegas, Nevada 89101
Telephone: (702) 727-1400
Attorney for Defendant, Polaris Industries, Inc.



1 OSCJ

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 JOHN BORGER and SHERRI BORGER,)

5 Plaintiffs,)

6 vs.)

Case No.: A-17-751896-C

Dept. No.: XXV

7 SANBAR POWERSPORTS, LLC, and DOES)
8 I through X; and ROE CORPORATIONS XI)
9 through XX, inclusive,)

Defendant(s).)

10 And All Related Matters.)
11 _____)

12 **AMENDED ORDER SETTING**
13 **CIVIL JURY TRIAL AND PRETRIAL/CALENDAR CALL**

14 IT IS HEREBY ORDERED THAT:

15 A. The above-entitled case is set to be tried to a jury on a five-week stack to begin

16 **Monday, May 20, 2019, at 10:30 a.m.**

17 B. A Pretrial/Calendar Call will be held on **Tuesday, May 14, 2019, at 10:30 a.m.**

18 Trial Counsel (and any party in proper person) must appear.

19 C. The Pretrial Memorandum must be filed prior to the Pretrial/Calendar Call, with
20 a courtesy copy delivered to Department XXV. EDCR 2.67 must be complied with.

21 D. All discovery deadlines, deadlines for filing dispositive motions and motions to
22 amend the pleadings or add parties are controlled by the previously issued Scheduling
23 Order and/or relevant Stipulation and Orders.

24 E. Stipulations to continue a trial date will not be considered by the Court.

25 F. Orders shortening time will not be signed except in extreme emergencies.

26 ***AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY***
27
28

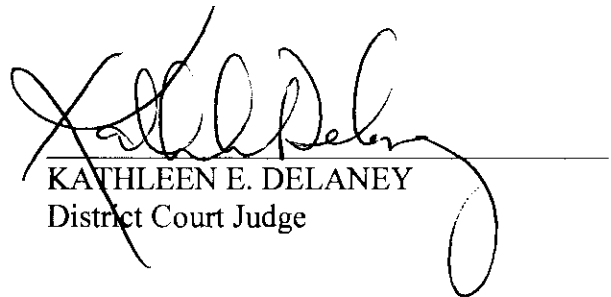
RECEIVED

JUL 16 2018 KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV
CLERK OF THE COURT

1 Failure of the designated trial attorney or any party appearing in proper person to
2 appear for any court appearances or to comply with this Order shall result in any of the
3 following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4)
4 vacation of trial date; and/or any other appropriate remedy or sanction.

5
6 Counsel must advise the Court immediately when the case settles or is otherwise
7 resolved prior to trial. A stipulation which terminates a case by dismissal shall
8 indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date
9 of that trial.

10 DATED: July 11, 2018.

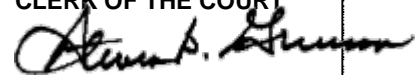
11
12 
13 KATHLEEN E. DELANEY
14 District Court Judge

15 I hereby certify that on or about the date filed,
16 the foregoing order was E-served, mailed, or
17 a copy was placed in the attorney's folder in
the Clerk's Office as follows:

18 Chad A. Bowers, Esq. – Chad A. Bowers, LTD.
19 Kyle W. Farrar, Esq. – Kaster, Lynch, Farrar & Ball, LLP
20 Griffith H. Hayes, Esq. – Litchfield Cavo
21 Jennifer Willis Arledge, Esq. – Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
22 Thomas Christopher Trent, Esq. – Johnson, Trent & Taylor, LLP

23 
24 Marwanda Knight
25 Judicial Executive Assistant

KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV



1 **MPOR**
2 **JENNIFER WILLIS ARLEDGE**
3 Nevada Bar No.: 8729
4 **WILSON, ELSER, MOSKOWITZ,**
5 **EDELMAN & DICKER LLP**
6 300 South 4th Street, 11th Floor
7 Las Vegas, NV 89101
8 (702) 727-1400; FAX (702) 727-1401
9 Jennifer.Arledge@wilsonelser.com
10 Attorneys for Defendant/Cross-Defendant
11 **POLARIS INDUSTRIES, INC.**

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11 JOHN BORGER and SHERRI BORGER,

12 Plaintiffs,

13 vs.

14 SANDBAR POWERSPORTS, LLC, DOES I
15 through X; ROE CORPORATIONS XI through
16 XX, inclusive, and POLARIS INDUSTRIES, INC.,

17 Defendants,

18 And related claims.

CASE NO: A-17-751896-C

DEPT NO: XXV

**DEFENDANT POLARIS INDUSTRIES,
INC.'S MOTION FOR PROTECTIVE
ORDER ON ORDER SHORTENING
TIME**

Before the Discovery Commissioner

7/27/18
9:30 am

19 COMES NOW Defendant POLARIS INDUSTRIES, INC. ("Polaris") by and through its
20 counsel of record, Jennifer Willis Arledge, Esq., of the law firm of WILSON ELSER MOSKOWITZ
21 EDELMAN & DICKER, LLP, and respectfully submits its motion for protective order in
22 accordance with NRCP 26(c) and EDCR 2.34. This motion is made and based upon the papers and
23 pleading on file, the following memorandum of points and authorities, the affidavit of Jennifer Willis
24

25 ///

26 ///

27 ///

1 Arledge, Esq., and any oral argument that this Court may entertain.

2 DATED this 16th day of July, 2018.

3 **WILSON, ELSER, MOSKOWITZ,**
4 **EDELMAN & DICKER LLP**

5
6 BY: Jennifer W. Arledge
7 **JENNIFER WILLIS ARLEDGE**
8 Nevada Bar No.: 8729
9 300 South 4th Street, 11th Floor
10 Las Vegas, NV 89101
11 Attorneys for Defendant
12 **POLARIS INDUSTRIES, INC.**
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER SHORTENING TIME

Upon motion of defendant and for good cause shown, IT IS HEREBY ORDERED that the hearing on DEFENDANT POLARIS INDUSTRIES, INC.'S MOTION FOR PROTECTIVE ORDER ON ORDER SHORTENING TIME is hereby shortened to the 27 day of July, 2018, at the hour of 9:30 a.m. of said date, or as soon thereafter as counsel can be heard.

~~Any Opposition shall be due on _____.~~

~~Any Reply shall be due on _____.~~

IT IS SO ORDERED.

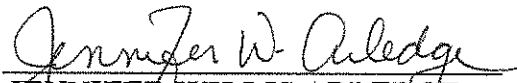
DATED this 19 day of July, 2018.


DISCOVERY COMMISSIONER

Respectfully Submitted By:

**WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER LLP**

BY:


JENNIFER WILLIS ARLEDGE

Nevada Bar No. 08729
300 South 4th Street, 11th Floor
Las Vegas, NV 89101
Attorney for Defendants
POLARIS INDUSTRIES, INC.

←
Please
update form
for OT next
time

1 **AFFIDAVIT IN SUPPORT OF MOTION AND FOR ORDER SHORTENING TIME**

2 STATE OF NEVADA)
) ss.
3 COUNTY OF CLARK)

4 I, Jennifer Willis Arledge, Esq., hereby depose and say as follows:

5 1. I am a competent adult, over the age of eighteen (18) years, and have personal
6 knowledge of all facts stated herein.

7 2. I am an attorney at law duly licensed to practice in the State of Nevada and a partner
8 in the law firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP, counsel of
9 record for Defendant POLARIS INDUSTRIES, INC. in Case No. A-17-751896-C, currently
10 pending in Department XXV of the Eighth Judicial District Court, County of Clark, Nevada.

11 3. I offer this affidavit in support of the Defendant's motion for protective order
12 postponing the depositions of Plaintiffs Sherri and John Borger, and their son, Foster Borger, and in
13 support of an order shorting time.

14 4. Once named in the instant action, Defendant Polaris Industries, Inc., ("Polaris")
15 retained Thomas Christopher Trent and David J. Baluk, to serve as national coordinating counsel.
16 On March 27, 2018, Thomas Christopher Trent and David J. Baluk, were admitted to practice before
17 this court *pro hac vice*.

18 5. Since Polaris became a Defendant, this case has been proceeding with discovery. The
19 depositions of the two owners of Defendant Sandbar Powersports, LLC, Mr. and Mrs. Melton, and
20 the two employees who were involved with renting the RZR to Plaintiffs have been deposed. In
21 addition, an inspection of the RZR involved in the subject accident took place at the home of its new
22 owner, and that new owner was deposed. A site inspection was also undertaken. Written discovery
23 has been exchanged. The parties are negotiating a protective order.
24
25
26
27
28

1 6. Defendants desire to take the depositions of Plaintiffs Sherri and John Borger, as well
2 as their son, Foster Borger. There were extensive discussions between counsel for the parties to
3 choose dates for these depositions. The two dates that seemed to work were August 6 and 7, 2018. I
4 notified Mr. Baluk that those two dates conflicted with a prior commitment on my calendar and that
5 I would be unable to attend. We discussed having another attorney from my office attend the
6 depositions as local counsel since national counsel would be taking the lead in representing Polaris
7 by asking questions.

8
9 7. On or about June 29, 2018, Mr. Trent advised me that new national counsel would be
10 stepping in due to a change at Polaris. I was asked to prepare and file a disassociation of counsel.
11 On July 2, 2018, Mr. Baluk asked that I postpone filing the disassociation of counsel while the file
12 was being transitioned to new national counsel, and in light of the July 4 holiday. I was awaiting
13 further instruction when I returned to the office on July 9, following a few days out of the office.

14 8. Meanwhile, on July 5, 2018, Sandbar electronically served deposition notices for
15 Plaintiffs and Foster Borger to take place on August 6 and 7, 2018. A copy of those notices is
16 attached to the instant motion as Exhibit "A."

17
18 9. On July 11, 2018, I obtained contact information for new national counsel and
19 informed them of the upcoming depositions, my scheduling conflict, and other outstanding issues.
20 At that time, I was informed that the new national counsel was scheduled to be on a family vacation
21 August 6 and 7 and I was asked to seek to reschedule the depositions. On that same day, I emailed
22 Plaintiff's counsel and Sandbar's counsel advising them of the change in national coordinating
23 counsel and requesting that the depositions be rescheduled. A copy of that email is attached to the
24 instant motion as Exhibit "B."

1 10. After receiving no response to my July 11 email, I sent a follow up email on July 13,
2 2018, again inquiring about moving the depositions. A copy of that email is attached to the instant
3 motion as Exhibit "C."

4 11. On July 13, 2018, Plaintiffs' counsel responded that his clients have moved the dates
5 a lot and are frustrated, noting that they are not his notices to move. A copy of that email is attached
6 to the instant motion as Exhibit "D." That same day, Sandbar's counsel responded that he is
7 normally very accommodating but would not agree to move the dates. A copy of that email is
8 attached to the instant motion as Exhibit "E."

9
10 12. Based on the above responses, this motion is being prepared.

11 13. On July 16, 2018, I left a voice mail message for Griffith Hayes, Sandbar's counsel,
12 to try to discuss the depositions and the plan to file the instant motion, to see if there could be any
13 agreement. Mr. Hayes responded via email, again stating that he is normally very accommodating
14 but could not agree to move the dates. A copy of that email is attached to the instant motion as
15 Exhibit "F."

16
17 14. I have received verified *pro hac vice* applications from new national counsel and will
18 submit them to the State Bar of Nevada for expedited processing on July 16, 2018. Motions to
19 associate counsel will be filed on order shortening time as soon as the State Bar approves the
20 applications.

21 15. However, even if new national counsel can be admitted to practice before the pending
22 depositions, that does not alleviate the scheduling problem. Moreover, I cannot attend the
23 depositions due to a prior speaking engagement. If the depositions proceed as scheduled, Polaris
24 will be deprived of the opportunity to have counsel of its choice represent it at the depositions. As
25 importantly, the local counsel who is most familiar with this case (me) cannot attend and represent
26 the interests of Polaris due to a prior commitment. Sending another attorney from my office is not
27
28

1 an option in this circumstance due to the serious nature of the injuries and the unique issues involved
2 in products liability litigation. Further, another attorney would not be familiar with the prior
3 deposition testimony of four (4) important witnesses. Polaris would be deprived of its right to be
4 represented fully and fairly by counsel of its choice at these critical depositions.

5 16. This request is not being made for the purposes of delay.

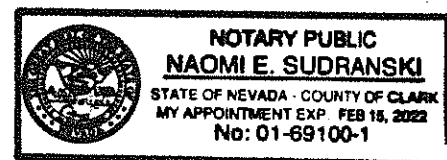
6 17. Since the depositions are scheduled for August 6 and 7, 2018, it is unlikely that the
7 instant motion would be heard in time if submitted in the ordinary course of the court's business.
8 Accordingly, an order shortening time is required to ensure that the issues are heard by the court
9 prior to becoming moot and resulting in injustice to Polaris Industries.
10

11 FURTHER YOUR AFFIANT SAYETH NAUGHT.

12
13
14
15 Subscribed and Sworn to Before Me
this 11th day of July, 2018.

Jennifer W. Arledge
JENNIFER WILLIS ARLEDGE, ESQ.

16
17 *Naomi E. Sudranski*
18 Notary Public for Said County and State



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS & AUTHORITIES

I. RELIEF REQUESTED

This case involves claims of strict product liability, breach of warranty, and negligent design and marketing against Defendant Polaris Industries, Inc. ("Polaris"). Polaris retained national coordinating counsel to represent it in this case along with undersigned local counsel. There has now been a change in the structure at Polaris resulting in a change of its national coordinating counsel. New national coordinating counsel has expeditiously taken steps to become admitted to practice in this jurisdiction in this matter only by submitting their verified applications to the State Bar of Nevada. Motions to associate counsel will be filed on order shortening time as soon as the verified applications are approved by the State Bar.

There are three (3) critical depositions that were set by prior national counsel, Plaintiffs Sherri Borger and John Borger, and their son, Foster Borger. New national coordinating counsel is not available to attend those depositions as scheduled. Moreover, the undersigned local counsel is also unavailable to attend those deposition due to a prior engagement. This motion seeks a protective order preventing those three (3) depositions from going forward until new national counsel has been admitted *pro hac vice* and is able to attend.

II. STATEMENT OF FACTS

On October 18, 2016, Plaintiffs Sherri Borger and her husband, John Borger, rented a Polaris RZR from Defendant Sandbar Powersports, LLC ("Sandbar"), near Lake Havasu, Arizona. Plaintiffs and their two children, Foster Borger and Jade Borger, took the RZR to an area known as "Bison Wash" in the Lake Havasu area. Currently, it is unclear who was operating the RZR at the time, however, it appears as though Mrs. Borger was the right front seat passenger when the RZR tipped and/or rolled over. Mrs. Borger's arm was trapped underneath the RZR. Emergency

1 personnel responded and Mrs. Borger was transported to University Medical Center in Las Vegas,
2 Nevada. Unfortunately, her right arm could not be saved and was amputated.

3 **III. PROCEDURAL HISTORY**

4 Plaintiffs first brought suit against Sandbar by filing a complaint on March 3, 2017. Sandbar
5 filed an answer and counterclaim on May 19, 2017. The case was exempted from arbitration on July
6 10, 2017, and the early case conference held that same day. The Joint Case Conference Report was
7 filed on August 8, 2017. On November 9, 2017, a Stipulation and Order to Amend Complaint was
8 entered, with the Amended Complaint being filed on November 14, 2017. The Amended Complaint
9 added Polaris Industries, Inc., as a defendant. Polaris filed its answer on December 12, 2017.
10 Sandbar filed its answer to Plaintiffs' amended complaint, making a cross-claim against Polaris on
11 February 14, 2018. Polaris filed an answer to the cross-claim on March 9, 2018. An amended Joint
12 Case Conference Report was filed on March 15, 2018. On March 27, 2018, national counsel,
13 Thomas Christopher Trent and David J. Baluk, were admitted to practice *pro hac vice*. A stipulation
14 and order for new discovery dates was filed on June 14, 2018. A new trial order was just issued
15 setting trial on a five-week stack beginning on May 20, 2019.
16
17

18 This case has been proceeding with discovery. The depositions of the two owners of
19 Sandbar, Mr. and Mrs. Melton, and the two employees who were involved with renting the RZR to
20 Plaintiffs have been deposed. In addition, an inspection of the RZR involved in the accident took
21 place at the home of its new owner, and that new owner was deposed. A site inspection was also
22 undertaken. Written discovery has been exchanged. The parties are negotiating a protective order.
23

24 Defendants desire to take the depositions of Plaintiffs Sherri and John Borger, as well as their
25 son, Foster Borger. There were extensive discussions between counsel for the parties to choose
26 dates for these depositions. The two dates that seemed to work were August 6 and 7, 2018.
27 Undersigned local counsel notified prior national counsel that those two dates conflicted with a prior
28

1 commitment on her calendar and that she would be unable to attend. Discussion was had about
2 another attorney attending the depositions as local counsel since national counsel would be taking
3 the lead in representing Polaris by asking questions.

4 On or about June 29, 2018, national counsel contacted local counsel to advise that new
5 national counsel would be stepping in. Local counsel was asked to prepare and file a disassociation
6 of counsel. On July 2, 2018, national counsel asked that local counsel postpone the filing of the
7 disassociation while the file was being transitioned to new national counsel, and in light of the July 4
8 holiday. Local counsel was awaiting further instruction when she returned to the office on July 9,
9 after being out for a few days.

10
11 On July 5, 2018, Sandbar electronically served deposition notices for Plaintiffs and Foster
12 Borger to take place on August 6 and 7, 2018. See deposition notices, Exhibit "A." On July 11,
13 2018, undersigned local counsel obtained contact information for new national counsel and informed
14 them of the upcoming depositions, her scheduling conflict, and other outstanding issues. Local
15 counsel was informed that national counsel could not attend the depositions as set due to a planned
16 family vacation and was asked to seek to reschedule the depositions. On July 11, 2018, undersigned
17 local counsel emailed Plaintiff's counsel and Sandbar's counsel advising them of the change in
18 national coordinating counsel and requesting that the depositions be rescheduled. See email, Exhibit
19 "B." After receiving no response, undersigned local counsel sent a follow up email on July 13,
20 2018, again inquiring about moving the depositions. See email, Exhibit "C." Plaintiffs' counsel
21 responded that his clients have moved the dates a lot and are frustrated, noting that they are not his
22 notices to move. See email, Exhibit "D." Sandbar's counsel responded that he is normally very
23 accommodating but could not agree to move the dates. See email, Exhibit "E." Based on these
24 responses, undersigned local counsel was instructed by new national counsel to proceed with the
25
26
27
28

1 instant motion. The Notice of Disassociation of Counsel for former national counsel was filed on
2 July 13, 2018.

3 On July 16, 2018, undersigned counsel left a voice mail message for Griffith Hayes,
4 Sandbar's counsel, to try to discuss the depositions and the plan to file the instant motion, to see if
5 there could be any agreement. Mr. Hayes responded via email again stating that he is normally very
6 accommodating but could not agree to move the dates. See email, Exhibit "F."

7
8 Verified *pro hac vice* applications have been received from new national counsel. They are
9 being submitted to the State Bar of Nevada for expedited processing on July 16, 2018. Motions to
10 associate counsel will be filed on order shortening time as soon as the State Bar approves the
11 applications. However, even if new national counsel can be admitted to practice before the pending
12 depositions, that does not alleviate the scheduling problem. Moreover, the undersigned local counsel
13 cannot attend the depositions due to a prior speaking engagement. If the depositions proceed as
14 scheduled, Polaris will be deprived of the opportunity to have counsel of its choice represent it at the
15 depositions. As importantly, the local counsel who is most familiar with this case cannot attend and
16 represent the interests of Polaris due to a prior commitment. Sending another attorney from local
17 counsel's office is not an option in this circumstance due to the serious nature of the injuries and the
18 unique issues involved in products liability litigation. Further, another attorney would not be
19 familiar with the prior deposition testimony of four (4) important witnesses. Polaris would be
20 deprived of its right to be represented fully and fairly by counsel of its choice at these critical
21 depositions.
22

23 24 IV. LEGAL ARGUMENT

25 Nevada Rule of Civil Procedure 26(c) states in pertinent part:

26 (c) **Protective Orders.** Upon motion by a party or by the person from
27 whom discovery is sought, accompanied by a certification that the
28 movant has in good faith conferred or attempted to confer with the other
affected parties in an effort to resolve the dispute without court action,

1 and for good cause shown, the court in which the action is pending may
2 make any order which justice requires to protect a party or person from
annoyance, embarrassment, oppression, or undue burden or expense,
including one or more of the following:

- 3 (1) that discovery not be had;
- 4 (2) that the discovery may be had only on specified terms and
5 conditions, including a designation of the time or place;
- 6 . . .

7 The relationship of an attorney and client is one of special confidence and trust and the
8 integrity of the legal profession demand that the interests of the client be fully protected. *Fracasse v.*
9 *Brent*, 6 Cal. 3d 784, 789, 494 P.2d 9, 12 (1972). Because of this, it is well settled that the client has
10 an absolute right to retain counsel of choice and with that comes the absolute right to discharge his
11 or her attorney at any time, with or without cause. *In re Phillips*, No. 94-O-11471, 2001 WL
12 1511526, at *6 (Cal. Bar Ct. Oct. 4, 2001) (citing *Fracasse* at 790, 494 P.2d at 9); *see also Estate of*
13 *Cazaurang* (1934) 1 Cal.2d 712, 713-14, 36 P.2d 1069); *Champion v. Superior Court*, 201 Cal. App.
14 3d 777, 783, 247 Cal. Rptr. 624, 627 (Ct. App. 1988).

16 In the instant matter, Polaris has chosen new national coordinating counsel in this matter
17 going forward. Further complicating this matter is the unavailability of Polaris' local counsel due
18 to a prior commitment. While another attorney from local counsel's office could be sent to these
19 depositions, the fact that Polaris has hired national coordinating counsel to represent it and
20 undersigned local counsel is the only attorney in her office with sufficient familiarity with the case to
21 substantively participate in the depositions, it would be unjust to allow the depositions to go forward.
22 Polaris is simply asking for postponement of the depositions until new national counsel has been
23 admitted *pro hac vice* and is available to attend.

25 Polaris has undertaken reasonable efforts to avoid inconvenience to the parties by notifying
26 them of the issue immediately and expediting its new counsel's *pro hac vice* applications. No party
27 has suggested any reason beyond frustration with scheduling as to why the depositions could not be
28

1 reset at another date. Moreover, this motion is not being made for the purpose of delay. This is the
2 first date that these depositions have been scheduled.

3 **V. CONCLUSION**

4 It is regrettable that the parties could not reach an agreement with respect to this issue
5 without judicial intervention. However, as set forth above, good cause exists to grant the instant
6 motion and order that the depositions be vacated until such time as Polaris' national counsel is
7 admitted *pro hac vice* and all counsel are available to attend these critical depositions.

8
9 DATED this 16th day of July, 2018.

10 Respectfully submitted,

11 **WILSON, ELSER, MOSKOWITZ,**
12 **EDELMAN & DICKER LLP**


13
14 BY: 
15 **JENNIFER WILLIS ARLEDGE**
16 Nevada Bar No.: 8729
17 300 South 4th Street, 11th Floor
18 Las Vegas, NV 89101
19 Attorneys for Defendant
20 **POLARIS INDUSTRIES, INC.**
21
22
23
24
25
26
27
28

EXHIBIT A

EXHIBIT A

NOTC

GRIFFITH H. HAYES, ESQ.

Nevada Bar No. 7374

MARISA A. POCCI, ESQ.

Nevada Bar No. 10720

KEIVAN A. ROEBUCK, ESQ.

Nevada Bar No. 14110

LITCHFIELD CAVO LLP

3993 Howard Hughes Parkway, Suite 100

Las Vegas, Nevada 89169

Telephone: (702) 949-3100

Facsimile: (702) 916-1776

Email: hayes@litchfieldcavo.com

Email: pocci@litchfieldcavo.com

Email: roebuck@litchfieldcavo.com

Attorneys for Defendant/Counter-Claimant/Cross-Claimant, Sandbar Powersports, LLC

DISTRICT COURT

CLARK COUNTY NEVADA

JOHN BORGER and SHERRI BORGER,

Plaintiffs,

v.

SANBAR POWERSPORTS, LLC, DOES I
through X, ROE CORPORATIONS XI through
XX, inclusive, and POLARIS INDUSTRIES,
INC.

Defendants.

Case No.: A-17-751896-C

Dept.: XXV

**NOTICE OF DEPOSITION TO
PLAINTIFF/COUNTER-DEFENDANT
SHERRI BORGER**

Date: August 6, 2018

Time: 9:30 a.m.

SANBAR POWERSPORTS, LLC.

Counter-Claimant,

v.

JOHN BORGER and SHERRI BORGER,

Counter-Defendants.

SANBAR POWERSPORTS, LLC.

Cross-Claimant,

v.

POLARIS INDUSTRIES, INC.,

Cross-Defendants.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2

3

4
5
6
7
8

901

2

2

5

6

7

8

9

0

1

2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of July, 2018, that I caused to be served a true and accurate copy of the foregoing **NOTICE OF DEPOSITION TO PLAINTIFF/COUNTER-DEFENDANT SHERRI BORGER**, by sending a copy of the same via Odyssey eFile NV, the Court's electronic filing/service program and by U.S. Mail to the following:

Counsel of Record	Phone/Fax Nos.	Party
Chad A. Bowers, Esq. CHAD A. BOWERS, LTD. 3202 West Charleston Blvd. Las Vegas, NV 89102	T: (702) 457-1001 F: (702) 457-8006 E: bowers@lawyer.com	Plaintiffs
Kyle W. Farrar, Esq. CASTER, LYNCH, FARRAR & BALL, L.L.P. 1010 Lamar, Suite 1600 Houston, TX 77002 ADMITTED PRO HAC VICE	T: (713) 221-8300 F: (713) 221-8301 E: kyleCitibtrial.com	
Jennifer Willis Arledge, Esq. WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP 300 South 4th Street, 11 th Floor Las Vegas, NV 89101	T: (702) 727-1400 F: (702) 727-1401 E: jennifer.arledge@wilsonelser.com	Polaris Industries, Inc.
T. Christopher Trent David Baluk JOHNSON, TRENT & TAYLOR, LLP 919 Milam Street, Suite 1500 Houston, TX 77002 ADMITTED PRO HAC VICE	T: (713) 222-2323 F: (713) 222-8886 E: ctrent@johnsontrent.com E: dbaluk@johnsontrent.com	


An employee of LITCHFIELD CAVO LLP

NOTC

GRIFFITH H. HAYES, ESQ.

Nevada Bar No. 7374

MARISA A. POCCI, ESQ.

Nevada Bar No. 10720

KEIVAN A. ROEBUCK, ESQ.

Nevada Bar No. 14110

LITCHFIELD CAVO LLP

3993 Howard Hughes Parkway, Suite 100

Las Vegas, Nevada 89169

Telephone: (702) 949-3100

Facsimile: (702) 916-1776

Email: hayes@litchfieldcavo.com

Email: pocci@litchfieldcavo.com

Email: roebuck@litchfieldcavo.com

Attorneys for Defendant/Counter-Claimant/Cross-Claimant, Sandbar Powersports, LLC

DISTRICT COURT

CLARK COUNTY NEVADA

JOHN BORGER and SHERRI BORGER,

Plaintiffs,

v.

SANBAR POWERSPORTS, LLC, DOES I
through X, ROE CORPORATIONS XI through
XX, inclusive, and POLARIS INDUSTRIES,
INC.

Defendants.

Case No.: A-17-751896-C

Dept.: XXV

**NOTICE OF DEPOSITION TO
PLAINTIFF/COUNTER-DEFENDANT
JOHN BORGER**

Date: August 7, 2018

Time: 9:30 a.m.

SANDBAR POWERSPORTS, LLC.

Counter-Claimant,

v.

JOHN BORGER and SHERRI BORGER,

Counter-Defendants.

SANDBAR POWERSPORTS, LLC.

Cross-Claimant,

v.

POLARIS INDUSTRIES, INC.,

Cross-Defendants.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

TO: ALL COUNSEL OF RECORD:

The deposition will take place at Oasis Reporting Services, 400 S. 7th Street, Suite 400, Las Vegas, Nevada 89101 (Tel: 702 476-4500). The examination will continue from day-to-day until completed. You are invited to attend and cross-examine.

LITCHFIELD CAVO LLP

Email: roebuck@litchfieldcavo.com

2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of July, 2018, that I caused to be served a true and accurate copy of the foregoing **NOTICE OF DEPOSITION TO PLAINTIFF/COUNTER-DEFENDANT JOHN BORGER**, by sending a copy of the same via Odyssey eFile NV, the Court's electronic filing/service program and by U.S. Mail to the following:

Counsel of Record	Phone/Fax Nos.	Party
Chad A. Bowers, Esq. CHAD A, BOWERS, LTD. 3202 West Charleston Blvd. Las Vegas, NV 89102	T: (702) 457-1001 F: (702) 457-8006 E: bowers@lawyer.com	Plaintiffs
Kyle W. Farrar, Esq. CASTER, LYNCH, FARRAR & BALL, L.L.P. 1010 Lamar, Suite 1600 Houston, TX 77002 ADMITTED PRO HAC VICE	T: (713) 221-8300 F: (713) 221-8301 E: kyleCitibtrial.com	
Jennifer Willis Arledge, Esq. WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP 300 South 4th Street, 11 th Floor Las Vegas, NV 89101	T: (702) 727-1400 F: (702) 727-1401 E: jennifer.arledge@wilsonelser.com	Polaris Industries, Inc.
T. Christopher Trent David Baluk JOHNSON, TRENT & TAYLOR, LLP 919 Milam Street, Suite 1500 Houston, TX 77002 ADMITTED PRO HAC VICE	T: (713) 222-2323 F: (713) 222-8886 E: ctrent@johnsontrent.com E: dbaluk@johnsontrent.com	


An employee of LITCHFIELD CAYO LLP

NOTC

GRIFFITH H. HAYES, ESQ.

Nevada Bar No. 7374

MARISA A. POCCHI, ESQ.

Nevada Bar No. 10720

KEIVAN A. ROEBUCK, ESQ.

Nevada Bar No. 14110

LITCHFIELD CAVO LLP

3993 Howard Hughes Parkway, Suite 100

Las Vegas, Nevada 89169

Telephone: (702) 949-3100

Facsimile: (702) 916-1776

Email: hayes@litchfieldcavo.com

Email: pocchi@litchfieldcavo.com

Email: roebuck@litchfieldcavo.com

Attorneys for Defendant/Counter-Claimant/Cross-Claimant, Sandbar Powersports, LLC

DISTRICT COURT

CLARK COUNTY NEVADA

JOHN BORGER and SHERRI BORGER,

Plaintiffs,

v.

SANBAR POWERSPORTS, LLC, DOES I
through X, ROE CORPORATIONS XI through
XX, inclusive, and POLARIS INDUSTRIES,
INC.

Defendants.

Case No.: A-17-751896-C

Dept.: XXV

**NOTICE OF DEPOSITION TO FOSTER
BORGER**

Date: August 6, 2018

Time: 3:00 p.m.

SANDBAR POWERSPORTS, LLC.

Counter-Claimant,

v.

JOHN BORGER and SHERRI BORGER,

Counter-Defendants.

SANDBAR POWERSPORTS, LLC.

Cross-Claimant,

v.

POLARIS INDUSTRIES, INC.,

Cross-Defendants.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

TO: ALL COUNSEL OF RECORD:

The deposition will take place at Oasis Reporting Services, 400 S. 7th Street, Suite 400, Las Vegas, Nevada 89101 (Tel: 702 476-4500). The examination will continue from day-to-day until completed. You are invited to attend and cross-examine.

LITCHFIELD CAVO LLP

Email: roebuck@litchfieldcavo.com

Appellants' Appendix 206

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of July, 2018, that I caused to be served a true and accurate copy of the foregoing **NOTICE OF DEPOSITION TO FOSTER BORGER**, by sending a copy of the same via Odyssey eFile NV, the Court's electronic filing/service program and by U.S. Mail to the following:

Counsel of Record	Phone/Fax Nos.	Party
Chad A. Bowers, Esq. CHAD A. BOWERS, LTD. 3202 West Charleston Blvd. Las Vegas, NV 89102	T: (702) 457-1001 F: (702) 457-8006 E: bowers@lawyer.com	Plaintiffs
Kyle W. Farrar, Esq. CASTER, LYNCH, FARRAR & BALL, L.L.P. 1010 Lamar, Suite 1600 Houston, TX 77002 ADMITTED PRO HAC VICE	T: (713) 221-8300 F: (713) 221-8301 E: kyleCitibtrial.com	
Jennifer Willis Arledge, Esq. WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP 300 South 4th Street, 11 th Floor Las Vegas, NV 89101	T: (702) 727-1400 F: (702) 727-1401 E: jennifer.arledge@wilsonelser.com	Polaris Industries, Inc.
T. Christopher Trent David Baluk JOHNSON, TRENT & TAYLOR, LLP 919 Milam Street, Suite 1500 Houston, TX 77002 ADMITTED PRO HAC VICE	T: (713) 222-2323 F: (713) 222-8886 E: ctrent@johnsontrent.com E: dbaluk@johnsontrent.com	


An employee of LITCHFIELD CAYO LLP

EXHIBIT B

EXHIBIT B

Arledge, Jennifer Willis

From: Arledge, Jennifer Willis
Sent: Wednesday, July 11, 2018 1:54 PM
To: 'Kyle Farrar'; 'Hayes, Griffith'
Cc: Lamper, Pamela M.; Hernandez, Celeste
Subject: Borger v. Sandbar & Polaris

Hi Kyle and Griff,

There will be a change in national counsel representing Polaris in this case. Jim Sanders and Scott Ross of Neal Harwell in Nashville will be appearing as soon as I can get their pro hacs done.

For this reason, we are requesting that the depositions of Sherri, John, and Foster Borger currently set for August 6 and 7 be continued to a mutually convenient time after they are admitted. I know we had trouble scheduling the current dates, but I am not available either day. I will be at a speaking engagement in Dallas.

Thank you,

Jennifer Willis Arledge
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
300 South 4th Street - 11th Floor
Las Vegas, NV 89101-6014
702.727.1259 (Direct)
702.727.1400 (Main)
702.727.1401 (Fax)
jennifer.arledge@wilsonelser.com

EXHIBIT C

EXHIBIT C

Arledge, Jennifer Willis

From: Arledge, Jennifer Willis
Sent: Friday, July 13, 2018 2:23 PM
To: 'Kyle Farrar'; 'Hayes, Griffith'
Cc: Lamper, Pamela M.; Hernandez, Celeste
Subject: RE: Borger v. Sandbar & Polaris - depositions

Importance: High

Gentlemen,

Can we move these dates? I will work diligently to secure new ones with the new national counsel.

Thank you,

Jennifer Willis Arledge
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
300 South 4th Street - 11th Floor
Las Vegas, NV 89101-6014
702.727.1259 (Direct)
702.727.1400 (Main)
702.727.1401 (Fax)
jennifer.arledge@wilsonelser.com

From: Arledge, Jennifer Willis
Sent: Wednesday, July 11, 2018 1:54 PM
To: 'Kyle Farrar'; 'Hayes, Griffith'
Cc: Lamper, Pamela M.; Hernandez, Celeste
Subject: Borger v. Sandbar & Polaris

Hi Kyle and Griff,

There will be a change in national counsel representing Polaris in this case. Jim Sanders and Scott Ross of Neal Harwell in Nashville will be appearing as soon as I can get their pro hacs done.

For this reason, we are requesting that the depositions of Sherri, John, and Foster Borger currently set for August 6 and 7 be continued to a mutually convenient time after they are admitted. I know we had trouble scheduling the current dates, but I am not available either day. I will be at a speaking engagement in Dallas.

Thank you,

Jennifer Willis Arledge
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
300 South 4th Street - 11th Floor
Las Vegas, NV 89101-6014
702.727.1259 (Direct)
702.727.1400 (Main)
702.727.1401 (Fax)
jennifer.arledge@wilsonelser.com

EXHIBIT D

EXHIBIT D

Arledge, Jennifer Willis

From: Kyle Farrar [kyle@fbtrial.com]
Sent: Friday, July 13, 2018 2:29 PM
To: Arledge, Jennifer Willis
Cc: Hayes, Griffith; Lamper, Pamela M.; Hernandez, Celeste
Subject: Re: Borger v. Sandbar & Polaris - depositions

My clients have moved dates a lot and are frustrated. More fundamentally, these aren't my notices to move.

On Jul 13, 2018, at 4:23 PM, Arledge, Jennifer Willis <Jennifer.Arledge@wilsonelser.com> wrote:

Gentlemen,

Can we move these dates? I will work diligently to secure new ones with the new national counsel.

Thank you,

Jennifer Willis Arledge
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
300 South 4th Street - 11th Floor
Las Vegas, NV 89101-6014
702.727.1259 (Direct)
702.727.1400 (Main)
702.727.1401 (Fax)
jennifer.arledge@wilsonelser.com

From: Arledge, Jennifer Willis
Sent: Wednesday, July 11, 2018 1:54 PM
To: 'Kyle Farrar'; 'Hayes, Griffith'
Cc: Lamper, Pamela M.; Hernandez, Celeste
Subject: Borger v. Sandbar & Polaris

Hi Kyle and Griff,

There will be a change in national counsel representing Polaris in this case. Jim Sanders and Scott Ross of Neal Harwell in Nashville will be appearing as soon as I can get their pro hacks done.

For this reason, we are requesting that the depositions of Sherri, John, and Foster Borger currently set for August 6 and 7 be continued to a mutually convenient time after they are admitted. I know we had trouble scheduling the current dates, but I am not available either day. I will be at a speaking engagement in Dallas.

Thank you,

Jennifer Willis Arledge
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
300 South 4th Street - 11th Floor
Las Vegas, NV 89101-6014
702.727.1259 (Direct)
702.727.1400 (Main)
702.727.1401 (Fax)
jennifer.arledge@wilsonelser.com

CONFIDENTIALITY NOTICE: This electronic message is intended to be viewed only by the individual or entity to whom it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any dissemination, distribution or copying of this communication is strictly prohibited without our prior permission. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, or if you have received this communication in error, please notify us immediately by return e-mail and delete the original message and any copies of it from your computer system.

For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at www.wilsonelser.com or refer to any of our offices.

Thank you.

EXHIBIT E

EXHIBIT E

Arledge, Jennifer Willis

From: Hayes, Griffith [Hayes@litchfieldcavo.com]
Sent: Friday, July 13, 2018 3:19 PM
To: Arledge, Jennifer Willis
Cc: Kyle Farrar; Lamper, Pamela M.; Hernandez, Celeste
Subject: Re: Borger v. Sandbar & Polaris - depositions

I am normally very accommodating on something like this but I cannot agree to move the dates.

Griff

Griffith H. Hayes, Esq.
Litchfield Cavo LLP
3993 Howard Hughes Parkway, Suite 100
Las Vegas, Nevada 89169
Direct Line 702-949-9301

On Jul 13, 2018, at 2:23 PM, Arledge, Jennifer Willis <Jennifer.Arledge@wilsonelser.com> wrote:

Gentlemen,

Can we move these dates? I will work diligently to secure new ones with the new national counsel.

Thank you,

Jennifer Willis Arledge
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
300 South 4th Street - 11th Floor
Las Vegas, NV 89101-6014
702.727.1259 (Direct)
702.727.1400 (Main)
702.727.1401 (Fax)
jennifer.arledge@wilsonelser.com

From: Arledge, Jennifer Willis
Sent: Wednesday, July 11, 2018 1:54 PM
To: 'Kyle Farrar'; 'Hayes, Griffith'
Cc: Lamper, Pamela M.; Hernandez, Celeste
Subject: Borger v. Sandbar & Polaris

Hi Kyle and Griff,

There will be a change in national counsel representing Polaris in this case. Jim Sanders and Scott Ross of Neal Harwell in Nashville will be appearing as soon as I can get their pro hacs done.

For this reason, we are requesting that the depositions of Sherri, John, and Foster Borger currently set for August 6 and 7 be continued to a mutually convenient time after they are admitted. I know we had trouble scheduling the current dates, but I am not available either day. I will be at a speaking engagement in Dallas.

Thank you,

Jennifer Willis Arledge
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
300 South 4th Street - 11th Floor
Las Vegas, NV 89101-6014
702.727.1259 (Direct)
702.727.1400 (Main)
702.727.1401 (Fax)
jennifer.arledge@wilsonelser.com

CONFIDENTIALITY NOTICE: This electronic message is intended to be viewed only by the individual or entity to whom it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any dissemination, distribution or copying of this communication is strictly prohibited without our prior permission. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, or if you have received this communication in error, please notify us immediately by return e-mail and delete the original message and any copies of it from your computer system.

For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at www.wilsonelser.com or refer to any of our offices.

Thank you.

PRIVILEGE AND CONFIDENTIALITY NOTICE

The information contained in this email and any attachments may be legally privileged and confidential. If you are not an intended recipient, you are hereby notified that any dissemination, distribution or copying of this email is strictly prohibited. If you have received this email in error, please notify the sender and permanently delete the email and any attachments immediately. You should not retain, copy or use this email or any attachment for any purpose, nor disclose all or any part of the contents to any other person. Thank you.

Atlanta | Boston area | Chicago | Dallas-Fort Worth | Fort Lauderdale | Hartford area | Houston |
Indiana
Las Vegas | Los Angeles | Louisiana | Milwaukee | New Jersey | New York | Philadelphia
Phoenix | Pittsburgh | Providence | Salt Lake City | St. Louis | Tampa | West Virginia

EXHIBIT F

EXHIBIT F

Arledge, Jennifer Willis

From: Hayes, Griffith [Hayes@litchfieldcavo.com]
Sent: Monday, July 16, 2018 10:04 AM
To: Arledge, Jennifer Willis
Cc: Kyle Farrar; Lamper, Pamela M.; Hernandez, Celeste
Subject: Re: Borger v. Sandbar & Polaris - depositions

I am normally very accommodating on something like this but I cannot agree to move the dates.

Griff

Griffith H. Hayes, Esq.
Litchfield Cavo LLP
3993 Howard Hughes Parkway, Suite 100
Las Vegas, Nevada 89169
Direct Line 702-949-9301

On Jul 13, 2018, at 2:23 PM, Arledge, Jennifer Willis <Jennifer.Arledge@wilsonelser.com> wrote:

Gentlemen,

Can we move these dates? I will work diligently to secure new ones with the new national counsel.

Thank you,

Jennifer Willis Arledge
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
300 South 4th Street - 11th Floor
Las Vegas, NV 89101-6014
702.727.1259 (Direct)
702.727.1400 (Main)
702.727.1401 (Fax)
jennifer.arledge@wilsonelser.com

From: Arledge, Jennifer Willis
Sent: Wednesday, July 11, 2018 1:54 PM
To: 'Kyle Farrar'; 'Hayes, Griffith'
Cc: Lamper, Pamela M.; Hernandez, Celeste
Subject: Borger v. Sandbar & Polaris

Hi Kyle and Griff,

There will be a change in national counsel representing Polaris in this case. Jim Sanders and Scott Ross of Neal Harwell in Nashville will be appearing as soon as I can get their pro hacs done.

For this reason, we are requesting that the depositions of Sherri, John, and Foster Borger currently set for August 6 and 7 be continued to a mutually convenient time after they are admitted. I know we had trouble scheduling the current dates, but I am not available either day. I will be at a speaking engagement in Dallas.

Thank you,

Jennifer Willis Arledge
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
300 South 4th Street - 11th Floor
Las Vegas, NV 89101-6014
702.727.1259 (Direct)
702.727.1400 (Main)
702.727.1401 (Fax)
jennifer.arledge@wilsonelser.com

CONFIDENTIALITY NOTICE: This electronic message is intended to be viewed only by the individual or entity to whom it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any dissemination, distribution or copying of this communication is strictly prohibited without our prior permission. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, or if you have received this communication in error, please notify us immediately by return e-mail and delete the original message and any copies of it from your computer system.

For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at www.wilsonelser.com or refer to any of our offices.

Thank you.

PRIVILEGE AND CONFIDENTIALITY NOTICE

The information contained in this email and any attachments may be legally privileged and confidential. If you are not an intended recipient, you are hereby notified that any dissemination, distribution or copying of this email is strictly prohibited. If you have received this email in error, please notify the sender and permanently delete the email and any attachments immediately. You should not retain, copy or use this email or any attachment for any purpose, nor disclose all or any part of the contents to any other person. Thank you.

Atlanta | Boston area | Chicago | Dallas-Fort Worth | Fort Lauderdale | Hartford area | Houston |
Indiana
Las Vegas | Los Angeles | Louisiana | Milwaukee | New Jersey | New York | Philadelphia
Phoenix | Pittsburgh | Providence | Salt Lake City | St. Louis | Tampa | West Virginia

NRCP

GRIFFITH H. HAYES, ESQ.

Nevada Bar No. 7374

MARISA A. POCCI, ESQ.

Nevada Bar No. 10720

KEIVAN A. ROEBUCK, ESQ.

Nevada Bar No. 14110

LITCHFIELD CAVO LLP

3993 Howard Hughes Parkway, Suite 100

Las Vegas, Nevada 89169

Telephone: (702) 949-3100

Facsimile: (702) 916-1776

Email: hayes@litchfieldcavo.com

Email: pocci@litchfieldcavo.com

Email: roebuck@litchfieldcavo.com

*Attorneys for Defendant/Counter-Claimant/Cross-Claimant/Third-Party Plaintiff,
Sandbar Powersports, LLC*

DISTRICT COURT

CLARK COUNTY NEVADA

JOHN BORGER and SHERRI BORGER,

Plaintiffs,

v.

SANBAR POWERSPORTS, LLC, DOES I
through X, ROE CORPORATIONS XI through
XX, inclusive, and POLARIS INDUSTRIES,
INC.

Defendants.

SANBAR POWERSPORTS, LLC.

Counter-Claimant,

v.

JOHN BORGER and SHERRI BORGER,

Counter-Defendants.

SANBAR POWERSPORTS, LLC.

Cross-Plaintiff,

v.

POLARIS INDUSTRIES, INC.,

Cross-Defendants.

Case No.: A-17-751896-C

Dept.: XXV

**TWELFTH SUPPLEMENTAL
DISCLOSURE OF WITNESSES AND
DOCUMENTS BY SANBAR
POWERSPORTS, LLC**

1 SANDBAR POWERSPORTS, LLC.
2 Third-Party Plaintiff,
3 v.
4 FOSTER BORGER,
5 Third-Party Defendant.

6 **TO THE COURT AND ALL INTERESTED PARTIES:**

7 COMES NOW, Defendant/Counter-Claimant/Cross-Claimant/Third-Party Plaintiff,
8 SANDBAR POWERSPORTS, LLC (hereinafter "SANDBAR"), by and through their attorneys of
9 record, the law firm of Litchfield Cavo LLP, and hereby discloses the following witnesses and
10 documents pursuant to NRCP 16.1(a)(1), with new items in **bold** font.

11 **NON-EXPERT WITNESSES**

- 12
- 13 1. John Borger
14 c/o Chad A. Bowers, Esq.
15 CHAD A, BOWERS, LTD.
16 3202 West Charleston Blvd.
17 Las Vegas, NV 89102
18 Tel: (702) 457-1001
19 Fax: (702) 457-8006
20 Email: bowers@lawyer.com
- 21 c/o Kyle W. Farrar, Esq.
22 CASTER, LYNCH, FARRAR & BALL, L.L.P.
23 1010 Lamar, Suite 1600
24 Houston, TX 77002
25 Tel: (713) 221-8300
26 Fax: (713) 221-8301
27 Email: kyle@fbtrial.com

28 Mr. Borger is a Plaintiff/Counter-Defendant in this case. He is expected to have knowledge of
the facts and circumstances surrounding the October 18, 2016 Polaris ATV (hereinafter "ATV) accident
giving rise to this lawsuit (hereinafter "Subject Accident"), the injuries sustained by his wife, Plaintiff
Sherri Borger, and Ms. Borger's related medical care.

- 29 2. Sherri Borger
30 c/o Chad A. Bowers, Esq.
31 CHAD A, BOWERS, LTD.
32 3202 West Charleston Blvd.
33 Las Vegas, NV 89102
34 Tel: (702) 457-1001

1 Fax: (702) 457-8006
2 Email: bowers@lawyer.com

3 c/o Kyle W. Farrar, Esq.
4 CASTER, LYNCH, FARRAR & BALL, L.L.P.
5 1010 Lamar, Suite 1600
6 Houston, TX 77002
7 Tel: (713) 221-8300
8 Fax: (713) 221-8301
9 Email: kyle@fbtrial.com

10 Ms. Borger is a Plaintiff/Counter-Defendant in this case. She is expected to have knowledge of
11 the facts and circumstances surrounding the Subject Accident giving rise to this lawsuit, the injuries she
12 sustained and her related medical care.

13 3. Foster Borger
14 c/o Chad A. Bowers, Esq.
15 CHAD A, BOWERS, LTD.
16 3202 West Charleston Blvd.
17 Las Vegas, NV 89102
18 Tel: (702) 457-1001
19 Fax: (702) 457-8006
20 Email: bowers@lawyer.com

21 c/o Kyle W. Farrar, Esq.
22 CASTER, LYNCH, FARRAR & BALL, L.L.P.
23 1010 Lamar, Suite 1600
24 Houston, TX 77002
25 Tel: (713) 221-8300
26 Fax: (713) 221-8301
27 Email: kyle@fbtrial.com

28 Upon information and belief, Foster Borger is the minor son of the Plaintiffs. Upon information
and belief, Foster was operating an ATV, with Sherri Borger as a passenger, when the Subject Accident
occurred. Foster is expected to have knowledge of the facts and circumstances surrounding the Subject
Accident giving rise to this lawsuit.

4. Jade Michelle Borger
c/o Chad A. Bowers, Esq.
CHAD A, BOWERS, LTD.
3202 West Charleston Blvd.
Las Vegas, NV 89102
Tel: (702) 457-1001
Fax: (702) 457-8006
Email: bowers@lawyer.com

c/o Kyle W. Farrar, Esq.
CASTER, LYNCH, FARRAR & BALL, L.L.P.
1010 Lamar, Suite 1600
Houston, TX 77002

1 Tel: (713) 221-8300
2 Fax: (713) 221-8301
3 Email: kyle@fbtrial.com

4 Upon information and belief, Ms. Borger was present as a passenger on an ATV when the Subject
5 Accident occurred. Ms. Borger is expected to have knowledge of the facts and circumstances
6 surrounding the Subject Accident giving rise to this lawsuit.

7 5. PMK TBD for
8 Sandbar Powersports, LLC
9 c/o Griffith H. Hayes, Esq.
10 LITCHFIELD CAVO LLP
11 3993 Howard Hughes Parkway, Suite 100
12 Las Vegas, Nevada 89169
13 Tel: (702) 949-3100
14 Fax: (702) 916-1776
15 Email: hayes@litchfieldcavo.com

16 Sandbar Powersports, LLC is the Defendant/Counter-Claimant in this case. The PMK is
17 expected to have knowledge of the facts and circumstances surrounding the Subject Accident giving rise
18 to this lawsuit.

19 6. Sgt. John Kole, S-92
20 Officer L. Tarkowski
21 Officer R.J. McEuen
22 Mohave County Sheriff's Office
23 600 W. Beale Street
24 Kingman, AZ 86401
25 Tel: (928) 753-0753
26 Fax: none listed

27 These officers were first responders at the scene of the Subject Accident. They are expected
28 have knowledge of the facts and circumstances surrounding the Subject Accident giving rise to this
lawsuit and regarding Plaintiff's alleged injuries and related medical care.

6a Tiffany Mitchell,
Office Assistant Sr/Records
Mohave County Sheriff's Office
600 W. Beale Street
Kingman, AZ 86401
Tel: (928) 753-0753
Fax: none listed

Ms. Mitchell is expected to authenticate the police records regarding the Subject Accident
(06/09/15) giving rise to this lawsuit.

///

1 7. David Lehmitz
2 958 N. Jefferson Street
3 Moscow, Idaho 83843
4 Tel: TBD

5 Mr. Lehmitz is expected to have knowledge of the facts and circumstances surrounding the
6 Subject Accident giving rise to this lawsuit.

7 8. Tracy Waddington
8 c/o Griffith H. Hayes, Esq.
9 LITCHFIELD CAVO LLP
10 3993 Howard Hughes Parkway, Suite 100
11 Las Vegas, Nevada 89169
12 Tel: (702) 949-3100
13 Fax: (702) 916-1776
14 Email: hayes@litchfieldcavo.com

15 Ms. Waddington is expected to have knowledge of the facts and circumstances surrounding the
16 Subject Accident giving rise to this lawsuit.

17 9. Officer Murdock
18 Lake Havasu City Police Department
19 2330 McCulloch Boulevard
20 N. Lake Havasu City, AZ 86403
21 Tel: (928) 855-1171
22 Tel: (928) 453-3313
23 Fax: (928) 680-5431

24 Officer Murdock was a first responder on the scene of the Subject Accident. He is expected have
25 knowledge of the facts and circumstances surrounding the Subject Accident giving rise to this lawsuit.

26 10. Person Most Knowledgeable TBD for
27 Lake Havasu City Fire Department
28 2330 McCulloch Boulevard
29 N. Lake Havasu City, AZ 86403
30 Tel: (928) 855-1171
31 Fax: (928) 680-5431

32 The Fire Department was a first responder on the scene of the Subject Accident. The PMK is
33 expected have knowledge of the facts and circumstances surrounding the Subject Accident giving rise
34 to this lawsuit and regarding Plaintiff's alleged injuries and related medical care.

35 11. Victoria Jenkins, RN
36 Steve M. Reeder, EMT-P
37 Skylar Stevenson, Pilot
38 Dari Stella, RN
39 And any additional treating physicians for
40 Air Methods Corporation
41 7211 S. Peoria
42 Englewood, CO 80112

Tel: (303) 792-7400
Fax: (928) 854-1187
Rocky Mountain Holdings, LLC
P.O. Box 713362
Cincinnati, OH 45271-3362
PO Box 2532
Fontana, CA 92334
Tel: (888) 636-4438
Tel: (909) 915-2905

Plaintiff Sherri Borger was evacuated by helicopter from the scene of the Subject Accident. Upon information and belief, Air Methods Corporation – Rocky Mountain Holdings, LLC provided emergency air ambulance services to transport her. These treating physicians and assistants are expected have knowledge of the facts and circumstances surrounding the Subject Accident giving rise to this lawsuit and regarding medical care provided to Plaintiff Sherri Borger.

12. Shirley Domingo, MD
Michelle Butler, MD
Michele Preston, DO
Peter Mamalakus
Neal Clinger
Chris Jarrell, RN
Dani Stello, RN
Tonia McCarthy
Deb Serr, RN
And any additional treating physicians for
HAVASU REGIONAL MEDICAL CENTER
101 Civic Center Lane
Lake Havasu City, AZ 86403
Tel: (928) 855-8185
Fax: none listed

These treating physicians and assistants are expected have knowledge of the facts and circumstances surrounding the Subject Accident giving rise to this lawsuit and regarding Plaintiff's alleged injuries and related medical care.

13. Douglas R. Fraser, MD
Ethan Benning, MD
Patrick R. McGrew, MD
Jason R. Lunn, MD
Teya C. Casner, MD
Richard N. Wulff, MD
James L. Preddy, DO
Catherine Ryan, RN
Antoinette Mullan, RN
Richard Haftmann, RT
Alexander Ohene, RT
Christine D. Trang, Pharm.
John P. Brosious, MD

1	Clayton Wu, MD
	Paula Perkins, RN
2	Krystal R. Tuano, MD
	Richard L. Ongtengco, MD
3	Jeffrey Surina, MD
	Jonathan Wirjo, MD
4	Paul J. Chestovich, MD
	Jason M. Castillo, MD
5	Kenneth Grigsby, MD
	Walter Ehrman, MD
6	Scott C. Ogley, MD
	R.D. Rebello, RN
7	Cassandra Stapler, RT
	Liberty Lyman, RN
8	Donald Frisch, Pharm.
	Gary Hanton, Pharm.
9	Annabelle Paez, Pharm.
	Melissa Ryan, Pharm.
10	Debra Mazza, Pharm.
	Aryan Rahbar, Pharm.
11	John Promlap, Pharm.
	Scott Leader, Pharm.
12	Reynaldo Villarreal, Pharm.
	Ann Schwartz, RN
13	Stacy Whipple, Unit Clerk
	Angelique Frances, RN
14	Devone Mansour, DO
	AB Staffid, MD
15	Joshua Macdavid, MD
	Justin Hawley, RT
16	Jason Knuppel, RT
	Heidi Ganados, RN
17	Jerri Day, RN
	David Ricamonique, RN
18	Tina Kipp, RN
	John Promlap, RN
19	Samson Otuwa, RN
	Nardos K. Gebresilasse, RT
20	Patrick Berg, RN
	Renee Gerow, RN
21	Kate Gausmann, RN
	Swate Wadhwani, RN
22	Ronald J. Knoblock, MD
	Hidenobu Shigemitsu, MD
23	Diana Dobos, CNA
	Nipsey Macaspac, RN
24	Silvia Trigueros, CAN
	Carmelo Liasus, RN
25	Heidi Ganados, RN
	Samantha Burneo, OT
26	Alicia Knoll, OT
	Jose Ro Dejesus, PT
27	Leah Mercado, RN
	Todd McMahon, PT
28	Cheryl Koizumi, PT

1 Alisha Rich, PT
2 Drew Kelsee, SW
3 Tamora Locke, SW
4 Morgan Mucciaronevaden, SW
5 Heather Dixon, SW
6 Howard Hughes, RT
7 Byron Carter, RT
8 Rachael Cole, RT
9 Kate Gausmann, RT
10 Geraldine Leyson, RN
11 Estilita Taclugan, CNA
12 Samantha A. Provstgaard, CNA
13 Wellansa Fikre, RN
14 Myma Gleason, RN
15 Silvea Trigueros, CNA
16 Karen Dowe, Tech.
17 Jamie Price, CNA
18 Leah Caudill, CNA
19 Desiree Cardinez, RN
20 Sharon-Ann Thomas, RN
21 Kim Gilland, DT
22 Stephanie Seybold, DT
23 Hanna Eskew, DT
24 Mayleen Hospital, RN
25 Andioleta Perez, RN
26 Diana Dy, RN
27 Lordes Villareal, RN
28 Marlie Alberto, RN
Lori Jean Roberts, RN
Kristena Straughn, RN
Kelly Orbeck, RN
And any additional treating physicians for
UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA (UMC)
1800 W. Charleston Boulevard
Las Vegas, NV 89102
Tel: (702) 383-2000
Fax: none listed

20 These treating physicians and assistants are expected have knowledge of the facts and
21 circumstances surrounding the Subject Accident giving rise to this lawsuit and regarding Plaintiff's
22 alleged injuries and related medical care.

- 23 14. Person(s) Most Knowledgeable for
24 Additional Medical Providers TBD

25 The PMK(s) is expected have knowledge of the facts and circumstances surrounding the Subject
26 Accident giving rise to this lawsuit and regarding Plaintiff's alleged injuries and related medical care.

- 27 15. Jason Melton
28 Sandbar Powersports, LLC
c/o Griffith H. Hayes, Esq.
LITCHFIELD CAVO LLP

3993 Howard Hughes Parkway, Suite 100
Las Vegas, Nevada 89169
Tel: (702) 949-3100
Fax: (702) 916-1776
Email: hayes@litchfieldcavo.com

Mr. Melton is expected to have knowledge of the facts and circumstances underlying this lawsuit.

16. Polly Melton
Sandbar Powersports, LLC
c/o Griffith H. Hayes, Esq.
LITCHFIELD CAVO LLP
3993 Howard Hughes Parkway, Suite 100
Las Vegas, Nevada 89169
Tel: (702) 949-3100
Fax: (702) 916-1776
Email: hayes@litchfieldcavo.com

Ms. Melton is expected to have knowledge of the facts and circumstances underlying this lawsuit.

17. Chris Patterson
Contact Information TBD

Mr. Patterson is expected to have knowledge of the facts and circumstances surrounding the Subject Accident giving rise to this lawsuit.

18 Any and all witnesses, including expert witnesses, disclosed by any other party to this lawsuit.

19 Any and all health care providers, emergency medical personnel, treating physicians, nurses, mental health professionals, physical therapists, occupational therapists, home health providers, and/or any medical or mental health provider rendering care to Plaintiff, Sherri Borger and/or Plaintiff, John Borger.

20 Custodian of Records and/or Persons Most Knowledgeable for any and all health care providers, emergency medical personnel, treating physicians, nurses, mental health professionals, physical therapists, occupational therapists, home health providers, and/or any medical or mental health provider rendering care to Plaintiff, Sherri Borger and/or Plaintiff, John Borger.

21. Person Most Knowledgeable TBD for
Polaris Industries, Inc.
c/o Jennifer Willis Arledge, Esq.
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
300 South 4th Street, 11th Floor

1 Las Vegas, NV 89101
2 Tel: (702) 727-1400
3 Fax: (702) 727-1401
4 Email: jennifer.arledge@wilsonelser.com

5 Polaris Industries, Inc. is a Defendant in this case. The PMK is expected to have knowledge of
6 the facts and circumstances surrounding the Subject Accident giving rise to this lawsuit.

7 22. James Shellenback
8 10627 Dreamy Lane
9 Parker, AZ 85344
10 Tel: (928) 669-2549

11 Subsequent to the Subject Accident, Mr. Shellenback purchased the subject Polaris RZR from
12 Sandbar Powersports. He is expected to testify regarding the condition of the subject Polaris RZR.

13 23. Custodian of Records for
14 Lake Havasu City Police Department
15 2330 McCulloch Boulevard
16 N. Lake Havasu City, AZ 86403
17 Tel: (928) 855-1171
18 Tel: (928) 453-3313
19 Fax: (928) 680-5431

20 The COR is expected to authenticate the police records regarding the Subject Accident
21 (06/09/15) giving rise to this lawsuit.

22 24. Custodian of Records for
23 Lake Havasu City Fire Department
24 2330 McCulloch Boulevard
25 N. Lake Havasu City, AZ 86403
26 Tel: (928) 855-1171
27 Fax: (928) 680-5431

28 The COR is expected to authenticate the medical records regarding the medical treatment
provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this
lawsuit.

29 25. Custodian of Records for
30 Air Methods Corporation
31 7211 S. Peoria
32 Englewood, CO 80112
33 Tel: (303) 792-7400
34 Fax: (928) 854-1187

35 Rocky Mountain Holdings, LLC
36 P.O. Box 713362
37 Cincinnati, OH 45271-3362
38 PO Box 2532
39 Fontana, CA 92334

Tel: (888) 636-4438
Tel: (909) 915-2905

The COR is expected to authenticate the medical records regarding the medical treatment provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

26. Custodian of Records for
Havasu Regional Medical Center
101 Civic Center Lane
Lake Havasu City, AZ 86403
Tel: (928) 855-8185
Fax: none listed

The COR is expected to authenticate the medical records regarding the medical treatment provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

27. Custodian of Records for
University Medical Center of Southern Nevada (UMC)
1800 W. Charleston Boulevard
Las Vegas, NV 89102
Tel: (702) 383-2000
Fax: none listed

The COR is expected to authenticate the medical records regarding the medical treatment provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

28. Custodian of Records for
Advanced Arm Dynamics
11671 Fountains Drive, Ste. 220
Maple Grove, MN 55369
Tel: (763) 420-2767
Fax: (763) 322-1987

The COR is expected to authenticate the medical records regarding the medical treatment provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

29. Brian T. Carlsen, MD
Patrick Prigge, CP, Clinical Manager
Jennifer Peterson, MA PT
Creighton Uyechi, PT
Diane Duran, Operations Mgr.
Eric Hoag, VP Provider Relations
And any additional treating physicians for
ADVANCED ARM DYNAMICS

11671 Fountains Drive, Ste. 220
Maple Grove, MN 55369
Tel: (763) 420-2767
Fax: (763) 322-1987

These treating physicians and assistants are expected have knowledge of the medical treatment provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

30. Custodian of Records for
COURAGE KENNY REHABILITATION INSTITUTE
2250 NW 26th Street
Owatonna, MN 55060
Tel: (507) 977-2150
Fax: Not listed

The COR is expected to authenticate the medical records regarding the medical treatment provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

31. Brooke A. Meade, MD
Ruth A. Nolte, PT
And any additional treating physician for
COURAGE KENNY REHABILITATION INSTITUTE
2250 NW 26th Street
Owatonna, MN 55060
Tel: (507) 977-2150
Fax: Not listed

These treating physician(s) and assistants are expected have knowledge of the medical treatment provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

32. Custodian of Records for
GILLETTE LIFETIME SPECIALTY HEALTHCARE
435 Phalen Boulevard
Saint Paul, MN 55130
Tel: (651) 290-8707
Tel: (651) 312-3122
Fax: (651) 229-3888

The COR is expected to authenticate the medical records regarding the medical treatment provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

33. Timothy Marrin, CPO
Scott B. Marston, MD

1 Deana L. Jacobs, CMA
2 And any additional treating physicians for
3 GILLETTE LIFETIME SPECIALTY HEALTHCARE
4 435 Phalen Boulevard
5 Saint Paul, MN 55130
6 Tel: (651) 290-8707
7 Tel: (651) 312-3122
8 Fax: (651) 229-3888

9 The Treating Physician(s) is expected have knowledge of the medical treatment provided to
10 Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

11 34. Custodian of Records for
12 MAYO CLINIC ROCHESTER
13 200 1st Street SW
14 Rochester, MN 55905
15 Tel: (507) 284-2511
16 Fax: not listed

17 The COR is expected to authenticate the medical records regarding the medical treatment
18 provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this
19 lawsuit.

20 35. Blake Cohen, MD
21 Brian T. Carlsen, MD
22 Wenchun Qu, MD, MS, Ph.D.
23 Debra Denny, MD
24 Xun ZHU, MD
25 Brandon J. Yuan, MD
26 Wayne Miller, MD
27 Scott Boeke, MD
28 Elizabeth J. Hedlund, PA-C
Eleanor Vita, PA-C
L.L. White, APRN, CNP
M.E. Young, RN
Nicholas Rhodes, MD
L. W. Lewallen, MD
K. Singh, DO
Jesson A. Baumgartner, DO
C. Gurrieri, MD
Jessica J. Berg, MD
David J. Duranceau, RN
Michael J. Brown, MD
William G. Morice II, MD
L.A. Lovejoy, MD
D. Denny, CRNA
J. Ricci, CRNA
And any additional treating physicians for
MAYO CLINIC ROCHESTER
200 1st Street SW
Rochester, MN 55905
Tel: (507) 284-2511
Fax: not listed

1 These treating physicians and assistants are expected have knowledge of the medical treatment
2 provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this
3 lawsuit.

- 4 36. Custodian of Records for
5 MEDSCHOOL ASSOCIATES SOUTH
6 n/k/a UNIVERSITY OF NEVADA SCHOOL OF MEDICINE
7 2040 W. Charleston Blvd., #300
8 Las Vegas, NV 89102
9 Tel: (702) 366-0466
10 Fax: not listed

11 The COR is expected to authenticate the medical records regarding the medical treatment
12 provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this
13 lawsuit.

- 14 37. Douglas R. Fraser, MD
15 Paul. J. Chestovich, MD
16 And any additional treating physicians for
17 MEDSCHOOL ASSOCIATES SOUTH
18 n/k/a UNIVERSITY OF NEVADA SCHOOL OF MEDICINE
19 2040 W. Charleston Blvd., #300
20 Las Vegas, NV 89102
21 Tel: (702) 366-0466
22 Fax: not listed

23 These treating physicians are expected have knowledge of the medical treatment provided to
24 Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

- 25 38. Custodian of Records for
26 OWATONNA HOSPITAL
27 2250 NW 26th St
28 Owatonna, MN 55060
29 Tel: (507) 451-3850
30 Fax: not listed

31 The COR is expected to authenticate the medical records regarding the medical treatment
32 provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this
33 lawsuit.

- 34 39. Eleanor O. Vita, MD
35 Jason W. Steinle, MD
36 Brooke A. Meade, MD
37 Elizabeth J. Hedlund, PA-C
38 Jodi Spinler
39 Michael Purvis
40 Chelsey L. Harwood
41 Barbara Middaugh, RN

Owa Ckri, PT
Ruth A. Nolte, PT
User Epic
Cassandra Tuma
Brandon F. Simmons, OT
Christy M. Larson
Elizabeth Escobar
Anna K. Louks
Anne C. Donch
And any additional treating physicians for
OWATONA HOSPITAL
2250 NW 26th St
Owatonna, MN 55060
Tel: (507) 451-3850
Fax: not listed

These treating physicians and assistants are expected have knowledge of the medical treatment provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

40. Custodian of Records for
REGIONS HOSPITAL
640 Jackson Street
St. Paul, MN 55101
Tel: (651) 254-3456
Fax: not listed

The COR is expected to authenticate the medical records regarding the medical treatment provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

41. Scott P. Marston, MD
Jennifer L. Bennett, MD
Michael D. Swank, MD
Andrew M. Schmiesing, MD
Gregory T. Siwek, MD
Michael A. Stojanovic, MD
Carmen E. Quatman, MD
Kristi J. Grall, MD
Richard J. Karr, MD
Shari C. Orlando, MD
Douglas A. Olson, MD
Kathleen A. Jesse, CMA
Sandi M. Caminati
Amber D. Campbell
Samuel E. Velasquez
Klarissa M. Benz, RN
Jean K. Hartmann
Katherine E. Hutson, PharmD
Scott A. Kelley, PharmD
Gerda M. Ottman, PharmD

1 Bonnie J. Alms, PharmD
2 Michelle M. Hayes, PharmD
3 Ann L. McCabe
4 Michele A. Henderickson, RN
5 Heather L. Ternberg, RN
6 Tracy L. Swedahl, RN
7 Ann M. Nelson, RN
8 Dr. Shin, MD
9 Jeffrey F. Koons, RN
10 Oliver H. Mallari, RN
11 Ashley E. Graves
12 James W. Kinsey, APRN, CRNA
13 Danielle M. Swan, RN
14 Rey Emmanuel G. Nolido, RN
15 Danielle L. Atkinson, RN
16 Mary R. Dosch, RN
17 Jill M. Krusermark, RN
18 Kelsey E. Kaufman, RN
19 And any additional treating physicians for
20 REGIONS HOSPITAL
21 640 Jackson Street
22 St. Paul, MN 55101
23 Tel: (651) 254-3456
24 Fax: not listed

25 These treating physician and assistants is expected have knowledge of the medical treatment
26 provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this
27 lawsuit.

28 42. Custodian of Records for
SUMMIT ORTHOPEDICS, LTD.
Doctor's Professional Building
280 Smith Avenue North, Suite 500
Saint Paul, MN 55102
Tel: (651) 968-5200
Fax: not listed

43 The COR is expected to authenticate the medical records regarding the medical treatment
44 provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this
45 lawsuit.

46 43. Yesenia Rodriguez, MD
47 And any additional treating physicians for
48 SUMMIT ORTHOPEDICS, LTD.
49 Doctor's Professional Building
50 280 Smith Avenue North, Suite 500
51 Saint Paul, MN 55102
52 Tel: (651) 968-5200
53 Fax: not listed

54 ///

1 This treating physician(s) is expected have knowledge of the medical treatment provided to
2 Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

3 44. Custodian of Records for
4 SYNERGY ORTHOPEDICS
5 920 Germantown Pike, Suite 210
6 Plymouth Meeting, PA 19462
7 Tel: (610) 292-8400
8 Fax: (610) 292-0908

9 The COR is expected to authenticate the medical records regarding the medical treatment
10 provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this
11 lawsuit.

12 45. Amit K. Ghosh, MD
13 And any additional treating physicians for
14 SYNERGY ORTHOPEDICS
15 920 Germantown Pike, Suite 210
16 Plymouth Meeting, PA 19462
17 Tel: (610) 292-8400
18 Fax: (610) 292-0908

19 The treating physician(s) is expected have knowledge of the medical treatment provided to
20 Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this lawsuit.

21 46. Custodian of Records for
22 UNITED HOSPITAL
23 333 Smith Avenue N.
24 St. Paul, MN 55102
25 Tel: (651) 241-8000
26 Fax: not listed

27 The COR is expected to authenticate the medical records regarding the medical treatment
28 provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this
lawsuit.

47. Katherine J. Glasrud, MD
Justin A. Pattee, MD
Lisa A. Cole, RN
Kim M. Wessel, RN
Paul H. Alme, RN
Rahel A. Doni, MLT
Pauline Vandenbos, RN
And any additional treating physicians for
UNITED HOSPITAL
333 Smith Avenue N.
St. Paul, MN 55102
Tel: (651) 241-8000
Fax: not listed

1 These treating physicians and assistants are expected have knowledge of the medical treatment
2 provided to Plaintiff for the injuries allegedly sustained due to the Subject Accident giving rise to this
3 lawsuit.

4 48. Stuart Galentine
5 20061 Frank St.
6 Orange, CA 92869
7 Tel: (714) 380-6473

8 Mr. Galentine was a previous renter of the subject Polaris RZR 900. He is expected to testify
9 regarding the condition of the RZR at the time of his rental, 10/15/2016.

10 49. Brenda Dean Galentine
11 20061 Frank St.
12 Orange, CA 92869
13 Tel: (714) 280-6473

14 Ms. Galentine was a previous renter of the subject Polaris RZR 900. She is expected to testify
15 regarding the condition of the RZR at the time of her rental, 10/15/2016.

16 50. Dean Kenneth Obst
17 2201 Canyon Road
18 Arcadia, CA 91106
19 Tel: (818) 259-5458

20 Mr. Obst was a previous renter and/or passenger of the subject Polaris RZR 900. He is expected
21 to testify regarding the condition of the RZR at the time of rental, 10/16/2016.

22 51. Richard A. Palmer
23 2170 Canyon Road
24 Arcadia, CA 91106
25 Tel: (626) 524-7889

26 Mr. Palmer was a previous renter and/or passenger of the subject Polaris RZR 900. He is
27 expected to testify regarding the condition of the RZR at the time of rental, 10/16/2016.

28 52. Monica Hawkins
 9803 Hampshire Street
 Rancho Cucamonga, CA 91730
 (909) 560-6740

 Ms. Hawkins was a previous renter and/or passenger of the subject Polaris RZR 900. She is
expected to testify regarding the condition of the RZR at the time of its rental, 10/16/2016.

///

///

53. Deborah Palmer
2170 Canyon Road
Arcadia, CA 91106
Tel: (626) 355-6355

Ms. Palmer was a previous renter and/or passenger of the subject Polaris RZR 900. She is expected to testify regarding the condition of the RZR at the time of its rental, 10/16/2016.

SANDBAR reserves the right to supplement this list of witnesses throughout the discovery process, to call upon any witnesses identified by any other party to this lawsuit, whether or not still a party, and to call upon any witnesses necessary for the purposes of rebuttal or impeachment.

EXPERT WITNESSES

To be named at designated time per Court's Discovery schedule.

DOCUMENTS

DESCRIPTION	BATES NOS.
Sandbar Powersports Rental Agreement for Polaris ATV, 10/18/16	SP000001 – SPC000003
Addendum to Rental Agreement for Polaris ATV, 10/18/16	SP000004 – SPC000005
Sandbar Powersports Participant Agreement, Release & Assumption of Risk re Polaris ATV, 10/18/16	SP000006 – SPC000009
Pre-Rental Check-Out form for Polaris ATV, 10/18/16	SP000010 – SPC000011
Sales Receipts for Rental of Polaris ATV, 10/18/16 (credit card info redacted)	SP000012
Evidence of Insurance for Polaris ATV, 10/18/16 (credit card info redacted)	SP000013
Witness Statement of David Lehmitz, 10/18/16	SP000014 – SPC000015
Color photographs of Polaris ATV Accident Scene, 10/18/16	SP000016 – SPC000035
Rocky Mountain ATV-MC online shopping printout, 10/19/16	SP000036 – SPC000052
Sandbar Powersports receipt (invoice) to Sherri Borger regarding rescue out of desert, 10/19/16	SP000053
Mohave County Sheriff's Office Incident Report, 11/08/16	SP000054 – SPC000063
Witness Statement of Tracy Waddington, 11/17/16	SP000064 – SPC000065
American Modern Home Insurance Company (AMHIC) Recreational Vehicle Rental Insurance Policy No. 201797-4 for Sandbar Powersports, policy period 10/11/16 – 10/11/17 (premium info redacted)	SP000066 – SPC000115
American Modern Home Insurance Company (AMHIC) Recreational Vehicle Rental Insurance Rental Policy No. 211797-4 for Sandbar Powersports, policy period 10/11/16 – 10/11/17 (premium info redacted)	SPC000116-SPC000151
MBA, Inc. Certificate of Insurance regarding the AMHIC Recreational Vehicle Rental Insurance Policy No. 201797-4 for Sandbar Powersports, policy period 10/11/16 – 10/11/17 (premium info redacted)	SP000152
American Modern Home Insurance Company (AMHIC) Declarations page regarding the Recreational Vehicle Rental Insurance Policy No. 201797-4 for Sandbar Powersports, policy period 10/11/16 – 10/11/17 (premium info redacted)	SPC000153

DESCRIPTION	BATES NOS.
MBA Insurance Motorcycle Rental Insurance Report for October 2016 and dated. 10/27/16 (premium info redacted)	SP000154
AMHIC claim acknowledgement/ROR letter to Sandbar Powersports	SP000155 – SP000157
John Borger's & Sherri Borger's Minnesota Driver Licenses (nos. & address redacted) and Visa credit card (no. redacted)	SP000158 – SP000159
Email exchange between Plaintiffs' Counsel and adjuster for Cincinnati/American Modern Insurance Group email exchange, March 23-24, 2017	SP000160 – SP000167
Plaintiffs' counsel letter to Sandbar Powersports, 11/07/16	SP000168
Medicare Beneficiary Form (incomplete)	SP000169 – SP000170
<u>First Supplemental Disclosure</u>	
Pre-rental color photographs of Polaris ATV	SP000171 – SP000230
Warning stickers on Polaris ATV	SP000231 – SP000236
Sandbar Powersports' maintenance check-list for Polaris, 10/18/16	SP000237
Amazon.com order/receipt for Sandbar Powersports' purchase of lower door inserts for Polaris ATV, 09/26/16	SP000238
Rocky Mountain ATV/MC invoice for Sandbar Powersports' purchase of rearview mirror for Polaris ATV, 09/26/16	SP000239
Havasu Powersports invoice for Sandbar Powersports' purchase of windshield for Polaris ATV, 09/16/16	SP000240
Pro-Armor packing list/invoice for Sandbar Powersports' purchase of soft top for Polaris ATV, 09/22/16	SP000241
Sandbar Powersports' Receipt of Sale of Polaris ATV, 03/21/16	SP000242
Bill of Sale for Polaris ATV, 09/13/16	SP000243
Directions to off-road driving area	SP000244
<u>Second Supplemental Disclosure</u>	
Sandbar Powersports receipt for sale of Polaris RZR, 03/19/17	SP000245
Rocky Mountain ATV-MC online shopping, 10/19/16	SP000246 – SP000262
Medical and billing records from Advanced Arm Dynamics (redacted)	SP000263 – SP000486
Billing records from Allina Health (redacted)	SP000487 – SP000503
Medical records from Gillette Children's Specialty Healthcare (redacted)	SP000504 – SP000513
Medical and billing records from Havasu Regional Medical Center (redacted)	SP000514 – SP000552
Certificate of no [medical] records from Medschool Associate South n/k/a University of Nevada School of Medicine)	SP000553 – SP000554
Billing records from Medschool Associates South n/k/a University of Nevada School of Medicine (redacted)	SP000555 – SP000565
Medical and billing records from Regions Hospital (redacted)	SP000566 – SP000687
Billing records and list of radiology imaging from University Medical Center	SP000688 – SP000705
Disc of radiology imaging from Allina Health – United Hospital	SP000706
Disc of radiology imaging from Havasu Regional Medical Center	SP000707
Disc of radiology imaging from Mayo Clinic	SP000708

DESCRIPTION	BATES NOS.
American Modern Home Insurance Company claim acknowledgment-ROR letter to Sandbar Powersports, 03/22/17	SP000709 - SP000711
Cincinnati Insurance Notice of Loss, 10/27/16	SP000712
Cincinnati Insurance and Sandbar Powersports email exchange, 04/11/17 to 04/12/17	SP000713 - SP000720
Cincinnati Insurance & Sandbar Powersports email chain regarding Borger claim/lawsuit, etc., 03/20/17 to 03/22/17 (redacted)	SP000721 - SP000743
See Privilege Log attached as Exhibit A	SP000744 - SP000745
See Privilege Log attached as Exhibit A	SP000746 - SP000750
See Privilege Log attached as Exhibit A	SP000751 - SP000753
<u>Third Supplemental Disclosure</u>	
Previously privileged documents bearing Bates Nos. SP000744 – SP000753 described as follows:	
American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17	SP000744 - SP000745
American Modern Insurance adjuster claim file notes, 11/28/17 - 03/21/17	SP000746 - SP000750
American Modern Insurance adjuster litigation report, 03/21/17 (redacted)	SP000751 - SP000753
American Modern Insurance email to Sandbar Powersports regarding removal from use, 12/27/16	SP000754
<u>Fourth Supplemental Disclosure</u>	
American Modern Home Insurance Company reservation of rights letter to Sandbar Powersports, 05/11/17	SP000755 – SP000761
<u>Fifth Supplemental Disclosure</u>	
Allied Insurance (Nationwide) personal automobile insurance policy No. PPGM0042376657-0, policy period 04/20/09 to 10/20/09 for insureds John Borger, Sherri Borger, and Jade Borger (redacted premium info)	SP000762 – SP000823
Allied Insurance (Nationwide) personal automobile insurance identification card for policy No. PPGM0042376657-6, policy period 07/13/16 to 01/13/17, insureds John Borger & Sherri Borger, vehicle Honda Odyssey EX vehicle	SP000824
Disc of radiology imaging & reports from University Medical Center	SP000825
Disc of radiology imaging from Regions Hospital	SP000826
<u>Sixth Supplemental Disclosure - no documents</u>	
<u>Seventh Supplemental Disclosure</u>	
Sign-in sheet for inspection of subject accident site at Bison Wash on 05/29/18	SP000827
Sign-in sheet for inspection of subject Polaris RZR at residence of James Shellenback	SP000828
Sign-in sheet for inspection of subject Polaris RZR parts at Sandbar Powersports, LLC in Lake Havasu City, Arizona	SP000829
Medical and billing records from Allina Health re Owatonna Hospital and United Hospital (redacted)	SP000830 – SP000997
Medical and billing records from Rocky Mountain Holdings (redacted)	SP000998 – SP001028
Color photos of the subject accident scene taken on 05/29/18 by expert Mark Kittel, P.E. of Veritech Consulting Engineering, LLC	SP001029 – SP001034

DESCRIPTION	BATES NOS.
Color photos of the subject Polaris RZR taken on 05/29/18 by expert Mark Kittel, P.E. of Veritech Consulting Engineering, LLC	SP001035 – SP001151
Herald Havasu News article regarding subject accident, 10/18/16	SP001152 – SP001153
Herald Havasu News article regarding subject accident, 10/19/16	SP001154 – SP001155
Nationwide Insurance Company insurance identification card for John and Sherri Borger regarding Honda Odyssey EX vehicle, policy period 07/13/16 – 01/13/17	SP001156
Nationwide Insurance Company personal automobile insurance policy for John and Sherri Borger regarding Honda Odyssey EX vehicle, policy period 07/13/13 – 01/13/14	SP001157 – SP001218
Nationwide Insurance Company personal automobile insurance policy for John and Sherri Borger regarding Honda Odyssey EX vehicle, policy period 07/13/16 – 01/13/17	SP001219 – SP001286
<u>Eighth Supplemental Disclosure</u>	
Additional billing records from Advanced Arm Dynamics	SP001287 – SP001288
Notice of no medical records from Summit Orthopedics (redacted)	SP001289 – SP001290
Notice of no medical records from Summit Orthopedics for Yesenia Rodriguez, MD	SP001291 – SP001294
<u>Ninth Supplemental Disclosure</u>	
Fax w/certification of no records from Alina Health, 09/12/18 (redacted)	SP001295 – SP001299
Fax from Alina Health regarding Sports & Orthopedics Specialists, 09/13/18 (redacted)	SP001300 – SP001306
Fax from Alina Health regarding Sports & Orthopedics Specialists, 09/17/18 (redacted)	SP001307 – SP001311
Rental agreement for prior renter of subject Polaris RZR 900 w/pre & post rental check of vehicle and renter's contact information, 10/15/16	SP001312 – SP001315
<u>Tenth Supplemental Disclosure</u>	
Rental agreement for prior renters of subject Polaris RZR 900 w/ pre & post rental check of vehicle and photocopies of California driver licenses (redacted)	SP001316 – SP001328
<u>Eleventh Supplemental Disclosure</u>	
Color photos of subject accident site taken by safety consultant expert Joseph E. Manning on 05/29/2018	SP001329 – SP001350
<u>Twelfth Supplemental Disclosure</u>	
International Cultic Studies Association (ICSA) article entitled "Lying in Court and Religion: An Analysis of the Theocratic Warfare Doctrine of the Jehovah's Witnesses"	SP001351 – SP001384
///	
///	
///	
///	
///	
///	
///	

1 Discovery is ongoing and SANDBAR reserves its right to supplement this Disclosure.

2
3 Dated: November 2, 2018

LITCHFIELD CAVO LLP

4 By: 

GRIFFITH H. HAYES, ESQ.

Nevada Bar No. 7374

MARISA A. POCCI, ESQ.

Nevada Bar No. 10720

KEIVAN A. ROEBUCK, ESQ.

Nevada Bar No. 14110

3993 Howard Hughes Parkway, Suite 100

Las Vegas, Nevada 89169

Telephone: (702) 949-3100

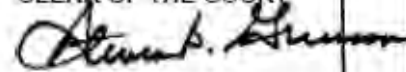
Facsimile: (702) 916-1776

Email: hayes@litchfieldcavo.com

Email: pocci@litchfieldcavo.com

Email: roebuck@litchfieldcavo.com

11 *Attorneys for Defendant/Counter-Claimant/Cross-*
12 *Claimant/Third-Party Plaintiff Sandbar*
13 *Powersports, LLC*



1 OSCJ

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 JOHN BORGER and SHERRI BORGER,

5 Plaintiff,

6 vs.

7 SANDBAR POWERSPORTS, LLC, DOES I
8 through X, ROE CORPORATIONS XI
9 through XX, inclusive, and POLARIS
10 INDUSTRIES, INC.

11 Defendant(s).

12 And All Related Matters.

Case No.: A-17-751896-C
Dept. No.: XXV

13 **ORDER SETTING CIVIL JURY TRIAL AND PRETRIAL/CALENDAR CALL**

14 IT IS HEREBY ORDERED THAT:

15 A. The above-entitled case is set to be tried to a jury on a five-week stack to begin

16 **Monday, July 29, 2019, at 10:30 a.m.**

17 B. A Pretrial/Calendar Call will be held on **Tuesday, July 23, 2019, at 10:30 a.m.**

18 Trial Counsel (and any party in proper person) must appear.

19 C. The Pretrial Memorandum must be filed prior to the Pretrial/Calendar Call, with
20 a courtesy copy delivered to Department XXV. EDCR 2.67 must be complied with.

21 D. All discovery deadlines, deadlines for filing dispositive motions and motions to
22 amend the pleadings or add parties are controlled by the previously issued Scheduling
23 Order and/or relevant Stipulation and Orders.

24 E. Stipulations to continue a trial date will not be considered by the Court.

25 F. Orders shortening time will not be signed except in extreme emergencies.

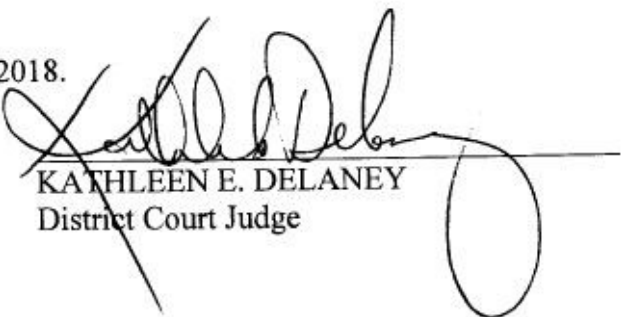
26 ***AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY***

27
28
KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV

1 Failure of the designated trial attorney or any party appearing in proper person to
2 appear for any court appearances or to comply with this Order shall result in any of the
3 following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4)
4 vacation of trial date; and/or any other appropriate remedy or sanction.

5
6 Counsel must advise the Court immediately when the case settles or is otherwise
7 resolved prior to trial. A stipulation which terminates a case by dismissal shall
8 indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date
9 of that trial.

10 Dated this 5th day of November, 2018.

11
12 
13 KATHLEEN E. DELANEY
14 District Court Judge

15 I hereby certify that on or about the date filed,
16 the foregoing order was E-served, mailed, or
a copy was placed in the attorney's folder in
the Clerk's Office as follows:

17 Chad A. Bowers, Esq. – Chad A. Bowers, Ltd.
18 Kyle W. Farrar, Esq. – Farrar & Ball (*Admitted Pro Hac Vice*)
19 Jennifer Willis Arledge, Esq. – Wilson, Elser, Moskowitz, Edelman & Dicker
Andrew Scott Ross, Esq. – Neal & Harwell (*Admitted Pro Hac Vice*)
Kevin A. Roebuck, Esq. – Litchfield Cavo

20 /s/ Marwanda Knight

21 Marwanda Knight
22 Judicial Executive Assistant
23
24
25
26
27
28

KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV