

**IN THE CIRCUIT COURT OF TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

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**ESTATE OF DAVID CARTER  
BY NICOLE CARTER, ADMINISTRATRIX,  
and NICOLE CARTER, Individually and as  
Next Friend and Natural Parent of  
OLIVIA CARTER, Deceased.**

**Plaintiffs,**

**v.**

No. CT-2106-21  
Div. V

**ROBERT DODSON, and  
MATTHEW SWEARENGEN.**

**Defendants.**

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**COMPLAINT**

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TO THE HONORABLE JUDGES OF THE CIRCUIT COURT

Plaintiff, the Estate of David Carter by Nicole Carter as Administratrix, and Nicole Carter, Individually and as Next Friend and Natural Parent of Olivia Carter, deceased, (Plaintiff), files this Complaint against the Defendants, Robert Dodson (Dodson) and Matthew Swearengen (Swearengen), and for her cause of action would show unto the Court the following:

## I.

### PARTIES

1. David Grayson Carter was an adult resident of Fayette County, Tennessee at the time the cause of action occurred. David Grayson Carter died on August 15, 2020.

2. Olivia Carter was the natural born daughter of David Grayson Carter and Nicole Carter, and was a resident of Fayette County, Tennessee at the time the cause of action occurred. Olivia Carter died on August 15, 2020.

3. Nicole Carter is the court appointed Administratrix of the Estate of David Carter.

4. Defendant, Robert Dodson is a resident of Fayette County, Tennessee and can be served with process at his residence, 292 Chelsia Lane, Munford, Tennessee 38058.

5. Defendant, Matthew Swearengen is a resident of Shelby County, Tennessee and can be served with process at his residence, 8607 Stablemill Lane, Cordova, Tennessee 38016.

6. Plaintiff, Nicole Carter, brings this Wrongful Death action arising in tort as a result of personal injuries and the death of David Grayson Carter and Olivia Carter, due to the Defendants' negligence on or about August 15, 2020.

## II.

### JURISDICTION AND VENUE

7. This is a wrongful death action arising in tort, pain and suffering, medical expenses incurred, loss of enjoyment of life, wrongful death, and other incidental damages which directly and proximately resulted from Defendants' negligence and gross negligence, which occurred on or about August 15, 2020, in Savannah, Hardin County, Tennessee.

8. This Court has jurisdiction over this action pursuant to inter alia, Tenn. Code Ann. § 16-10-101.

9. Venue is proper in this Court pursuant to inter alia, Tenn. Code Ann. § 20-4-101, because one or both Defendants reside in Shelby County, Tennessee.

### III.

#### **FACTUAL STATEMENT**

10. On August 15, 2020, David Grayson Carter and his daughter Olivia Carter were at Pickwick Lake in Savannah, Hardin County, Tennessee. David Grayson Carter, his daughter Olivia Carter, and his wife Nicole Carter often spent time at Pickwick Lake.

11. On the same date as above, David Grayson Carter and his daughter Olivia Carter, were on a 2018 Sea-Doo “Spark” personal watercraft jet ski.

12. At the same time and date as above, Defendant Matthew Swearengen was operating a 2017 Bombardier Sea-Doo RXT 300 jet ski.

13. The 2017 Bombardier Sea-Doo RXT being operated by Defendant Swearengen was owned in the name of Defendant Robert Dodson.

14. On August 15, 2020 at approximately 2:00 p.m., the weather conditions on Pickwick Lake were clear, with good visibility. The waves were calm at less than 6 (six) feet, with moderate (7-14 m.p.h.) winds.

15. At the same time and date as above, David Grayson Carter and his daughter Olivia Carter were on their Sea-Doo, leaving a populated area on Pickwick Lake known as Dry Creek Cove.

16. Dry Creek Cove is a cove of Pickwick Lake, to the southeast of Pickwick Dam. Dry Creek Cove exits out to roads that lead towards the Tennessee-Alabama state line.

17. Dry Creek Cove is a heavily populated area during holiday weekends and is also a well-populated area during non-holiday weekends.

18. Due to the ongoing Covid-19 Pandemic, Pickwick Lake and Dry Creek Cove has been well-populated each weekend. It is estimated that around a hundred boats were in the Dry Creek Cove area on the afternoon of August 15, 2020.

19. At the same time and date as above, Defendant Swearengen was riding his jet ski at a high rate of speed and violently collided with the jet ski driven by David Grayson Carter and Olivia Carter.

20. As a result of the accident, both David Grayson Carter and Olivia Carter were violently thrown from their jet ski and fell into the lake. Eyewitnesses immediately began providing emergency assistance to both David Grayson Carter and Olivia Carter.

21. At the same date and time, both David Grayson Carter and Olivia Carter lost consciousness and were brought to the nearest shoreline near the Bruton Branch boat ramp. As a result of his injuries, David Grayson Carter was pronounced dead on the scene. As a result of her injuries, Olivia Carter suffered permanent and non-recoverable brain damage and was pronounced dead later that evening at LeBonheur Children's Hospital in Memphis, Tennessee.

22. As a direct and proximate result of the misconduct described herein, David Grayson Carter and Olivia Carter died as a result of the grossly negligent actions of both Defendants. Defendant Matthew Swearengen negligently drove his jet ski at a rate of speed too fast for the heavily populated area of Dry Creek Cove and crashed directly into the jet ski driven by David Grayson Carter. Further, Defendant Robert Dodson negligently entrusted the jet ski to a person he knew or should have known would negligently cause injury to himself or others.

#### IV.

#### CAUSES OF ACTION

#### COUNT I – WRONGFUL DEATH OF DAVID GRAYSON CARTER

23. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth verbatim herein.

24. The acts and/or omissions of the Defendants alleged herein and detailed below caused the wrongful death of David Grayson Carter and were the direct and proximate cause, or were a proximate contributing cause, of Plaintiff's injuries entitling Plaintiff to recover damages.

25. Defendant Matthew Swearengen, in operating his jet ski, acted in reckless disregard of the safety and well-being of David Grayson Carter by riding his jet ski at a high level of speed within an area filled with other boats, jet skis, and people swimming in the lake.

26. Defendant Matthew Swearengen, in operating his jet ski, acted in reckless disregard of the safety and well-being of David Grayson Carter by not slowing his jet ski down at any time, or allowing slower or stopped swimmers, boats, and jet skis pass on the waters.

27. Defendant Matthew Swearengen, in operating his jet ski, acted in reckless disregard of the safety and well-being of David Grayson Carter by operating his jet ski while, upon information and belief, under the influence of alcohol and non-prescription illegal drugs, thereby lowering his ability to safely operate his jet ski on August 15, 2020.

28. Defendant Robert Dodson, acted with reckless disregard of the safety and well-being of David Grayson Carter and others, by allowing Mr. Swearengen the use of his jet ski when he knew or should have known that Mr. Swearengen was not capable of operating the jet ski in a safe manner.

29. Defendant Robert Dodson, acted with reckless disregard of the safety and well-being of David Grayson Carter and others, by not properly supervising Mr. Swearengen while he was operating Mr. Dodson's jet ski.

30. Defendant Robert Dodson, acted with reckless disregard of the safety and well-

being of David Grayson Carter and others, by not adequately ensuring that his jet ski would be operated by persons who were fit, suitable, and properly trained.

31. Defendant Robert Dodson, acted with reckless disregard of the safety and well-being of David Grayson Carter and others, when he allowed persons who constituted a potential menace, danger to the public, or those with otherwise unsuitable propensities to operate his jet ski.

32. Defendant Robert Dodson is vicariously liable to the Plaintiff for any damages arising out of the tortious conduct of Defendant Matthew Swearengen based on the doctrine of *vicarious liability*.

33. The acts of the Defendants are the proximate cause, or are a proximate contributing cause, of the death of David Grayson Carter and are the proximate cause, or are a proximate contributing cause of the injuries, damages, and losses suffered and sustained by David and which have been suffered and sustained by the Plaintiff.

## **COUNT II – WRONGFUL DEATH OF OLIVIA CARTER**

34. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth verbatim herein.

35. The acts and/or omissions of the Defendants alleged herein and detailed below caused the wrongful death of Olivia Carter and were the direct and proximate cause, or were a proximate contributing cause, of Plaintiff's injuries entitled Plaintiff to recover damages.

36. Defendant Matthew Swearengen, in operating his jet ski, acted in reckless disregard of the safety and well-being of Olivia Carter by riding his jet ski at a high level of speed within an area filled with other boats, jet skis, and people swimming in the lake.

37. Defendant Matthew Swearengen, in operating his jet ski, acted in reckless

disregard of the safety and well-being of Olivia Carter by not slowing his jet ski down at any time, or allowing slower or stopped swimmers, boats, and jet skis pass on the waters.

38. Defendant Matthew Swearengen, in operating his jet ski, acted in reckless disregard of the safety and well-being of Olivia Carter by operating his jet ski while, upon information and belief, under the influence of alcohol and non-prescription illegal drugs, thereby lowering his ability to safely operate his jet ski on August 15, 2020.

39. Defendant Robert Dodson, acted with reckless disregard of the safety and well-being of Olivia Carter and others, by allowing Mr. Swearengen the use of his jet ski when he knew or should have known that Mr. Swearengen was not capable of operating the jet ski in a safe manner.

40. Defendant Robert Dodson, acted with reckless disregard of the safety and well-being of Olivia Carter and others, by not properly supervising Mr. Swearengen while he was operating Mr. Dodson's jet ski.

41. Defendant Robert Dodson, acted with reckless disregard of the safety and well-being of Olivia Carter and others, by not adequately ensuring that his jet ski would be operated by persons who were fit, suitable, and properly trained.

42. Defendant Robert Dodson, acted with reckless disregard of the safety and well-being of Olivia Carter and others, when he allowed persons who constituted a potential menace, danger to the public, or those with otherwise unsuitable propensities to operate his jet ski.

43. Defendant Robert Dodson is vicariously liable to the Plaintiff for any damages arising out of the tortious conduct of Defendant Matthew Swearengen based on the doctrine of *vicarious liability*.

44. The acts of the Defendants are the proximate cause, or are a proximate

contributing cause, of the death of Olivia Carter and are the proximate cause, or are a proximate contributing cause of the injuries, damages, and losses suffered and sustained by Olivia and which have been suffered and sustained by the Plaintiff.

### **COUNT III – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

45. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth verbatim herein.

46. Defendant Matthew Swearengen owed a duty to David Grayson Carter and Olivia Carter to operate his jet ski in a safe and reasonable manner.

47. Defendant Robert Dodson owed a duty to David Grayson Carter and Olivia Carter to ensure his jet ski would be operated by persons who were fit and suitable under the circumstances.

48. Both Defendants breached their combined duty to David Grayson Carter and Olivia Carter.

49. This breach of duty caused severe personal injuries, pain and suffering, and death to both David Grayson Carter and Olivia Carter.

50. This breach of duty was the proximate cause or were a proximate contributing cause of the injuries and death suffered by David Grayson Carter and Olivia Carter.

51. Plaintiff Nicole Carter was on a boat in Dry Creek Cove when her husband and daughter left on their jet ski to go around the lake on August 15, 2020.

52. On the same date as above, Plaintiff began to worry when her husband and daughter had not returned.

53. On the same date as above, boating police and first responders from the Tennessee Wildlife Resources Agency (TWRA), began convening on the scene of the accident,



not far from where Plaintiff was on her boat.

54. On the same date as above, a family friend whose boat was tied up to the Plaintiff's went to the scene of the accident and saw that David and Olivia were involved and had been pulled onto shore.

55. On the same date as above, a member from the TWRA came to retrieve Plaintiff Nicole Carter and inform her of the accident. Plaintiff left immediately on the TWRA boat to get in a car to meet her daughter Olivia at LeBonheur Children's Hospital in Memphis, Tennessee.

56. Plaintiff suffered severe emotional injury at seeing first responders race past her boat to the accident scene where her husband and daughter were being pulled out of the lake.

57. Plaintiff suffered severe emotional injury at seeing her daughter at LeBonheur Children's Hospital and being informed that she had suffered permanent and likely fatal brain damage. Plaintiff was informed that her husband David Grayson Carter was pronounced dead at the scene at Pickwick Lake by TWRA agents before she left for Memphis.

58. Plaintiff Nicole Carter's physical location at the time of the event was near the accident such that her emotional injuries are a foreseeable result of the Defendants' combined negligence.

59. Plaintiff has therefore established a prima facie case of Negligent Infliction of Emotional Distress permitting her recovery under this legal doctrine.

#### **COUNT IV - NEGLIGENCE**

60. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth verbatim herein.

61. Defendant Matthew Swearengen owed a duty to David Grayson Carter and Olivia Carter to operate his jet ski in a safe and reasonable manner.

62. Defendant Swearengen breached this duty when he drove his jet ski at a high rate of speed through countless boats, swimmers, and other jet skis in the lake. Further, he breached this duty when he collided with the jet ski, which was sitting idly, being driven by David Grayson Carter.

63. As a result of this breach, David Grayson Carter and Olivia Carter suffered severe personal injuries and death.

64. Defendant Robert Dodson owed a duty to David Grayson Carter and Olivia Carter to ensure his jet ski would be operated by persons who were fit and suitable under the circumstances.

65. Defendant Robert Dodson breached this duty when he negligently entrusted his jet ski to a person not suitable under the circumstances.

66. This breach of duty caused severe personal injuries, pain and suffering, and death to both David Grayson Carter and Olivia Carter.

67. But for the Defendants' acts and omissions, Plaintiff's decedents would not have died at Pickwick Lake and LeBonheur Children's Hospital.

68. Defendants' conduct, acts and/or omissions were negligent, willful, and reckless or constitute gross negligence. Defendants' acts and omissions were the direct and proximate cause of death of David Grayson Carter and Olivia Carter.

69. Plaintiff, Nicole Carter is entitled to recover from the Defendants for the death of her husband and daughter, and all other incidental damages caused by the Defendants' negligence.

#### **COUNT V – NEGLIGENT ENTRUSTMENT**

70. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth

verbatim herein.

71. Defendant Robert Dodson owed a duty to David Grayson Carter and Olivia Carter to supervise and entrust the use of his jet ski to those persons suitable, competent, qualified, experienced, and diligent in the usage of such.

72. Defendant Robert Dodson owed a duty to David Grayson Carter and Olivia Carter to properly supervise and ensure that his jet ski was being used by someone suitable, competent, qualified, experienced, and diligent in the usage of such.

73. Defendant Robert Dodson owed a duty to David Grayson Carter and Olivia Carter to ensure his jet ski was not used by someone with unsuitable propensities, or those with a mental or physical trait or characteristic, to deem the usage of such as dangerous to the public or as a hazard.

74. Defendant Robert Dodson breached this duty when he allowed Mr. Swearengen to use his jet ski.

75. Defendant Robert Dodson is vicariously liable to the Plaintiff for any damages arising out of the tortious conduct of Defendant Matthew Swearengen based on the doctrine of *vicarious liability*.

76. This breach was the proximate cause of the severe injuries and death suffered by both David Grayson Carter and Olivia Carter, as well as the severe, emotional distress and injuries suffered by the Plaintiff.

#### **COUNT VI – LOSS OF CONSORTIUM**

77. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth verbatim herein.

78. Due to the combined negligence of the above listed Defendants, Plaintiff has

suffered severe emotional and psychological damages. Plaintiff has lost both her husband and her daughter, as a result of the boating accident detailed herein.

79. Namely, Plaintiff has been deprived of the love, guidance, care, protection, companionship, and affection from her husband David Grayson Carter.

80. Namely, Plaintiff has been deprived of the love, care, companionship, and affection from her daughter Olivia Carter.

81. Pursuant to T.C.A. § 20-5-113, Plaintiff is permitted to recover for the above listed damages resulting out of the wrongful death suffered by the combined negligence of both Defendants.

#### V.

#### **DEMAND FOR JURY TRIAL**

82. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth verbatim herein.

83. Pursuant to Rule 38 of the Tennessee Rules of Civil Procedure, Plaintiff demands a trial by jury of all issues triable.

#### VI.

#### **DAMAGES**

84. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth verbatim herein.

85. As a proximate cause of the above-described acts of the Defendants, David Grayson Carter and Olivia Carter were wrongfully deprived of their lives, and the Plaintiff was also deprived of their companionship, love, and affection. Additionally, the Plaintiff has suffered injuries, damages, and losses, including (but not limited to) the following:

- a. David Grayson Carter's pain and suffering, loss of the joy of life, and other losses caused by the injuries he sustained in the accident;
- b. Olivia Carter's pain and suffering, loss of the joy of life, and other losses caused by the injuries she sustained in the accident;
- c. Medical, hospital, doctor, and funeral expenses;
- d. David Grayson Carter's lost wages, loss of income, and loss of wage earning capacity;
- e. Loss of the love, society, companionship, affection, and loss of the normal parent-child relationship which existed between Nicole Carter and her daughter Olivia;
- f. Loss of the love, consortium, companionship, affection, and loss of the normal spousal relationship which existed between David and the Plaintiff;
- g. Loss of aid, services, and physical assistance provided by David for the Plaintiff;
- h. Infliction of emotional injuries and distress;
- i. Exemplary or punitive damages; and,
- j. Other injuries, damages, and losses suffered and sustained by the Plaintiff which may be shown upon the trial of this action.

## **VII.**

### **PUNITIVE DAMAGES**

86. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth verbatim herein.

87. The defendant's actions were intentional, fraudulent, malicious, or reckless and as such and pursuant to T.C.A § 29-39-104, entitle Plaintiff to an award for punitive damages as determined by a trier of fact.

## **VIII.**

**PRAYER FOR RELIEF**

**WHEREFORE PREMISES CONSIDERED**, Plaintiff sues the Defendants jointly and severally for the injuries described and pray for judgement for compensatory damages against the Defendants in such amount as may appear fair and reasonable to a jury, and for all such other relief, both general and specific, to which they may be entitled under the premises.

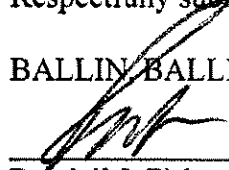
**WHEREFORE**, Plaintiff sues the Defendant for the following relief and requests judgement against the Defendant for:

1. Compensatory Damages in the amount of Two Million Five Hundred Thousand (\$2,500,000.00) dollars;
2. Loss of consortium for Plaintiff, Nicole Carter, in the amount of Two Million Five Hundred Thousand (\$2,500,000.00) dollars;
3. Punitive Damages in the amount of Five Million (\$5,000,000.00) dollars;
4. All costs and expenses of this action; and
5. Such other and further relief to which the Plaintiff may be entitled under law and equity.

Respectfully submitted, this the 24 day of May 2021.

Respectfully submitted,

BALLIN BALLIN & FISHMAN, P.C.

  
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