

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Lia Martin

1 **NEIL FRASER, ESQ. (Bar No. 125651)**
2 **JAMES C. CARR, ESQ. (Bar No. 308118)**
3 **Law Offices of Neil J. Fraser**
4 945 Mayo Street
5 Los Angeles, California 90042
6 Phone: (213) 324-4206; (310) 254-6322
7 Email: neil@neiljfraserlaw.com
8 james@neiljfraserlaw.com

9 Attorneys for Plaintiff

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12
13 ALEXANDRE ANTONIO KEJA
14 BOTELHO,

15 Plaintiff,

16 vs.

17 ASSOCIATION OF SURFING
18 PROFESSIONALS LLC dba WORLD SURF
19 LEAGUE, a Delaware Corporation authorized
20 to do business in California, a Subsidiary of
21 WSL HOLDINGS LLC, a Delaware
22 Corporation, a Subsidiary of ASP
23 HOLDINGS, LLC, a California Corporation;
24 BILL SHARP; SCOTT EGGERS; DOES 1
25 through 100, inclusive,

26 Defendants.

CASE NO.: 22STCV05307

COMPLAINT FOR:

- 1) NEGLIGENCE/GROSS NEGLIGENCE
- 2) FRAUDULENT CONCEALMENT
- 3) INTENTIONAL MISREPRESENTATION
- 4) NEGLIGENT MISREPRESENTATION

27 COMES NOW, plaintiff ALEXANDRE ANTONIO KEJA BOTELHO, an individual,
28 and alleges against defendants ASSOCIATION OF SURFING PROFESSIONALS LLC dba
WORLD SURF LEAGUE, a Delaware Corporation duly authorized to do business in

1 California, a Subsidiary of **WSL HOLDINGS LLC**, a Delaware Corporation duly authorized to
2 do business in California, a Subsidiary of **ASP HOLDINGS, LLC**, a California Corporation,
3 **BILL SHARP, SCOTT EGGERS, and DOES 1 through 100**, inclusive as follows:

4 **PARTIES, JURISDICTION & VENUE**

5
6 1. Plaintiff **ALEXANDRE ANTONIO KEJA BOTELHO** (hereinafter “Botelho”) is an
7 individual whose place of residence is the municipality of Lagos, in the Algarve region of
8 southern Portugal.

9 2. Defendant, **ASSOCIATION OF SURFING PROFESSIONALS LLC** dba WORLD
10 SURF LEAGUE (hereinafter “WSL”) is a Delaware corporation duly authorized to do business
11 in California as a registered foreign LLC with its principal place of business located at 147 Bay
12 Street, Santa Monica, California 90405.

13 3. Defendant, **WSL HOLDINGS LLC** is a Delaware corporation duly authorized to do
14 business in California as a registered foreign LLC with its principal place of business also
15 located at 147 Bay Street, Santa Monica, California 90405 and is the parent company of
16 defendant WSL.

17 4. Defendant **ASP HOLDINGS, LLC**, a California Corporation, is the parent holding
18 company of WSL Holdings LLC with its principal place of business located at 1401 Glencrest
19 Terrace, Glendale, California 91208.

20 5. Plaintiff is informed and believes and thereon alleges that each defendant company is
21 responsible in a legally actionable manner for the events detailed herein and ratified the actual
22 actions of WSL upon which this lawsuit is based.

23 6. Defendant, **WSL; DOES 1 through 10, inclusive, as part of its corporate portfolio,**
24 **and at all times mentioned herein, owned and/or operated the Big Wave World Tour**, a series of
25 worldwide surfing events designed around the concept of who of the competition entrants can
26
27
28

1 surf the biggest wave at each scheduled event. One of WSL's events is the Nazare Tow Surfing
2 Challenge which takes place in and around the area of breaking waves off the beach known as
3 Praia Norte, in the municipality of Nazare, district of Leiria, Central Portugal. The incident
4 made subject of this lawsuit occurred at said place during the event known as the Nazare Tow
5 Surfing Challenge held on February 11, 2020. The organization, format, event rules, safety
6 measures, operation and judging of the Nazare Tow Surfing Challenge were all created and
7 executed by defendant WSL; DOES 1 through 10, inclusive and their agents and employees
8 and other hired personnel, including the named individual defendants herein and DOES 11
9 through 50, inclusive.

11 7. Defendants BILL SHARP (hereinafter "Sharp") and SCOTT EGGERS (hereinafter
12 "Eggers" and DOES 21 through 50, inclusive, were, at all times relevant to the events detailed
13 and complained of herein, the agents and employees of defendants WSL and DOES 1 through
14 10, inclusive and, in doing the acts herein alleged, or failing to do the acts whose failure is
15 complained of herein, were acting in the course and scope of their employment with WSL, and
16 DOES 1 through 10, inclusive and acting with the authority, support and ratification of WSL
17 and DOES 1 through 10, inclusive.

19 8. At all times relevant hereto, defendant SHARP was employed by defendant WSL, et
20 al, as General Manager of the Big Wave World Tour and further acted on behalf of said
21 corporate defendant as Event Director and Adjudicator of the Big Wave World Tour. In his
22 capacity as a supervisory employee of WSL, DOES 1 through 10, inclusive, defendant SHARP
23 was responsible for the organization of the Nazare Tow Surfing Challenge of February 2020,
24 which included creating and implementing a reasonable safety plan for the efficient rescue of
25 participants who might be placed in danger by the monumental waves generated at the event
26 location at Nazare.
27
28

1 9. At all times relevant hereto, defendant EGGERS was employed by defendant WSL,
2 et al, as Safety Director of the Big Wave World Tour and further acted on behalf of said
3 corporate defendant as Water Safety Director and Adjudicator of the Big Wave World Tour
4 event at Nazare in February 2020. In this capacity as an employee of WSL, DOES 1 through
5 10, inclusive, defendant EGGERS was, with defendant SHARP, responsible for creating and
6 implementing a reasonable safety plan for the efficient rescue of participants who might be
7 placed in danger by the monumental waves generated at the event location at Nazare.
8

9 10. This court has jurisdiction over the named corporate entities, and the named
10 individual and Doe defendants herein, who, at all times pertinent hereto, were acting on behalf
11 of or in the course of their duties with said corporate entities as herein delineated. Jurisdiction
12 is present pursuant to *California Code of Civil Procedure, Section 410.10*, and venue pursuant
13 to *California Code of Civil Procedure, Section 395(a)* in that defendants WSL and WSL
14 HOLDINGS LLC have substantial and continuous business contacts with California, are
15 qualified to do business in California as registered foreign corporations, thus availing
16 themselves of the jurisdiction of this Court, and operate from a principal place of business in
17 Santa Monica, California. Defendant ASL HOLDINGS, LLC is subject to this court's
18 jurisdiction as a California corporation, while the named individual defendants are, to
19 plaintiff's information and belief, residents of the State of California.
20
21

22 11. The true names and capacities, whether individual, corporate, associate or otherwise
23 of defendants DOES 1 through 100, inclusive, are unknown to plaintiff who therefore sues said
24 defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that
25 each of the defendants designated herein as a DOE is legally responsible in some manner for
26 the events and happenings herein alleged, and that their conduct was a proximate cause of
27 damage to plaintiff. Plaintiff will ask leave of court to amend this complaint to insert the true
28

1 names and capacities of said DOE defendants when such have been ascertained.

2 **GENERAL ALLEGATIONS**

3 12. At all times relevant hereto, plaintiff Botelho was a professional surfer and a
4 competitor on the Big Wave Tour, a worldwide surfing competition owned, organized,
5 operated, adjudicated and regulated by defendant WSL, DOES 1 through 10, inclusive. Botelho
6 was invited to join the Big Wave Tour in 2016 and became a top ten permanent member of the
7 tour for the 2018-2019 season. Botelho was ranked in the top six Big Wave surfers in the world
8 by the end of the 2018-2019 season.

9
10 13. Botelho's prowess as a top Big Wave surfer enabled him to earn substantial
11 financial reward for his skill, including prize money in WSL events, sponsorship deals with
12 such companies as Volcom, Mercedes-Benz and Ocean & Earth, enabling plaintiff to compete
13 around the world in Big Wave events and create and maintain a lucrative and popular profile as
14 one of the world's top Big Wave surfers.

15
16 14. One of the WSL's Big Wave events is entitled the Nazare Tow Surfing Challenge
17 held at Nazare in Portugal and plaintiff Botelho competed in this event in the 2017-2018
18 season, placing as a semi-finalist, and in the 2018-2019 season, placing as a finalist and taking
19 fourth place in the competition. Consequently, Botelho was conversant with the surf conditions
20 at Nazare and with the necessary safety measures required to best guard against injury to Big
21 Wave competitors that might result from the prevalent surf conditions in the competition area
22 off the beach at Praia Norte at Nazare.

23
24 15. The waves which roll into Praia Norte in Nazare are among the biggest in the world,
25 if not the biggest, a phenomena caused by the confluence of several factors, including the
26 customary west/northwest swell direction and the prevailing winds and, more specifically, the
27 refraction of the waves due to the depth difference between the continental shelf and an
28

1 extremely deep submarine canyon located just offshore at Nazare, the steep vertical variation as
2 the incoming water hits the abrupt depth reduction at the edge of the canyon, creating a
3 shoaling effect which magnifies the height of incoming waves, the intersection of two wave
4 fronts, the littoral drift from the wave propagation which creates a northerly flowing current
5 deflecting off a headland named Promontorio do Sitio, enhancing a water pile-up in the Praia
6 Norte cove, and the prevailing current channeled along the shoreline and flowing in the
7 opposite direction from the waves which, upon interception, generate wedge-type waves as the
8 two waves meet to create a peak that further contributes to increase wave height. The
9 combination of this set of unique factors leads to the generation of huge waves rolling towards
10 Praia Norte that have been documented as the biggest in the world, reaching a height of 100
11 feet or more and rolling towards the beach with tremendous energy and breaking with massive
12 force along the wavefront.
13

14
15 16. The Nazare Tow Surfing Challenge competition owned, organized, operated,
16 adjudicated and regulated by competition owned, organized, operated, adjudicated and
17 regulated by defendant WSL, DOES 1 through 10, inclusive, is described by the WSL as a
18 “exhibition style invitational event” and is subject to a detailed set of rules and regulations
19 promulgated by defendant WSL and DOES 1 through 10, inclusive. The event is not scheduled
20 for a specific date in advance, but rather held on a day when conditions are at an optimum.
21 Defendant WSL, DOES 1 through 10, inclusive, and their agents and employees monitor
22 offshore conditions and place competitors on “Green” standby 48 hours prior to the anticipated
23 day of competition. Participants are obligated to be present 24 hours before the anticipated start
24 of the event and to be ready to compete when said defendants deem the conditions to be at their
25 most challenging and wave height to be at a maximum.
26

27 17. The event is a team event, with ten teams of two surfers per team, divided into two
28

1 groups. The members of each team are selected by defendants WSL and DOES 1 through 10,
2 inclusive, in said defendants' sole discretion and each team member must ride at least two
3 waves to be eligible to place in the event but there is no limit to the number of waves a
4 competing surfer may ride for judging during the course of the event. The event consists of four
5 sixty-minute heats during the day of competition with five surfers at any one time in the water
6 looking to ride waves. The entire event is expected to occur over a four-hour period.

8 18. The Nazare event is a tow-in event, which means the competing surfers use jet skis
9 to navigate out to the area for catching waves. The team members rotate driving the jet ski with
10 being towed out on a board towed behind the jet ski. The ferocity of the waves at Praia Norte
11 makes it impossible for an individual to enter the sea and make the journey out to the area of
12 breaking waves under their own power.

14 19. Judging of the Nazare event is exclusively run by defendants WSL, et al, and
15 winners are chosen in men, woman and team categories for "Wave of the Day". Judging
16 criteria is based upon wave size from start to end of the ride, number of powerful, functional
17 maneuvers demonstrated by the surfer, critical positioning in or near the barrel of the surfed
18 wave (if any) and completing a ride on a meaningful portion of the selected wave.

19 20. The Nazare Tow Surfing Challenge event made subject of this lawsuit took place at
20 Nazare on February 11, 2020. The event window designated by defendants WSL, et al, for this
21 event was for a day said defendants selected between November 1, 2019 and March 31, 2020
22 and the designated desired surf levels selected by defendants WSL, et al, were 50-65 foot wave
23 faces. The teams were selected by said defendants at least three months prior to the event.
24 Plaintiff Botelho was paired with another experienced Big Wave surfer, Hugo Vau, and they
25 were designated Team Portugal.

27 21. In the months leading up to the event, several of the selected surfers, including
28

1 plaintiff Botelho, became concerned about the adequacy of the safety measures proposed by
2 defendants WSL, Bill Sharp, Scott Eggers, and Does 1 through 50, inclusive, for the event. The
3 invited surfers proposed to Bill Sharp, who was the Event Director and person in charge on
4 behalf of WSL and DOES 1 through 10, inclusive, at the event site in Nazare, that each team be
5 provided with a budget to assemble their own, hand-picked safety team. Defendants Bill Sharp,
6 on behalf of WSL and DOES 1 through 10, inclusive agreed to this proposal with each team to
7 have a dedicated water safety jet ski and driver shadowing them while in the water and three
8 radios and a dedicated channel per team for communication, linking the Team Spotter on the
9 headland, the jet ski driver towing his or her team member,
10

11 22. This agreement between the competitors and defendants Bill Sharp, WSL and
12 DOES 1 through 50, inclusive, was memorialized in an email sent by defendant Sharp on
13 November 5, 2019 to plaintiff Botelho and, it is plaintiff's understanding, all other participants
14 in the upcoming event.
15

16 23. The above-mentioned email sent by defendant Sharp in his capacity as Event
17 Manager for WSL and DOES 1 through 10, inclusive, also set out a plan for water safety,
18 which included three layers of safety support, the first being the team member driving the jet
19 ski to make standard post-ride pickups and first attempts in the "impact zone"; the second layer
20 a dedicated Safety Support pilot and jet ski to pick up a surfer in the event the team member is
21 unable to do so, who would be under the direction of Water Safety Manager, defendant Scott
22 Eggers and DOES 1 through 50, inclusive, acting on behalf of and as the agent and employee
23 of defendant WSL; and a third layer of Urgent Response lifeguards with paramedic/emergency
24 life-support training positioned at the edge of the wave break and prepared to respond
25 immediately to a wiped-out surfer in the impact zone or to any kind of medical emergency.
26

27 Defendant Sharp, as Event Manager for WSL and DOES 1 through 10, inclusive, and acting in
28

1 the course and scope of his duties with WSL and with their express or implied assent and
2 authority, also stated in this email that rescue swimmers would be present and part of this third
3 layer of safety. The rescue swimmers would be under the immediate direction of Water Safety
4 Manager, defendants Scott Eggers and DOES 1 through 50, inclusive, acting on behalf of and
5 as the agent and employee of defendant WSL. Finally, additional lifeguards and a primary
6 response medical team would be positioned on the beach at Praia Norte.
7

8 24. The “impact zone” referred to is that area where a wave fold and breaks with the lip
9 of the wave hitting the flat water in front. This is the area and moment when a wave is at its
10 most powerful. In big waves, getting caught in the impact zone can mean getting dragged
11 fiercely down to the bottom and being tossed violently by the energy of the churning water. It is
12 recognized as almost always the most dangerous place at any surf spot and the site of the vast
13 majority of surfing injuries and even deaths.
14

15 25. The safety plan put forward by WSL through Event Manager Sharp was deemed by
16 virtually every surfer invited to participate in the Nazare event as unsatisfactory and WSL,
17 through communications with defendant Sharp, was made aware by group email of the specific
18 shortfalls identified by the invited surfers in each proposed safety layer. The concern of the
19 competitors was based upon the knowledge and firsthand experience of a majority of them who
20 has surfed the big waves at Nazare and made aware of the inherent dangers at the location. In
21 fact, at least two of the invitees had suffered severe wipe-outs at Nazare resulting in near death
22 in one instance and severe injuries in another. The danger of the impact zone was identified and
23 the presence of a rescue swimmer in that area emphasized as the hold-down force of the water
24 there can cause injury or severely compromise an already injured surfer caught in its roiling
25 waters.
26

27 26. One of the safety conditions insisted upon by the surfers, including plaintiff
28

1 Botelho, was that a “grabber” with a rescue swimmer be present on the water throughout the
2 event. This comprises a jet ski with an experienced driver carrying a rescue swimmer dedicated
3 to the rescue and pickup of any hurt, unconscious or in distress surfer. Defendants Sharp and
4 Eggers, and DOES 21-50, acting on behalf of WSL and DOES 1-10, inclusive, represented that
5 they would hire an individual named Kalani Lattanzi to be the primary rescue swimmer and he
6 was listed in such capacity in the WSL Information Kit provided to all competitors invited to
7 the Tow Surfing Challenge.
8

9 27. Plaintiff Botelho and, to his information and belief, all the other surfer participants
10 invited to the Nazare event, were satisfied with the designation of Kalani Lattanzi as the rescue
11 swimmer as he is widely accepted as likely the only person in the world capable of operating
12 within the Nazare impact zone as a rescue swimmer, and certainly the best. He is known
13 throughout the surfing world for his feats of bodysurfing the waves at Nazare and had shown
14 his capabilities of swimming in and surviving in the Nazare impact zone on several occasions
15 before the February 11, 2020 event.
16

17 28. In fact, plaintiff Botelho had trained in the Nazare harbor waters with Kalani
18 Lattanzi in 2017, practicing rescue techniques under the auspices of the Big Wave Risk
19 Assessment Group, an independent organization formed to educate and train surfers in skills
20 such as ocean risk management and safety protocols. The training included some individuals
21 who were present at the 2020 Tow Surfing Challenge, either as a competitor or on the safety
22 teams. During the 2017 practice sessions designed to teach rescue techniques of both conscious
23 and unconscious surfers, Kalani Lattanzi was the only individual capable of hauling plaintiff
24 Botelho from the water and onto a rescue sled when plaintiff was practicing a situation where
25 he was incapacitated or rendered unconscious in the water.
26

27 29. Prior to the 2020 event, when informed by defendants Sharp and Eggers that Kalani
28

1 Lattanzi would be the designated rescue swimmer on the day of competition, plaintiff was
2 satisfied with that aspect of the safety plan and relied upon the representations of said
3 defendants regarding the presence of Lattanzi in deciding whether to participate in the event.

4 30. In fact, defendants WSI, Sharp, Eggers and DOES 1 through 100, inclusive, and
5 each of them, did not take any steps to put into place the safety measures they had promised the
6 surfer competitors, including plaintiff Botelho, would be in place at the time of the event.
7 Furthermore defendants, and each of them, willfully and fraudulently concealed their knowing
8 failure to institute the agreed safety measures from the surfers, including plaintiff Botelho and
9 continued to do so up to and including the day before the event as to some of the agreed safety
10 measures and never revealed their willful disregard to implement some of their promises
11 regarding safety at all. This included fraudulently concealing from plaintiff the fact that rescue
12 swimmer Kalani Lattanzi had never even been contacted by defendants and asked to be at the
13 Nazare Tow Surfing Challenge at all, despite his name being listed as the rescue swimmer in
14 the Information Kit distributed to plaintiff and all the competing surfers in several versions of
15 the kit distributed and updated in the three months prior to February 11, 2020. Had plaintiff
16 known Kalani Lattanzi was not going to be present and acting as the rescue swimmer during
17 the event, plaintiff would not have competed as plaintiff was then, and remains, of the opinion
18 that Kalani Lattanzi was the only individual capable of successfully rescuing plaintiff if
19 plaintiff was to get into difficulties or suffer injury in the water, and especially in the impact
20 zone, during the competition.
21
22
23

24 31. Defendants, and each of them, committed said acts of misrepresentation willfully
25 and/or in reckless disregard for the rights and physical safety and wellbeing of plaintiff and
26 others competing in the February 11, 2020 event. Further misrepresentations of safety measures
27 which defendants Scott, Eggers WSL and DOES 1 through 100, inclusive had promised to
28

1 provide but which were not provided included, but are not necessarily limited to:

2 a) Failing to provide for a dedicated Safety Support jet ski driver to shadow each team,
3 or to provide for each team to hire the safety support driver of their choice;

4 b) Failing to provide working radios to the personal spotter for each team, including
5 plaintiff's team, resulting in a lack of direct contact between the team in the water and the
6 spotter;

7 c) Failing to provide the three promised radios to each team, including plaintiff's team,
8 and failing to provide for dedicated channels for each team, resulting in confusing cross-chatter
9 and interference with multiple voices on the available radio channels. As a result, plaintiff's
10 spotter on land, Jorge Leal, had no direct communication with the safety personnel in the water
11 and on the beach when the safety personnel were trying to locate plaintiff in and around the
12 impact zone;

13 d) Not only misrepresenting that Kalani Lattanzi would be present as the rescue
14 swimmer but also failing to provide for a rescue swimmer at all;

15 e) Failing to provide the minimum number of experienced water safety individuals
16 anticipated by the competitors, including plaintiff;

17 f) Failing to implement a clear structure and assign responsibilities to the water safety
18 personnel who were present for the event;

19 g) Failing to put in place a working strategy to deal with emergencies that might arise;
20 and,

21 h) Failing to train and organize the lifeguards on the beach to deal with water
22 emergencies and failing to ensure the lifeguards were supplied with adequate equipment
23 resulting in the lifeguards being unable to swim any distance in the impact zone to aid
24 surfers in need of rescue, including plaintiff herein.
25
26
27
28

1 32. The aforementioned acts and failures of defendants, and each of them, constitute
2 willful, malicious, and oppressive behavior by defendants, intentional misrepresentations
3 concerning the safety measures to be in place for the event and intentional and fraudulent
4 concealment of these varied multiple failures to provide the safest possible conditions for
5 competition for the participants. Such willful and intentional acts entitle plaintiff to an award of
6 punitive and exemplary damages against defendants, and each of them, found liable for each
7 willful and malicious act alleged in this complaint.
8

9 33. Defendants Sharp, Eggers, WSL and DOES 1 through 100, inclusive, compounded
10 their misrepresentations by concealing the truth about event safety measures until the eve of
11 and the day of the Nazare event and, when some of the surfer participants refused to sign the
12 required agreement between a participant and the WSL to compete in the Nazare event, which
13 included a waiver of liability for any injury incurred during the event, told such participants
14 they would not be permitted to compete. Many of the surfers, including plaintiff, had been
15 training and preparing for months to take part in the event after being invited to do so by
16 defendants WSL and DOES 1 through 10, inclusive, had paid their own way to get to and stay
17 in Nazare awaiting the signal that would indicate the day the event would be run and had
18 obligations to sponsors who expected them to compete in the Nazare Tow Surfing Challenge
19 and thus promote the sponsor's product. Despite genuine concerns about safety, plaintiff and
20 other competitors felt obliged to sign the agreement with the WSL, including the waiver form.
21 At the time of signing on the eve of the competition, plaintiff was still unaware of the absence
22 of several aspects of the agreed safety measures, including the lack of any rescue swimmer, and
23 still expected Kalani Lattanzi to be present to act in such capacity as agreed.
24
25

26 34. Plaintiff Botelho does not dispute that Big Wave Surfing is a dangerous extreme
27 sport which carries the risk of injury or even death and plaintiff does assume the risk of such
28

1 occurrences that are inherent in the sport itself. However, plaintiff does not accept that he
2 assumes the risk of injury and damage and alleges that defendants, and each of them, owe him
3 a duty of care not to increase the risks to an individual over and above those inherent in the
4 sport. Plaintiff alleges that defendants, and each of them, have a duty and an obligation to Big
5 Wave competitors, including plaintiff, to take reasonable steps to minimize the risks of
6 participating in the sport that are capable of being implemented without altering the nature of
7 the sport and especially when defendants are running events in which plaintiff is invited by
8 defendants to compete and his name is used in promoting the event and the fact he is one of the
9 invited competitors. The failures of defendants, and each of them, to provide for adequate
10 safety measures and procedures in the planning, organization and running of the February 11,
11 2020 Nazare Big Wave Challenge, and to misrepresent that the safety measures agreed to
12 between the participants and the defendants would be followed and in place for the event, and
13 to conceal intentionally and deliberately that they were doing so from plaintiff and others are
14 tortious acts which render any assumption of the risk the defendants may assert in defense
15 unlawful, invalid and without legal merit.

18 35. Furthermore the pre-event waiver that plaintiff was pressured into signing is
19 rendered void and unenforceable by the actions and omissions of the defendants, and each of
20 them, as alleged herein which constitute conduct displaying a want of even scant care for
21 plaintiff and the event participants' safety and wellbeing. Such conduct elevates these acts and
22 omissions to a standard of negligence that can be categorized as gross negligence sufficient to
23 render invalid any and all pre-event executed waivers.

25 36. The Nazare Tow Surfing Challenge made subject of this lawsuit took place on
26 February 11, 2020. The scheduled four-hour event ran throughout daylight hours. Sunrise took
27 place at 7.33 a.m. and sunset occurred at 6.08 p.m. According to defendant WSL's "WSL Big
28

1 Wave Awards 2020 – Wave Height Estimation and Comparisons”, the waves were described
2 thus; “(G)iven the enormous momentum transfer to the surf zone, the wave set-up at Nazare
3 can be significantly higher than usual”. Said report indicated a new woman’s world record was
4 set for biggest wave ridden, concluding that wave reached a height of 73 feet.
5

6 37. The Tow Challenge took place on February 11, 2020, when defendants, and each of
7 them, determined that day offered the biggest swell and biggest waves of the time period within
8 which to hold the event. The Tow Challenge was promoted by WSL as to occur on the biggest
9 day possible. This ignored the collective opinion of the surfers participating who, when
10 solicited by defendants WSL, Sharp and Eggers and DOES 1 through 50, inclusive in late 2019
11 had designated a day of clean and big, but not the biggest, waves.
12

13 37. Plaintiff Botelho and his team partner, Hugo Vau, competed throughout the day in
14 their designated heats. Shortly after 3.00 p.m. in Nazare that day, the event entered into its sixth
15 continuous hour of competition. Plaintiff had just completed riding a wave and had been picked
16 up on the tow sled secured behind the jet ski Hugo Vau was driving to be towed out again to
17 the wave-break area. As Vau accelerated through the breaking surf, he and plaintiff were
18 confronted with a converging, bending, U-shaped wave as two waves coming from opposite
19 directions barreled toward each other. Vau, using his extensive expertise and experience of
20 driving a jet ski in waves at Nazare, attempted to foam climb the smaller of the converging
21 waves but, such was the speed at which the waves converged, was unable to climb over and
22 past the waves in time.
23

24 38. The impact of the waves colliding with each other caught the jet ski and tow board
25 upon which plaintiff was lying and hurled plaintiff, Vau and the jet ski and board some 20 feet
26 into the air. Plaintiff then fell back towards the surf and struck his head and chest on the tow
27 sled as he hit the water. The impact rendered plaintiff unconscious and the swirling surf of the
28

1 impact zone area swept plaintiff beneath the surface.

2 39. When the incident happened, plaintiff and his partner had no backup safety ski
3 shadowing them. Defendants, WSL, Sharp, Eggers and DOES 1 through 50, inclusive, and
4 each of them, failed to provide the backup safety ski and driver as promised and concealed until
5 just hours before the event the fact that plaintiff and Vau would not have a backup safety ski
6 and driver, leaving plaintiff no opportunity to secure backup on his own. Defendants, and each
7 of them, further pressured plaintiff into competing without the agreed backup safety ski, telling
8 plaintiff he would not be permitted to compete unless he signed the liability waiver and agreed
9 to participate. Plaintiff executed the waiver under protest.

10
11 40. When the incident happened, plaintiff was unaware there was no rescue swimmer in
12 the impact zone at Praia Norte. In fact, plaintiff was led to believe, even when the Tow Surfing
13 Challenge was underway, that Kalani Lattanzi would be present as the rescue swimmer, as
14 represented by defendants, WSL, Sharp, Eggers and DOES 1 through 50, inclusive, and each of
15 them, and as listed in the participants' Information Package handout and several amendments.

16
17 In fact, not only was Kalani Lattanzi not present at Nazare on February 11, 2020, but plaintiff
18 learned at a later date from Kalani Lattanzi himself that he had never even been contacted by
19 WSL or any of their agents, representatives or employees to ask whether he would act as the
20 rescue swimmer for the Tow Surfing Challenge event. At no time before, during or since the
21 event has any named defendants, or anyone acting on their behalf, disclosed to plaintiff that
22 Kalani Lattanzi had never been even contacted to act as rescue swimmer that day. Defendants,
23 and each of them, actively concealed the fact of their misrepresentation as to his presence from
24 plaintiff. Plaintiff relied upon the false representation of defendants, and each of them, as to
25 Kalani Lattanzi's presence for the event and, had he known the truth that Kalani Lattanzi would
26 not be present to act as rescue swimmer in the impact zone – and, in fact, that there would be
27
28

1 no rescue swimmer in the impact zone at all – plaintiff would not have participated in the Tow
2 Surf Challenge event on February 11, 2020 and would not have suffered the injuries or the
3 extent of the injuries he did suffer when rendered unconscious in the roiling surf which is a
4 feature of the waters just off the Praia Norte beach.

5
6 41. As a result of being rendered unconscious by the impact of the wave flinging
7 plaintiff into the air and back down onto the tow board where he struck his head and chest,
8 plaintiff was unable to help himself escape the waves and needed immediate rescue. This did
9 not occur, initially because of the absence of a rescue swimmer and the lack of backup safety
10 ski and compounded by the inadequate communication system employed by defendant, and
11 each of them, which led to confusion among the rescue personnel who were present and
12 rendered plaintiff’s spotter unable to assist in efforts to locate plaintiff in the water.

13
14 42. The furious nature of the waves and surf off the beach at Praia Norte makes rescue
15 of a surfer in trouble very difficult. Defendants, and each of them, knew this and yet
16 deliberately and callously and with scant regard for the wellbeing of the competitors failed to
17 provide anything close to adequate safety protocols for the event. Furthermore, defendants, and
18 each of them, misrepresented the nature and extent of the safety measures they had taken to
19 guard against a competitor suffering serious injury. As a result of these misrepresentations and
20 failures of due care, plaintiff was left in the water unconscious for up to six minutes before he
21 was pulled from the sea not breathing when his body was washed close to the shore.

22
23 43. During the period of time plaintiff was unconscious in the water, he was spotted and
24 lost by several persons trying to ascertain what had happened and where he was located.
25 Plaintiff was struck by several giant waves which propelled him some distance, pulled him
26 under the surface and held his body down underwater before popping to the surface again in a
27 different area from where last spotted. Rescue attempts were made by his partner Hugo Vau,
28

1 despite himself suffering injury, and by a jet ski safety driver named Alemao Edilson Luis da
2 Assuncio who, despite not being assigned to plaintiff's team, or, it is understood any team, as a
3 safety driver, but rather acting in a general capacity over the length and breadth of the event's
4 area of ocean, realized there had been an incident and raced towards the scene. Alemao made
5 several attempts to rescue plaintiff, including trying to grab plaintiff's inert body but having to
6 release his hold to escape an incoming wave, going into the surf and grabbing plaintiff but
7 failing to pull plaintiff onto a tow board behind another jet ski which had arrived at the scene
8 when another incoming wave caused him to lose his hold on plaintiff and losing his grip on
9 plaintiff again when hit by yet another wave. When hit by this last wave, Alemao completely
10 lost sight of plaintiff and was frantically searching for him when plaintiff's body popped up
11 some distance away and close to the shore where lifeguards on the shore and other rescue
12 personnel were able to reach plaintiff Alex Botelho and bring him to dry land.

15 44. Despite the heroic efforts of plaintiff's partner Hugo Vau and the safety driver
16 known as Alemao, plaintiff suffered extensive injury from his long exposure to water while
17 unconscious. **The length of time Alex Botelho was unconscious in the surf materially and**
18 **significantly increased the nature and type of injury he suffered, and plaintiff only survived at**
19 **all because of his superior fitness through years of professional surfing.**

21 45. The nature and extent of plaintiff's injuries were significantly caused and/or
22 compounded by several factors directly caused and/or contributed to by the material
23 misrepresentations, intentional concealment, and gross negligence of defendants, and each of
24 them, in regard to the safety measures and protocols they represented would be in place for the
25 Nazare Tow Surfing Challenge event of February 11, 2020. As previously stated these include
26 the false representation that Kalani Lattanzi would be present to act as rescue swimmer in the
27 area where plaintiff's incident occurred, the fact that defendants failed to have any rescue
28

1 swimmer at all present in the impact zone, the failure to provide backup safety skis to shadow
2 each team, and failing to disclose that they were not complying with their agreement to do so
3 until the eve of the competition, the lack of any safety skis in the immediate area of plaintiff's
4 incident when it occurred, the lack of a clear safety plan or its execution, the inadequate and
5 indistinct radio communications whose clutter added to the confusion and rendered plaintiff's
6 own spotter unable to communicate with safety and rescue personnel, the inadequate number of
7 safety personnel onsite, the inadequate training of many of the safety personnel to deal with an
8 emergency situation, the lack of any safety personnel capable and qualified to swim and rescue
9 persons in the impact zone (none of the lifeguards stationed on the beach were able to get into
10 the water to attempt to swim to plaintiff's aid) and the general disregard for safety in favor of
11 promoting the extreme nature of Big Wave Surfing in order to attract viewers to events, both in
12 person and when broadcast, and in order to attract sponsors and advertisers which would
13 increase profits for defendant WSL, et al, through the excitement of risk.

14
15
16 46. Had it not been for the misrepresentations and failures of defendants, and each of
17 them, plaintiff would not have suffered such serious injury, or not been injured at all. Plaintiff
18 alleges and will establish through competent proof that he could, and should, have been rescued
19 from the surf much quicker than in fact he was and that the length of time he remained in the
20 water is directly attributable to the acts and omissions defendants, and each of them.

21
22 47. As a direct consequence of the incident, plaintiff suffered injury in body and mind.
23 Plaintiff was not breathing when pulled from the water and was without a pulse for a minute
24 until medical personnel were able to revive him as he lay on the beach. Plaintiff suffered a blow
25 to his head and chest initially which caused him to lose consciousness, and further suffered a
26 perforated lung, water in the lungs and damage to his chest musculature while in the water.

27 Upon revival on the beach, he was able to expel some water from his lungs upon vomiting but
28

1 was rushed to hospital in critical condition.

2 48. The night of February 11, 2020, after plaintiff had arrived at hospital, he was
3 suddenly unable to breathe and had to be intubated for machine-assisted breathing. He required
4 his lungs to be drained and further suffered a bacterial infection in his lungs from the sea water.
5 Plaintiff remained in intensive care for a week and was hospitalized for fifteen days before
6 being released home to continue his recovery.
7

8 49. Plaintiff's injuries left him weakened and unable to conduct a normal life for many
9 months after the incident during which he underwent physical therapy to help heal his injuries
10 and build his strength. The nature and extent of plaintiff's injuries and medical expenses will be
11 presented and proven according to proof herein.
12

13 50. Plaintiff further suffered psychological injury as a result of the Nazare incident and
14 has suffered nightmares of drowning since February 2020, sleep and mood disturbance, and a
15 gradually dissipating fear of entering ocean water again. Plaintiff has sought and been provided
16 with psychological care for his mental wellbeing in a nature and amount according to proof at
17 time of trial.

18 51. As a further direct result of the incident complained of herein, plaintiff has suffered
19 a loss of earnings and earning capacity due to his inability to continue his career as a
20 professional surfer, including competing in Big Wave surfing events, which, in turn, has
21 resulted in him falling from the top ten world rankings in the sport and losing the various
22 sponsorships and other financial and career-related aids he was able to earn through his
23 excellence in his sport, all to plaintiff's damage in an amount according to proof at trial.
24

25 52. Plaintiff believes and thereupon alleges that, as delineated herein, some or all of the
26 actionable conduct described herein committed knowingly, willfully and deliberately by
27 defendants, and each of them, in a manner designed to deceive plaintiff and conceal from
28

1 plaintiff the true nature of the safety precautions that would be in place at the February 2020
2 Nazare event and exhibited a want of even scant care, exposing plaintiff to injury in a manner
3 not inherent in the nature of Big Wave surfing as a sport and with a conscious disregard of the
4 rights and safety of plaintiff and the other participants in said event, all to plaintiff's damage
5 according to proof.

6
7 53. The specific causes of action arising out of the facts set forth in the general
8 allegations now follow.

9 **FIRST CAUSE OF ACTION**
10 **(Negligence/Gross Negligence)**

11 54. Plaintiff refers to and realleges paragraphs 1 through 53 of this complaint and, by
12 such reference, incorporates the same as though fully set forth herein.

13
14 55. On February 11, 2020, plaintiff suffered injury and damage as herein alleged while
15 participating in the Nazare Tow Surfing Challenge, the incident and resultant injuries and
16 damage being caused and/or materially contributed to by the acts and omissions of defendants,
17 and each of them as herein alleged. Defendants, and each of them, breached an owed duty of
18 due care by failing to exercise due care and diligence in the organizing, operation and
19 overseeing of said event in a manner as alleged in the general allegations herein. The nature of
20 these failings by defendants, and each of them, constitute and exhibit a want of even scant care
21 and an extreme departure from the ordinary standard of care incumbent on them. Such an
22 outrageous lack of care represents negligence of a scale and magnitude which raises its
23 character to that of gross negligence.
24

25
26 56. Although plaintiff was participating in a sport that some term extreme and which
27 inherently carries a risk of injury by its very nature, plaintiff's injuries, or the extent of his
28 injuries, were caused by risks created by defendants, and each of them, over and above any risk

1 inherent in the sport of Big Wave Surfing. Defendants, and each of them, are and were
2 obligated to take reasonable steps to minimize risk to participants which could be taken without
3 altering the nature of the sport. The failure to implement anything close to adequate safety
4 measures and protocols for the February 11, 2020, event, as herein alleged, is a violation of that
5 duty of due care that is incumbent on defendants, and each of them, based upon the totality of
6 the facts set forth herein concerning the organization, operation, and execution of the Nazare
7 Tow Surfing Challenge in February 2020.
8

9
10 57. Defendants' actions and omissions which exhibit such an outrageous want of even
11 scant care towards plaintiff and other event participants and exposed plaintiff to risks totally
12 outside the inherent dangers of Big Wave Surfing is of such gross negligence that plaintiff is
13 relieved of any express assumption of risk that may be asserted by defendants by way of any
14 waiver signed by plaintiff in regard to the event detailed herein.
15

16 58. As a direct and proximate result of the gross negligence of defendants, and each of
17 them, plaintiff suffered damage to his health and wellbeing as herein alleged and is thus entitled
18 to compensatory damages in an amount according to proof.
19

20 59. Plaintiff is further entitled to an award of general damages against defendants, and
21 each of them, in an amount according to proof.
22

23 **SECOND CAUSE OF ACTION**
24 **(Fraudulent Concealment)**

25 60. Plaintiffs refer to and reallege paragraphs 1 through 59 of this complaint and, by
26 such reference, incorporates the same as though fully set forth herein.
27

28 61. In regard to the safety measures and protocols that were to be in place at the
February 2020 Nazare Tow Surfing Challenge event, defendants, and each of them, solicited

1 opinions from the participants, including plaintiff, as to what safety measures would be
2 acceptable to the competitors. As a result of these discussions and defendants' own
3 determinations, defendant WSL, through their agents and managing employees, Bill Sharp and
4 Scott Eggers and DOES 1 through 30, inclusive, issued a written plan of safety measures and
5 protocols for the event. This plan is detailed in the general allegations herein, specifically
6 paragraphs 22, 23 and 26, and are incorporated as though fully set forth herein.
7

8 62. Defendants, and each of them, in fact had no intention of putting such safety
9 measures into place for the Nazare event and their representations were designed rather to
10 induce the participating surfers to agree to take part in the competition. Plaintiff relied on the
11 representations of defendants, and each of them, in agreeing to take part in the event.
12

13 63. Plaintiff reasonably relied upon the representations of defendants, and each of them,
14 that the agreed upon safety measures would be instituted for the event and that the defendants
15 would honor and abide by their agreement. Defendants, and each of them, fraudulently
16 concealed from plaintiff their actual intentions and plaintiff was unaware when he participated
17 in the event that many of the agreed safety measures would not be honored, as is set forth in the
18 general allegations herein, specifically paragraphs 30-33, which are incorporated as though
19 fully set forth herein.
20

21 64. As a direct and proximate result of the fraudulent concealment of their plan not to
22 comply with their representations as to safety by defendants, and each of them, plaintiff
23 suffered damage to his health and wellbeing as herein alleged and is thus entitled to
24 compensatory damages in an amount according to proof.
25

26 65. Plaintiff is further entitled to an award of general damages against defendants, and
27 each of them, in an amount according to proof.
28

1 and failing to provide for dedicated channels for each team, resulting in confusing cross-chatter
2 and interference with multiple voices on the available radio channels. As a result, plaintiff's
3 spotter on land, Jorge Leal, had no direct communication with the safety personnel in the water
4 and on the beach when the safety personnel were trying to locate plaintiff in and around the
5 impact zone;

6
7 d) Not only misrepresenting that Kalani Lattanzi would be present as the rescue
8 swimmer but also failing to provide for a rescue swimmer at all;

9 e) Failing to provide the minimum number of experienced water safety individuals
10 anticipated by the competitors, including plaintiff;

11 f) Failing to implement a clear structure and assign responsibilities to the water safety
12 personnel who were present for the event;

13 g) Failing to put in place a working strategy to deal with emergencies that might arise;
14 and,

15 h) Failing to train and organize the lifeguards on the beach to deal with water
16 emergencies and failing to ensure the lifeguards were supplied with adequate equipment
17 resulting in the lifeguards being unable to swim any distance in the impact zone to aid
18 surfers in need of rescue, including plaintiff herein.

19
20 151. Defendants, and each of them, made these representations and omitted material
21 facts with the intent of having plaintiff and other participants compete in the event without
22 adequate safety measures in place and to induce plaintiff and others to sign their contracts to
23 appear and to waive in writing any claim of liability against defendants, and each of them,
24 arising from the inherent risks of the sport of Big Wave Surfing. At the time plaintiff agreed to
25 enter into each agreement, plaintiff did not know, or have reason to know, that defendants, and
26 each of them, were making false and misleading representations and had omitted material facts.
27
28

1 including past, present, and future medical and related expenses, loss of earnings and loss of
2 earning capacity, according to proof;

3 2. For general damages in an amount according to proof;

4 3. For punitive and exemplary damages according to proof;

5
6
7 **OF AND FOR A FOURTH CAUSE OF ACTION**

8 1. For specific, compensatory, incidental, articulable and consequential damages,
9 including past, present, and future medical and related expenses, loss of earnings and loss of
10 earning capacity, according to proof;

11 2. For general damages in an amount according to proof;

12 3. For punitive and exemplary damages according to proof;

13
14
15 **AS TO ALL CAUSES OF ACTION**

16 1. For costs of suit; and,

17 2. For such other and further relief as is deemed just and proper.

18 DATED: February 9, 2022, at Los Angeles, California.

19
20
21 LAW OFFICES OF NEIL J. FRASER

22
23 NEIL J. FRASER
24 Attorney for Plaintiff, ALEXANDRE
25 ANTONIO KEJA BOTELHO
26
27
28