

<p>DISTRICT COURT, GARFIELD COUNTY COLORADO</p> <p>109 8<sup>th</sup> Street, Suite 104 Glenwood Springs, CO 81601 Tele: 970-928-3065</p>	<p>DATE FILED: June 10, 2022 11:47 AM FILING ID: 1F5F2AF41335A CASE NUMBER: 2022CV4</p> <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>Plaintiffs: ESTIFANOS DAGNE and RAHEL ESTIFANOS,</p> <p>v.</p> <p>Defendants: GLENWOOD CAVERNS HOLDINGS LLC d/b/a GLENWOOD CAVERNS ADVENTURE PARK, ALTITUDE RIDES AND ATTRACTIONS, LLC, SOARING EAGLES, INC., TOBY WILLIAMS, INDIVIDUALLY, AND STEVE OCHOA, INDIVIDUALLY.</p>	
<p>Counsel for Defendants Glenwood Caverns Holdings LLC, Toby Williams and Steve Ochoa:</p> <p>Jordan L. Lipp, #34672 Lexie A. Davis, #54106 CHILDS McCUNE LLC 821 17<sup>th</sup> Street, Suite 500 Denver, Colorado 80202 Telephone: (303) 296-7300 Facsimile: (720) 625-3637 Email: <a href="mailto:jlipp@childsmccune.com">jlipp@childsmccune.com</a> <a href="mailto:ldavis@childsmccune.com">ldavis@childsmccune.com</a></p>	<p>Case Number: 2022CV4</p> <p>Div.: F                      Ctrm: A</p>
<p><b>DEFENDANT GLENWOOD CAVERNS HOLDINGS, LLC’S ANSWER AND JURY DEMAND TO PLAINTIFFS’ FIRST AMENDED COMPLAINT AND JURY DEMAND</b></p>	

Defendant Glenwood Caverns Holdings, LLC d/b/a Glenwood Caverns Adventure Park (“Glenwood Caverns”), by and through its attorneys, Childs McCune LLC, hereby submits its Answer to Plaintiffs’ First Amended Complaint and Jury Demand (“First Amended Complaint”).

## **PARTIES, JURISDICTION, AND VENUE**

1. Glenwood Caverns is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the First Amended Complaint, and therefore denies the same.

2-8. Glenwood Caverns admits the allegations contained in Paragraphs 2-8 of the First Amended Complaint.

9. Paragraph 9 of the First Amended Complaint is not directed to Glenwood Caverns and therefore does not require a response. To the extent a response is required, Glenwood Caverns incorporates its designation of responsible nonparties filed on March 18, 2022, and except as so stated, lacks sufficient information to form a belief as to the truth of the allegations, and therefore denies the allegations.

10. Paragraph 10 of the First Amended Complaint is not directed to Glenwood Caverns and therefore does not require a response. To the extent a response is required, Glenwood Caverns lacks sufficient information to form a belief as to the truth of the allegations, and therefore, denies the allegations.

11. Glenwood Caverns admits that jurisdiction and venue are proper in Garfield County, Colorado.

## **FACTUAL ALLEGATIONS**

12. Glenwood Caverns admits that it is the owner and operator of an adventure park called Glenwood Caverns Adventure Park.

13-15. Glenwood Caverns admits the allegations contained in Paragraphs 13-15 of the First Amended Complaint.

16. Glenwood Caverns admits the allegations contained in Paragraph 16 of the First Amended Complaint.

17. Upon information and belief, Glenwood Caverns admits the allegations in Paragraph 17 of the First Amended Complaint.

18. Glenwood Caverns admits that it purchased the Haunted Mine Drop Ride from Soaring Eagle in 2017 but notes that Soaring Eagle and/or Altitude Rides continued to service, maintain, and provided updated information and manuals for the Haunted Mine Drop Ride after Glenwood Caverns purchased the ride from Soaring Eagle.

19. Paragraph 19 of the First Amended Complaint is not directed to Glenwood Caverns and therefore does not require a response. To the extent a response is required, Glenwood Caverns incorporates its designation of responsible nonparties filed on March 18,

2022, and except as so stated, lacks sufficient information to form a belief as to the truth of the allegations, and therefore denies the allegations.

20-23. Glenwood Caverns admits that the Haunted Mine Drop has a minimum height requirement of forty-six (46) inches, as set forth by the manufacturer, and as such children who meet the height requirement may ride the Haunted Mine Drop. Except as so admitted, Glenwood Caverns denies the allegations contained in Paragraphs 20-23.

24-25. Glenwood Caverns admits the allegations contained in Paragraphs 24-25 of the First Amended Complaint.

26. Glenwood Caverns denies the allegations contained in Paragraph 26 of the First Amended Complaint.

27-28. Glenwood Caverns admits the allegations contained in Paragraphs 27-28 of the First Amended Complaint.

29-43. Paragraphs 29-43 of the First Amended Complaint are not directed to Glenwood Caverns and therefore do not require a response. To the extent a response is required, Glenwood Caverns incorporates its designation of responsible nonparties filed on March 18, 2022, and except as so stated, lacks sufficient information to form a belief as to the truth of the allegations, and therefore denies the allegations.

44. Glenwood Caverns is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 44 of the First Amended Complaint, and therefore denies the same.

45. Glenwood Caverns admits that the Colorado Division of Oil and Public safety investigated the death of Ms. Wongel Estifanos and issued an Accident Investigation Report.

46-55. Glenwood Caverns admits that the Colorado Division of Oil and Public Safety issued an Accident Investigation Report regarding its findings, which speaks for itself, and that the ride has a manual, which speaks for itself. Except as so stated, Defendant denies the allegations contained in Paragraphs 46-55 of the First Amended Complaint.

56-57. Glenwood Caverns denies the allegations contained in Paragraphs 56-57 of the First Amended Complaint.

58. Upon information and belief, Glenwood Caverns admits that the Estifanos family visited the park on September 5, 2021. Glenwood Caverns is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 58 of the First Amended Complaint, and therefore denies the same.

59. Glenwood Caverns admits that Mr. Williams and Mr. Ochoa were employed by Glenwood Caverns on September 5, 2021 and were working on the Haunted Mine Drop on that date.

60. Glenwood Caverns admits that Ms. Wongel Estifanos rode the Haunted Mine Drop on September 5, 2021. Except as so stated, Glenwood Caverns is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 60 of the First Amended Complaint, and therefore denies the same.

61. Glenwood Caverns admits the allegations in Paragraph 61 of the First Amended Complaint.

62. Paragraph 62 of the First Amended Complaint states a legal conclusion to which no response is required. To the extent a response is required, Glenwood Caverns admits that Mr. Williams and Mr. Ochoa were acting within the course and scope of their employment with Glenwood Caverns while operating the ride and denies the imposition of any further duties or implications not consistent with Colorado law.

63. Glenwood Caverns admits the allegations in Paragraph 63 of the First Amended Complaint.

64. Glenwood Caverns is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 64 of the First Amended Complaint, and therefore denies the same.

65. Glenwood Caverns admits that combined, Mr. Williams and Mr. Ochoa went to Ms. Wongel Estifanos' seat at least four times prior to launching the ride.

66. Glenwood Caverns is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 66 of the First Amended Complaint, and therefore denies the same.

67-68. Glenwood Caverns denies the allegations contained in Paragraphs 67-68 of the First Amended Complaint.

69-70. Glenwood Caverns is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 69-70 of the First Amended Complaint, and therefore denies the same.

71. Glenwood Caverns admits that Ms. Wongel Estifanos tragically died but is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 71 of the First Amended Complaint, and therefore denies the same.

72. Glenwood Caverns is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 72 of the First Amended Complaint, and therefore denies the same.

73. Glenwood Caverns admits the allegations contained in Paragraph 73 of the First Amended Complaint.

74. Glenwood Caverns admits that the Colorado Division of Oil and Public Safety investigated the death of Ms. Wongel Estifanos and issued an Accident Investigation Report regarding its findings, which speaks for itself. Except as so admitted, Glenwood Caverns denies the allegations contained in Paragraph 74 of the First Amended Complaint.<sup>1</sup>

75. Glenwood Caverns denies the allegations contained in Paragraph 75 of the First Amended Complaint.

76-79. Glenwood Caverns admits that the Colorado Division of Oil and Public Safety investigated the death of Ms. Wongel Estifanos and issued an Accident Investigation Report regarding its findings, which speaks for itself. Except as so admitted, Glenwood Caverns denies the allegations contained in Paragraphs 76-79 of the First Amended Complaint, including subparts.

80-86. Glenwood Caverns admits the allegations in Paragraphs 80-86 of the First Amended Complaint.

87-92. Glenwood Caverns admits that an email was sent to it on July 25, 2018, and another email was sent to it in August of 2019. Those emails speak for themselves. Except as so admitted, Glenwood Caverns denies the allegations contained in Paragraphs 87-92 of the First Amended Complaint.

93-95. Glenwood Caverns denies the allegations in Paragraphs 93-95 of the First Amended Complaint.

96-99. Glenwood Caverns admits that an email was sent to it on July 25, 2018, and another email was sent to it in August of 2019. Those emails speak for themselves. Except as so admitted, Glenwood Caverns denies the allegations contained in Paragraphs 96-99 of the First Amended Complaint.

100-103. Glenwood Caverns admits that the Colorado Division of Oil and Public Safety investigated the death of Ms. Wongel Estifanos and issued an Accident Investigation Report regarding its findings, which speaks for itself. Except as so admitted, Glenwood Caverns denies the allegations contained in Paragraphs 100-103 of the First Amended Complaint.

104-105. Glenwood Caverns denies the allegations in Paragraphs 104-105 of the First Amended Complaint.

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<sup>1</sup> The First Amended Complaint is replete with the words “kill”, “killed,” and “killing.” And it primarily uses this pejorative and inflammatory language completely disconnected with the allegations involving C.R.S. § 13-21-203(1)(a). Such inflammatory language is not proper or appropriate in a civil action. *E.g.*, *BNSF Ry. Co. v. LaFarge Sw., Inc.*, No. CIV. 06-1076 MCA/LFG, 2009 WL 9144604, at \*13 (D.N.M. Feb. 16, 2009) (the defendant “asks the Court to instruct counsel that they may not use the word ‘kill’ (or similar inflammatory terminology suggesting a crime) to describe the manner of the decedents’ deaths. The Court agrees that such terminology is improper, and counsel is instructed not to use it.”).

106. Glenwood Caverns incorporates by reference Paragraphs 1-105 of this Answer.

107-109. Glenwood Caverns denies the allegations contained in Paragraphs 107-109 of the First Amended Complaint.

**FIRST CLAIM FOR RELIEF**  
**Plaintiffs against Defendants Glenwood Caverns, Williams and Ochoa**  
**Premises Liability – Wrongful Death**

110. Glenwood Caverns incorporates by reference Paragraphs 1-109 of this Answer.

111. Paragraph 111 of the First Amended Complaint sets forth a legal conclusion, to which no response is required. To the extent a response is required, Glenwood Caverns admits that it is a landowner as defined by C.R.S. § 13-21-115, and that Ms. Wongel Estifanos tragically died.

112-117. Glenwood Caverns admits that Toby Williams and Steve Ochoa were employees of Glenwood Caverns and were operators of the Haunted Mine Drop Ride. Glenwood Caverns denies the remaining allegations in Paragraphs 112-117, including any allegations relating to the agent or employee relationship to the extent those allegations are inconsistent with Colorado law.

118. Paragraph 118 of the First Amended Complaint sets forth a legal conclusion, to which no response is required. To the extent a response is required, Colorado premises liability law speaks for itself.

119. Paragraph 119 sets forth a legal conclusion, to which no response is required. To the extent a response is required, Glenwood Caverns admits that Ms. Wongel Estifanos and the Plaintiffs were invitees, and that Ms. Wongel Estifanos tragically died.

120-121. Paragraphs 120-121 of the First Amended Complaint set forth legal conclusions, to which no response is required. To the extent responses are required, Glenwood Caverns admits that Defendant's legal obligations are set forth in Colorado's premises liability statute. Except as so admitted, Glenwood Caverns denies the allegations contained in Paragraphs 120-121 of the First Amended Complaint.

122. Paragraph 122 of the First Amended Complaint sets forth legal conclusions, to which no response is required. To the extent a response is required, Glenwood Caverns denies the allegations in Paragraph 122 as to itself and as to Defendants Steve Ochoa and Toby Williams. As to Defendants Soaring Eagle and Altitude Rides and Attractions, Glenwood Caverns incorporates its designation of responsible nonparties filed on March 18, 2022, and except as so stated, lacks sufficient information to form a belief as to the truth of the allegations, and therefore, denies the allegations.

123. Glenwood Caverns admits that an email was sent to it on July 25, 2018, and another email was sent to it on August 15, 2019. Those emails speak for themselves. Except as so admitted, Glenwood Caverns denies the allegations contained in Paragraph 123 of the First Amended Complaint.

124-132. Paragraphs 124-132 of the First Amended Complaint set forth legal conclusions, to which no responses are required. To the extent responses are required, Glenwood Caverns admits that Defendant's legal obligations are set forth in Colorado's premises liability statute. Except as so admitted, Glenwood Caverns denies the allegations contained in Paragraphs 124-132 of the First Amended Complaint.

133-135. Glenwood Caverns denies the allegations contained in Paragraphs 133-135 of the First Amended Complaint as to itself and as to Defendants Steve Ochoa and Toby Williams. As to Defendants Soaring Eagle and Altitude Rides and Attractions, Glenwood Caverns incorporates its designation of responsible nonparties filed on March 18, 2022, and except as so stated, lacks sufficient information to form a belief as to the truth of the allegations, and therefore, denies the allegations.

136. Glenwood Caverns denies the allegations contained in Paragraph 136 of the First Amended Complaint.

137-138. Glenwood Caverns denies the allegations contained in Paragraphs 137-138 of the First Amended Complaint as to itself and as to Defendants Steve Ochoa and Toby Williams. As to Defendants Soaring Eagle and Altitude Rides and Attractions, Glenwood Caverns incorporates its designation of responsible nonparties filed on March 18, 2022, and except as so stated, lacks sufficient information to form a belief as to the truth of the allegations, and therefore, denies the allegations.

139-140. Paragraphs 139-140 of the First Amended Complaint set forth legal conclusions, to which no responses are required. To the extent responses are required, Colorado's comparative negligence law speaks for itself.

141. Glenwood Caverns denies the allegations contained in Paragraph 141 of the First Amended Complaint as to itself and as to Defendants Steve Ochoa and Toby Williams. As to Defendants Soaring Eagle and Altitude Rides and Attractions, Glenwood Caverns incorporates its designation of responsible nonparties filed on March 18, 2022, and except as so stated, lacks sufficient information to form a belief as to the truth of the allegations, and therefore, denies the allegations.

### **SECOND CLAIM FOR RELIEF**

#### **Plaintiffs against Defendants Soaring Eagle and Altitude Rides Negligence – Wrongful Death**

142. Glenwood Caverns incorporates by reference Paragraphs 1-141 of this Answer.

143-149. Paragraphs 143-149 of the First Amended Complaint are not directed to Glenwood Caverns and therefore do not require a response. To the extent a response is required, Glenwood Caverns incorporates its designation of responsible nonparties filed on March 18, 2022, and except as so stated, lacks sufficient information to form a belief as to the truth of the allegations, and therefore, denies the allegations.

### **GENERAL DENIAL**

Glenwood Caverns denies all allegations of the Complaint not specifically admitted herein, including any allegations made in the prayer for relief.

### **AFFIRMATIVE DEFENSES**

1. Plaintiffs' claims should be dismissed for failure to state a claim upon which relief can be granted.

2. Plaintiffs' claims are barred in whole or in part because the alleged damages and losses were proximately caused by intervening events attributable to persons, firms, and/or corporations other than Defendant.

3. Plaintiffs' claims are barred, in whole or in part, or recovery of damages and losses must be reduced by the relative fault of other persons, including responsible parties and non-parties, as provided at C.R.S. §§ 13-21-111, 13-21-111.5, and otherwise, and also by C.R.S. § 13-21-111.7, and otherwise.

4. Plaintiffs' claims are barred in whole or in part by release, contract, and waiver.

5. Plaintiffs' recovery of damages and losses, if any, must be reduced by the amounts received from collateral sources.

6. Plaintiffs' recovery of damages and losses, if any, are subject to applicable statutory caps and constitutional limitations.

Glenwood Caverns reserves the right to assert additional affirmative defenses to Plaintiffs' claim as further investigation and discovery warrant.

### **JURY DEMAND**

Pursuant to Rule 38 of the Colorado Rules of Civil Procedure, Defendants' demand a trial by jury on all issues raised by the pleadings in this action.



WHEREFORE, Defendant Glenwood Caverns Holdings, LLC respectfully requests that the Court enter judgment in its favor and grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 10<sup>th</sup> day of June 2022.

CHILDS McCUNE LLC

*s/ Lexie A. Davis*

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Jordan L. Lipp, #34672

Lexie A. Davis, #54106

*Attorneys for Defendants Glenwood Caverns  
Holdings, LLC, Toby Williams and Steve Ochoa*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2022, a true and correct copy of the foregoing **DEFENDANT GLENWOOD CAVERNS HOLDINGS, LLC'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND JURY DEMAND** was e-filed through Colorado Courts E-Filing, with service upon the following:

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*s/ Becky Pryor*  
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