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10 Attorneys for Plaintiffs,
11 ELENA MATYAS, individually and as Successor-in-Interest to ROXIE
12 MIRABELLE FORBES; and DOUGLAS FORBES, individually and as Successor-
13 in-Interest to ROXIE MIRABELLE FORBES

14
15 **UNITED STATES DISTRICT COURT**
16
17 **CENTRAL DISTRICT OF CALIFORNIA**
18

19 ELENA MATYAS, individually and as
20 Successor-in-Interest to ROXIE
21 MIRABELLE FORBES; and
22 DOUGLAS FORBES, individually and
23 as Successor-in-Interest to ROXIE
24 MIRABELLE FORBES,

25 Plaintiffs,

26 v.

27 SUMMERKIDS, INC., a California
28 Corporation, et al.,

Defendants.

Case No. 2:21-cv-04163 JAK (JDEx)

[Assigned to the Hon. John A. Kronstadt,
Courtroom 10B]

AFFIDAVIT OF JOHN McCALLUM

Complaint filed: November 5, 2019

Trial Date: None Set.

1 I, John McCallum, solemnly declare:

2 1. I am over the age of 21 and am a resident of the State of Kansas. If
3 called upon to do so, I could and would testify to the following from my own
4 personal knowledge.

5 2. Prior to February 6, 2023, I was Senior Director Quality Assurance
6 Policy, Strategy and Execution (hereinafter "ARC").

7 3. For more than 11 years I dedicated my professional life to the ARC and
8 rose through the ranks from Corporate Account Specialist (March 2012-November
9 2012) to Program Manager, LTP - Division 7 (November 2012 – August 2014) to
10 Strategic Partner Manager (August 2014 – March 2017) to Senior Manager,
11 Instructor Development and Quality Assurance (March 2017 – February 2021) to my
12 final role as Senior Director of Quality Assurance (February 2021 – February 2023),
13 all of which illustrates my comprehensive engagement with and understanding of
14 practices to ensure ARC program and training compliance standards.

15 4. These programs and training standards in which I was involved for those
16 11 years with the ARC included aquatics certification and verification.

17 5. I declined any severance package from the ARC, largely due to my
18 knowledge of improper practices, including that which led to this declaration.

19 6. At the time of six year-old decedent Roxie Forbes' ("Decedent") death
20 at Summerkids camp, the ARC was fully aware of deficiencies in certification
21 programs and chose not to do anything about them.

22 7. While the acts of Summerkids and ARC representative Andrew
23 Cervantes contributed to the death of Decedent on June 28, 2019, the ARC's refusal
24 to fix its certification programming, despite my repeated pleadings was also a cause
25 of Decedent's death.

26 8. The ARC is a \$3.8 billion organization from which it manages a \$120 –
27 \$150 million certification program portfolio.

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1 9. The general public, which has placed an enormous amount of trust in the
2 ARC for more than one hundred years, should know of the ARC’s behavior in this
3 matter.

4 10. In or around 2016, I warned Senior Vice President of Product
5 Management and Platform Development, Dominick Tolli (hereinafter “Tolli”), in
6 person and by email, providing him with a full list of system deficiencies and
7 proposed remedies – including all aquatics certifications. These systems were clearly
8 deficient.

9 11. From 2016 to the time of Decedent’s drowning death and thereafter,
10 Tolli’s ARC team led ARC in decisions impacting learning management systems,
11 which are used to identify the current status and future eligibility of certification
12 courses, including aquatics certifications.

13 12. The SABA learning management system is a computer program system
14 used for managing ARC certification of students and instructors, and SABA was the
15 only learning management system actually utilized by the ARC from 2010 – 2020.
16 Tolli briefly evaluated other learning management systems including CLARA and
17 Cornerstone, all of which he abandoned because they did not resolve deficiencies in
18 the ARC’s tracking and verifying of certifications. Tolli and the ARC continued to
19 deploy SABA despite being well aware that it too was inadequate for verification of
20 certification programs.

21 13. In addition to its systems deficiencies, at the time of Decedent’s death,
22 the ARC did not use actual staff members to serve as a second line of defense against
23 certification fraud or other critical issues. In fact, the ARC formerly used its Aquatics
24 Specialists to audit aquatics sites and ARC instructors – including lifeguard
25 instructors – in order to ensure compliance with ARC standards. Instead, the ARC
26 abandoned that model and morphed the Aquatics Specialists into Training sales roles
27 in order to optimize revenue instead of maintaining a critical line of defense against
28 potential harm. This reduced institutional knowledge about Authorized and Licensed

1 Training Providers. Therefore, if a lifeguard instructor purportedly trained 15 camp
2 counselors as lifeguards, not a single human resource at the ARC was vetting tests,
3 training documents, and course records submitted to SABA. In fact, the ARC did not
4 employ any critical document collection process whatsoever.

5 14. In the case of Andrew Cervantes, he inputted into SABA that he trained
6 and certified camp counselors as lifeguards all on the very same day. That violates
7 the ARC's lifeguard training standards. Additionally, because of ARC's known
8 certification deficiencies, Cervantes was able to input himself into the SABA system
9 as having certified himself both as lifeguard and instructor, which was clearly
10 improper but which Cervantes was able to do under the deficiencies in ARC's
11 certification system to which Cervantes has since admitted under oath. An absent
12 auditing/oversight process enabled Cervantes to improperly do what he did for years,
13 wrongfully certifying himself and others because of the known deficiencies in the
14 ARC's certification system.

15 15. Every such ARC certification comes by way of an honor system.
16 Meaningful oversight and accountability are virtually null and void.

17 16. Before 2021, as a result of this oversight gap ... it only took one
18 fraudulently certified lifeguard instructor – such as Cervantes – to gain access to the
19 SABA system in order to start an endless domino effect of fraudulent certifications.
20 Once someone like Cervantes had access to the system, the individual could
21 distribute any certifications – including non-aquatics certifications for advanced
22 medical service training such as the 55-hour Emergency Medical Response EMR
23 training – to any third party.

24 17. The ongoing resistance to change by upper management placed our
25 Quality Assurance team in an untenable position. I continued to warn not only Tolli,
26 but also fellow department leadership, including Director of Service Delivery
27 Jonathan Comyn, my direct supervisor at the time of Decedent's death and Tonya
28 Craft, the Executive Director of Service Delivery.

1 18. An abundance of email correspondence is available for verification
2 through access to the ARC email server and individuals whom I engaged, including
3 President of Training Services Jack McMaster, Comyn, Tolli, Craft, Senior Product
4 Manager Nicole Steffens, Senior Product Manager of Aquatics Stephanie Shook and
5 Senior product Manager of Aquatics Joshua Rowland.

6 19. A considerable number of such persons – including McMaster, Comyn,
7 Tolli, Craft, Steffens, Shook and Rowland – were on the receiving end of my
8 warnings and suggestions.

9 20. I made the following clear to ARC management and subject matter
10 experts – including McMaster, Comyn, Tolli, Craft, Steffens, Shook, Rowland and
11 Vice President of Information Technology Joey Zito – that ignoring my ongoing
12 requests to correct these systems and practices:

- 13 – could lead to dire outcomes;
- 14 – could deceive the very public that, in countless matters, entrusts
15 the ARC with its lives [In fact, I often mentioned to said upper management
16 how it was “bad optics” to not embrace critical change];
- 17 – could, for example, enable lifeguard instructors to game the
18 system by issuing invalid certifications, not only for themselves, but for others
19 [I now know this is the case that ended in the death of the decedent].

20 21. Mr. Tolli had multiple opportunities prior to the decedent’s death to
21 address and remediate these dangerous certification deficiencies but chose not to over
22 many years, from at least 2013 forward.

23 22. In 2017, I continued to alert Tolli and others – including Comyn,
24 Steffens, Shook and Rowland – about my concerns. I provided a laundry list of easily
25 implementable systems and processes upgrades – effectively what I believed should
26 be the ARC Rules of the Road for Quality Assurance.

27 23. Examples of the simple means by which the ARC could all but eliminate
28 fraud and potential harm included ID checks for training program applicants, system

1 cross-checks to catch bad actors who sought to secure fraudulent certifications and
2 notarization requirements for Licensed Training Provider Agreements.

3 24. Mr. McMaster subsequently had multiple opportunities over the years
4 leading up to and through Decedent's death to address and remediate these dangerous
5 certification deficiencies. Like Mr. Tolli, he chose not to.

6 25. Prior to the time of Decedent's death in 2019, I had warned McMaster,
7 Tolli, Craft, Steffens and Shook about the dangerous certification deficiencies. I am
8 unaware of any of them acting on my pleadings and solutions regarding the
9 dangerous ARC certification deficiencies that existed at the time of Decedent's death.

10 26. During this time and through Decedent's death, McMaster, Tolli, Craft,
11 Steffens and Shook preferred to do what was convenient, such as "hide behind the
12 honor system," instead of doing what was right by correcting dangerous certification
13 deficiencies.

14 27. During this time and through Decedent's death, Tolli, McMaster, Craft,
15 Steffens and Shook were fully aware that the Authorized (Instructor) Provider and
16 Licensed Training Provider Agreements were utilized for the primary purposes of
17 protecting/indemnifying the ARC, instead of protecting the public.

18 28. From my knowledge as former Program Manager of the LTP Division,
19 the ARC uses its LTP Agreement and Instructor Conduct Agreement as a means to
20 avoid liability rather than to ensure adequate training and program standards. In the
21 case of Decedent, the ARC knew these issues were occurring and embedded
22 language in these agreements to blame its trainer or Licensed Training Provider
23 rather than itself. It is less costly to replace an agreement than it is to replace a
24 learning management system.

25 29. The ARC demands that lifeguard instructors and trainers represent
26 themselves under the ARC brand. This language was actually embedded into the
27 Authorized and Licensed Training Provider Agreements and Conduct Agreements.
28 The ARC also exchanges money with these instructors. The ARC demands

1 recertifications and other practices to keep instructors allegiant to the ARC. Yet,
2 should harm of any kind occur like that which happened to Decedent, the ARC
3 claims that these ARC-branded instructors are in no way employees or even
4 contractors and are, instead, fully responsible for their own actions. This directly
5 contradicts the fact that the ARC's proprietary Training and Certification website
6 page promotes and links to all ARC Licensed Training Providers, replete with course
7 details, provider contact information and fees, from which the ARC receives a
8 percentage. It is widely known to the ARC that the general public does not know the
9 difference between the ARC and the Licensed Training Provider.

10 30. There is no ARC mandate to list the facilities in a Licensed Training
11 Provider Agreement. By listing the facilities the ARC could check the pool
12 specifications to see if it meets course requirements.

13 31. The ARC Licensed Training Provider Agreement states that the LTP
14 must "Permit Red Cross to perform random observations of LTP's courses." The
15 ARC does not audit its own lifeguard instructors, which would ensure that the ARC
16 and its Licensed Training Providers are actually implementing required training and
17 testing. This is exactly the case with Decedent. No ARC representative ever went to
18 the camp to see if the camp had a pool, if that pool was safe and if Cervantes was
19 actually training and testing at all, let alone properly. The ARC only investigates after
20 a tragedy occurs.

21 32. I continually told ARC upper management – including McMaster, Tolli,
22 Craft, Comyn, Steffens, Shook and Rowland – prior to Decedent's drowning, that it
23 was just a matter of time before something bad was going to happen – "it's a matter
24 of when, not if," is what I specifically stated.

25 33. No Licensed Training Provider Agreement or Conduct Agreement can
26 mask the fact that the ARC knew of the issues and the inherent dangers in doing
27 business as usual.

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1 34. Mr. Forbes submitted a demand letter on August 10, 2020, to ARC
2 General Counsel Phyllis Harris and VP Chief Counsel Lori Polacheck. ARC Counsel
3 Polacheck forwarded documents to me, including deposition transcripts.

4 35. Everything I had warned ARC upper management about – including
5 McMaster, Tolli, Comyn, Steffens, Shook and Rowland – had now tragically come
6 true.

7 36. I drafted a root cause analysis and an impact analysis and shared that
8 with my direct supervisor Comyn.

9 37. The ARC directed me to revoke all lifeguard certifications that were
10 issued through Cervantes to the Summerkids camp counselors – and I did so on
11 September 1, 2020. On the same date, at the ARC’s direction, I also permanently
12 revoked all of Cervantes’ ARC certifications and I further removed Cervantes from
13 all AP/LTP Agreements in which Cervantes was listed as an instructor. At the ARC’s
14 direction, I also nullified the Licensed Training Provider Agreement between the
15 ARC and Summerkids on the same date. To me, this moment appeared to be an
16 admission of guilt by the ARC.

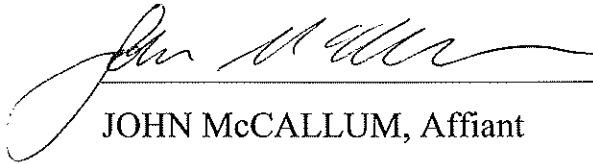
17 38. ARC informed Mr. Forbes that the revocations were, in no way, an
18 admission of wrongdoing by the ARC itself. ARC did what I previously alluded to,
19 which was point the finger squarely at Cervantes and Summerkids.

20 39. Once I revoked certifications and notified relevant parties, and once
21 ARC became a named party in the Forbes lawsuit, ARC Counsel took command of
22 the situation.

23 40. Although the ARC revoked all Summerkids lifeguard certifications in
24 late 2020, the ARC did not preclude these very same counselors from reapplying for
25 certification, despite the fact that they certainly knew how they leveraged a broken
26 system to their advantage. These lifeguards had anywhere from 4–7 hours of
27 purported training and no testing. They certainly knew that was not the program
28 requirement of 27+ hours. Despite this tragic drowning, the ARC enabled itself to

1 earn more income from some of the very people who should never again be allowed
2 to supervise aquatics environments, let alone aquatics environments specifically
3 designed around children.

4 I declare under penalty of perjury under the laws of the State of California that
5 the foregoing is true and correct. Executed on April 21, 2023, at Ozark, Missouri.

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8 JOHN McCALLUM, Affiant

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1 THE STATE OF MISSOURI, COUNTY OF Camden

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3 On this 21st day of April in the year 2023, before me, a Notary
4 Public in and for said state, personally appeared John Alexander McCallum
5 known to me to be the person who executed the within affidavit, and
6 acknowledged to me that he/she executed the same for the purposes therein stated.

7
8 Subscribed and sworn to before me, this 21st day of April 2023.

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11 Signature: Shaunna L. Wood

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13 Name: Shaunna Wood

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15 My commission expires: July 21, 2025

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SHAUNNA LYNN WOOD NOTARY PUBLIC - NOTARY SEAL STATE OF MISSOURI COMMISSIONED FOR CAMDEN COUNTY MY COMMISSION EXPIRES JUL. 21, 2025 ID #21364818
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