

GRETCHEN M. NELSON (SBN No.112566)
CARLOS F. LLINÁS NEGRET (SBN 284746)
NELSON & FRAENKEL, LLP
601 South Figueroa St., Suite 2050
Los Angeles, CA 90017
Telephone: (844) 622-6469
Fax: (213) 622-6019
gnelson@nflawfirm.com
cllinas@nflawfirm.com

DANIEL O. ROSE (pro hac vice to be submitted)
KEVIN J. MAHONEY (pro hac vice to be submitted)
KREINDLER & KREINDLER LLP
750 Third Ave.
New York, New York 10017
Telephone: (212) 687-8181
Fax: (212) 972-9432
drose@kreindler.com
kmahoney@kreindler.com

Attorneys for Claimants/Counter-Plaintiffs Nina Huttegger and Julia Ahopelto

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (WESTERN DIVISION)**

In the matter of the Complaint of
Truth Aquatics, Inc. and Glen Richard
Fritzler and Dana Jeanne Fritzler,
individually and as Trustees of the
Fritzler Family Trust DTD 7/27/92 as
owners and/or owners pro hac vice of
the dive vessel CONCEPTION,
Official Number 638133, for
Exoneration from or Limitation of
Liability

Plaintiffs-in-Limitation

v.

CASE NO. 2:19-CV-07693-PA-MRW
[PERCY ANDERSON, DISTRICT
JUDGE]

**CLAIMANT'S ANSWER AND
AFFIRMATIVE DEFENSES TO
FIRST AMENDED COMPLAINT
FOR EXONERATION FROM, OR
LIMITATION OF, LIABILITY;**

AND

**COUNTERCLAIM AGAINST
TRUTH AQUATICS, INC. AND**

NINA HUTTEGGER, individually, as
successor-in-interest of JUHA-PEKKA
AHOPELTO, and on behalf of her
minor son, C.A,

and

JULIA AHOPELTO, individually, as
surviving daughter of JUHA-PEKKA
AHOPELTO,

Claimants / Counter-Plaintiffs

v.

Truth Aquatics, Inc. and Glen Richard
Fritzler and Dana Jeanne Fritzler,
individually and as Trustees of the
Fritzler Family Trust DTD 7/27/92 as
owners and/or owners pro hac vice of
the dive vessel CONCEPTION,
Official Number 638133

Counter-Defendants

**GLEN RICHARD FRITZLER AND
DANA JEANNE FRITZLER,
INDIVIDUALLY AND AS
TRUSTEES OF THE FRITZLER
FAMILY TRUST DTD 7/27/92 AS
OWNERS AND/OR OWNERS PRO
HAC VICE OF THE DIVE VESSEL
CONCEPTION, OFFICIAL
NUMBER 638133**

**ANSWER TO PLAINTIFFS-IN-LIMITATION FIRST AMENDED
COMPLAINT FOR EXONERATION FROM, OR LIMITATION OF,
LIABILITY**

Claimants, NINA HUTTEGGER, individually, as successor-in-interest of
JUHA-PEKKA AHOPELTO, and on behalf of her minor son C.A., and JULIA
AHOPELTO, as surviving daughter of JUHA-PEKKA AHOPELTO (collectively
“Claimants”):

By and through undersigned counsel, file this *Answer and Affirmative
Defenses* to the First Amended Complaint of TRUTH AQUATICS, INC. and GLEN

1 RICHARD FRITZLER and DANA JEANNE FRITZLER, individually and as
2 TRUSTEES OF THE FRITZLER FAMILY TRUST DTD 7/27/92 as owners and/or
3 owners pro hac vice of the dive vessel CONCEPTION, Official Number 638133
4 (collectively "Plaintiffs-in-Limitation"), for Exoneration from, or limitation of,
5 liability.

6 In filing this Answer, Claimants specifically reserve all rights to pursue all
7 available claims in state court for resolution of any and all issues beyond the exclusive
8 jurisdiction of this Admiralty Court pursuant to the "Savings to Suitors" clause, 28
9 U.S.C. §1333, and all state law remedies, including the right to a jury trial. The filing
10 of this Answer is in no way a waiver of this right and Claimants are not agreeing to
11 join all issues in this proceeding by filing this Answer.

12 In support thereof, Claimants respectfully allege as follows:

13 1. The allegations contained in Paragraph 1 of the Amended Complaint are
14 legal in nature, and do not call for a response, but to the extent such is required,
15 Claimants deny that Plaintiffs-in-Limitation are entitled to exoneration from, or
16 limitation of liability.

17 2. The allegations contained in Paragraph 2 of the Amended Complaint are
18 denied for lack of sufficient information to justify a belief therein.

19 3. The allegations contained in Paragraph 3 of the Amended Complaint are
20 denied for lack of sufficient information to justify a belief therein.

21 4. The allegations in Paragraph 4 of the Amended Complaint are denied for
22 lack of sufficient information to justify a belief therein.

23 5. The allegations in Paragraph 5 of the Amended Complaint are denied.

24 6. The allegations in Paragraph 6 of the Amended Complaint are denied for
25 lack of sufficient information to justify a belief therein.

1 7. The allegations in Paragraph 7 of the Amended Complaint are denied for
2 lack of sufficient information to justify a belief therein.

3 8. The allegations in Paragraph 8 of the Amended Complaint are denied for
4 lack of sufficient information to justify a belief therein.

5 9. The allegations in Paragraph 9 of the Amended Complaint are denied for
6 lack of sufficient information to justify a belief therein.

7 10. The allegations in Paragraph 10 of the Amended Complaint are denied.

8 11. Regarding Paragraph 11, Claimants admit that on August 31, 2019, the
9 CONCEPTION's voyage commenced in Santa Barbara, California with 33
10 passengers and six crewmembers on board for a three-day trip in the area of the
11 Channel Islands. Except as otherwise admitted, the allegations that the
12 CONCEPTION, prior to and at the inception of the voyage, was tight, staunch and
13 seaworthy and fit for the intended trip are denied. The rest of the allegations in
14 Paragraph 11 are legal in nature, and do not call for a response, but to the extent such
15 is required, Claimants that Plaintiffs-in-Limitation are entitled to exoneration from,
16 or limitation of liability.

17 12. Regarding Paragraph 12, Claimants admit that the fire on the
18 CONCEPTION resulted in the death of all of the Passengers and one Crewmember.
19 Except as admitted, the rest of the allegations in paragraph 12 are denied for lack of
20 sufficient information to justify a belief therein.

21 13. The allegations in Paragraph 13 of the Amended Complaint are denied.

22 14. The allegations contained in Paragraph 14 of the Amended Complaint are
23 denied for lack of sufficient information to justify a belief therein.

24 15. The allegations in Paragraph 15 of the Amended Complaint are denied.

25 16. The allegations contained in Paragraph 16 of the Amended Complaint are
26 legal in nature, and do not call for a response, but to the extent such is required,
27

1 Claimants deny that Plaintiffs-in-Limitation are entitled to exoneration from, or
2 limitation of liability.

3 17. The allegations contained in Paragraph 17 of the Amended Complaint are
4 legal in nature, and do not call for a response, but to the extent such is required,
5 Claimants deny that Plaintiffs in Limitation are not required to post security pursuant
6 to Rule F(1).

7 18. The allegations contained in Paragraph 18 of the Amended Complaint are
8 legal in nature, and do not call for a response, but to the extent such is required,
9 Claimants deny the allegation and further allege that the suggestion that a \$1,000
10 bond is a proper bond after 33 people have been killed in a horrific boat fire is morally
11 egregious and contrary to law.

12 19. The allegations contained in Paragraph 19 of the Amended Complaint are
13 legal in nature, and do not call for a response, but to the extent such is required,
14 Claimants deny the allegations.

15 20. The allegations in the ‘WHEREFORE’ clause of the complaint,
16 subparagraphs 1 – 6 are legal in nature, and do not call for a response, but to the
17 extent such is required, Claimants deny the allegations and deny that Plaintiffs-in-
18 Limitation are entitled to exoneration from, or limitation of liability.

19 **CLAIMANTS’ AFFIRMATIVE DEFENSES TO PLAINTIFFS-IN-**
20 **LIMITATION’S COMPLAINT FOR EXONERATION FROM, OR**
21 **LIMITATION OF, LIABILITY**

22 **FIRST AFFIRMATIVE DEFENSE**

23 21. The allegations of the Complaint fail to state a claim upon which relief
24 may be granted. Plaintiffs-in-Limitation have failed to make out a *prima facie* case
25 establishing that they are entitled to avail themselves of the Limitation of Liability
26 Act, 46 U.S.C. § 30501 *et seq.*
27
28

SECOND AFFIRMATIVE DEFENSE

22. The Limitation of Liability Act, 46 U.S.C. § 30501 *et seq.*, is unconstitutional in that it deprives the Claimants of property rights without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and does not provide for equal protection of the laws pursuant to the Fifth and Fourteenth Amendments to the United States Constitution.

THIRD AFFIRMATIVE DEFENSE

23. Under the General Maritime Law of the United States, Plaintiffs-in-Limitation are jointly and severally liable for the negligent acts of third parties, including but not limited to crewmembers, the vessel's master and product designers/manufacturers/distributors. These third parties, individually, are not entitled to exoneration from, or limitation of liability.

FOURTH AFFIRMATIVE DEFENSE

24. Pursuant to Rule F(1)(a) of the Supplemental Rules for Admiralty or Maritime Claims, the Plaintiffs-in-Limitation had to "deposit with the court, for the benefit of Claimants, a sum equal to the amount or value of the owner's interest in the vessel and pending freight, or approved security therefor." Plaintiffs-in-Limitation have not complied with Rule F(1)(a), by failing to deposit with the court, for the benefit of Claimants, an adequate bond or security. Plaintiffs-in-Limitation are not entitled to exoneration from, or limitation of liability for failing to comply with Rule F(1)(a). This Court should, therefore, dismiss the Amended Complaint, or failing that, order Plaintiffs-in-Limitation to deposit an adequate bond, or security.

FIFTH AFFIRMATIVE DEFENSE

25. The value of the vessel at the end of the voyage alleged in the Amended Complaint is neither sufficient nor adequate to properly discharge Plaintiffs-in-Limitation's liabilities and obligations, nor does it reflect the correct values required by law. This Court should, therefore, dismiss the Complaint, or failing that, order Plaintiffs-in-Limitation to submit their interests in the Vessel and other property for

1 re-evaluation and thereof direct that Plaintiffs-in-Limitation file security in an
2 increased amount to cover the claims herein.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 26. The value of the limitation fund proposed by Plaintiffs-in-Limitation is
5 insufficient and inaccurate because the CONCEPTION was part of a common flotilla
6 of vessels. To the extent that these group of vessels are owned and/or controlled by
7 the Plaintiffs-in-Limitation and are engaged in a common enterprise, under a single
8 command, among common management personnel; the limitation fund should be
9 increased to comprise the value of all vessels in the Plaintiffs-in-Limitation flotilla.
10 Plaintiffs-in-Limitation have not complied with Rule F(1)(a), by failing to deposit
11 with the court, for the benefit of Claimants, an adequate bond or security. Plaintiffs-
12 in-Limitation are not entitled to exoneration from, or limitation of liability for failing
13 to comply with Rule F(1)(a). This Court should, therefore, dismiss the Amended
14 Complaint, or failing that, order Plaintiffs-in-Limitation to deposit an adequate bond,
15 or security.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 27. Plaintiffs-in-Limitation are not entitled to either exoneration from, or
18 limitation of liability pursuant to 46 U.S.C. §§ 30501, *et seq.*, for any and all loss,
19 damage, and/or injuries caused by the alleged incident, or done, occasioned, or
20 incurred on the relevant voyage on which the alleged incident occurred. The subject
21 fire, and JUHA-PEKKA AHOPELTO'S death, occurred because the Vessel was
22 unseaworthy, not staunch, not tight, not strong, improperly manned, improperly
23 equipped, improperly supplied, defective and in all respects, unfit for the operational
24 service for which it was engaged. At all times material, the Plaintiffs-in-Limitation
25 had privity and knowledge of the vessel's unseaworthy conditions and defects.
26 Plaintiffs-in-Limitation knew or, in the exercise of reasonable care should have
27 known that the dangers and risks associated with defects and unseaworthy conditions
on the CONCEPTION, could cause severe injuries and death to others.

EIGHTH AFFIRMATIVE DEFENSE

28. Plaintiffs-in-Limitation are not entitled to either exoneration from, or limitation of liability pursuant to 46 U.S.C. §§ 30501, *et seq.*, for any and all loss, damage, and/or injury caused by the alleged incident, or done, occasioned, or incurred on the relevant voyage on which the alleged incident occurred. The subject fire and the death of JUHA-PEKKA AHOPELTO occurred because the CONCEPTION was unseaworthy, not staunch, not tight, not strong, improperly manned, improperly equipped, improperly supplied, defective and in all respects, unfit for the operational service for which it was engaged. At all times material, the Plaintiffs-in-Limitation, their agents and/or apparent agents, the Vessel's master(s), operators and/or mechanics had privity and knowledge of the CONCEPTION'S unseaworthy conditions and defects. The privity and knowledge of the master(s), agent(s), apparent agent(s), operators and mechanics are imputed to Plaintiffs-in-Limitation.

NINTH AFFIRMATIVE DEFENSE

29. Plaintiffs-in-Limitation are not entitled to either exoneration from, or limitation of liability pursuant to 46 U.S.C. §§ 30501, *et seq.*, for any and all loss, damage, and/or death caused by the alleged incident, or done, occasioned, or incurred on the relevant voyage on which the alleged incident occurred. The subject fire, and the death of JUHA-PEKKA AHOPELTO, occurred because of the Plaintiffs-in-Limitation's negligence or fault, and/or the negligence or fault of their agents and/or apparent agents.

30. At all times material, Plaintiffs-in-Limitation had privity and knowledge of their own negligent conduct and/or the negligent conduct of their agents and/or apparent agents, including the vessel's operator, master and crew, which proximately caused the CONCEPTION fire and the death of JUHA-PEKKA AHOPELTO.

31. In particular, upon information and belief, on or before the date of the subject incident, the Plaintiffs-in-Limitation, among other things: a) failed to have crewmembers roaming the vessel, while passengers were asleep in the hull/bunkroom area, b) failed to promulgate and enforce reasonable rules and regulations designed to ensure the safety and health of passengers, including having crewmembers roaming the vessel while passengers were asleep in the hull/bunkroom area, c) failed to promulgate and enforce reasonable rules and regulations designed to ensure the safety and health of passengers, including rules and regulations designed to prevent all crewmembers from being asleep during the time that the fire started and spread to the hull/bunkroom area, d) failed to promulgate and enforce formal roving watch schedules, e) misrepresented to the United States Coast Guard that the CONCEPTION promulgated and enforced formal roving watch schedules, f) failed to supervise and/or audit the crew and master to ensure that formal roving watch schedules were implemented and enforced aboard the CONCEPTION, g) failed to install common electronic devices in the wheelhouse and galley areas of the Vessel requiring crewmembers on roving watch to punch during set periods (i.e. every 15 minutes), or an alarm will go off, h) operated a passenger vessel with a tightly packed passenger bunkroom area in the bottom deck of the ship with inadequate ventilation, surrounded by wood, fiberglass and other flammable materials, and without adequate alternative means to evacuate in the event of fire or other foreseeable emergencies, i) allowed crewmembers to sleep on the top deck by the wheelhouse isolated from passenger sleeping quarters, preventing those crewmembers to hear and/or notice foreseeable emergencies, including fire and smoke in the bunkroom area of the Vessel, j) failed to promulgate and enforce reasonable rules implementing pre-departure muster drills – with the objective of providing passengers and crew with life-saving training and information, including, but not limited to the location of all hatch doors in and out of the hull/bunkroom area, where they are to assemble in the event of an emergency, k) operated an

1 unseaworthy passenger vessel with non-existent or improper and/or outdated smoke
2 detectors and alarms, l) operated an unseaworthy passenger vessel with non-existent
3 or improper and/or outdated fire sprinklers and/or fire suppression devises, m)
4 operated an unseaworthy vessel with faulty electrical wiring and/or outdated and/or
5 inadequate power sources, incapable of safely charging multiple modern electronics
6 at once, n) operated an unseaworthy vessel with defective and/or inadequate
7 electrical outlets, wiring and panels different from their intended and permitted use
8 as manufactured, o) operated an unseaworthy vessel with neglected maintenance on
9 electric outlets, wiring and panels, p) operated an unseaworthy vessel with non-
10 existent and/or inadequate ventilation and air flow, capable of managing CO2 in the
11 event of fire or other foreseeable emergencies, q) operated an unseaworthy vessel
12 with blocked off, and/or neglected hatch doors with inadequate means of egress in
13 and out of the passenger bunkroom area, r) failed to use reasonable care to provide
14 and maintain proper and adequate, crew and equipment, s) failed to give crew
15 members who were associated to this incident, reasonable work and rest hours of
16 employment so as not to overwork them to the point of not being physically fit to
17 carry out their duties and cause them to overwork to the point of fatigue, t) failed to
18 maintain the vessel in a reasonably safe condition, u) failed to inspect the subject
19 area, v) created dangerous conditions which were known by the Plaintiffs-in-
20 Limitation and which in the exercise of reasonable care should have been known by
21 the Plaintiffs-in-Limitation, w) failed to investigate the hazards to its passengers and
22 then take the necessary steps to eliminate those hazards, minimize those hazards, or
23 to adequately warn its passengers of the danger of those hazards posed to him and
24 give him the ability to avoid them, x) failed to reduce potential fire hazards,
25 including limiting the unsupervised charging of lithium-ion batteries and extensive
26 use of power cords, y) failed to retain and train, crewmembers with knowledge and
27 experience in the safe operation and maintenance of a passenger vessel, z) failed to
28 retain and train crewmembers with knowledge and experience of applicable local,

1 state and federal regulations ensuring the safe operation and maintenance of a
 2 passenger vessel, aa) manned the vessel with diving instructors inexperienced and
 3 untrained in the safe operation and maintenance of a passenger vessel, and bb)
 4 operated a passenger vessel with defective and/or unseaworthy escape hatches –
 5 which could not be opened and used for their intended purpose at the time of this
 6 incident.

7 **TENTH AFFIRMATIVE DEFENSE**

8 32. Plaintiffs-in-Limitation are not entitled to either exoneration from, or
 9 limitation of liability pursuant to 46 U.S.C. §§ 30501, *et seq.*, for any and all loss,
 10 damage, and/or injury caused by the alleged incident, or done, occasioned, or
 11 incurred on the relevant voyage on which the alleged incident occurred. The subject
 12 fire, and the death of JUHA-PEKKA AHOPELTO, occurred because of the
 13 negligence or fault of the vessel's master(s) and/or operator(s).

14 33. At all times material, the vessel's master(s) and/or operator(s), had
 15 privity and knowledge of their negligent conduct and/or the negligent conduct of
 16 their agents and/or apparent agents, which proximately caused the CONCEPTION
 17 fire and the death of JUHA-PEKKA AHOPELTO. The privity and knowledge of the
 18 master(s) and/or operator(s) of the vessel are imputed to the Plaintiffs-In-Limitation

19 34. In particular, upon information and belief, on or before the date of the
 20 subject incident, the master(s) and/or operator(s) of the vessel: a) failed to have
 21 crewmembers roving the vessel, while passengers were asleep in the hull/bunkroom
 22 area, b) failed to promulgate and enforce reasonable rules and regulations designed
 23 to ensure the safety and health of passengers, including having crewmembers roving
 24 the vessel while passengers were asleep in the hull/bunkroom area, c) failed to
 25 promulgate and enforce reasonable rules and regulations designed to ensure the
 26 safety and health of passengers, including rules and regulations designed to prevent
 27 all crewmembers from being asleep during the time that the fire started and spread
 28 to the hull/bunkroom area, d) failed to promulgate and enforce formal roving watch

1 schedules, e) misrepresented to the United States Coast Guard that the
2 CONCEPTION promulgated and enforced formal roving watch schedules, f) failed
3 to supervise and/or audit the crew and master to ensure that formal roving watch
4 schedules were implemented and enforced aboard the CONCEPTION, g) failed to
5 install common electronic devices in the wheelhouse and galley areas of the vessel
6 to track compliance with roving watch regulations, including, for example by
7 requiring crewmembers on roving watch to punch during set periods (i.e. every 15
8 minutes), or an alarm will go off, h) operated a passenger vessel with a tightly packed
9 passenger bunkroom area in the bottom deck of the ship with inadequate ventilation,
10 surrounded by wood, fiberglass and other flammable materials, and without
11 adequate alternative means to evacuate in the event of fire or other foreseeable
12 emergencies, i) allowed crewmembers to sleep on the top deck by the wheelhouse
13 isolated from passenger sleeping quarters in the hull, preventing those crewmembers
14 to hear and/or notice foreseeable emergencies, including fire and smoke in the
15 bunkroom area of the Vessel, j) failed to promulgate and enforce reasonable rules
16 implementing pre-departure muster drills – with the objective of providing
17 passengers and crew with life-saving training and information, including, but not
18 limited to the location of all hatch doors in and out of the hull/bunkroom area, where
19 they are to assemble in the event of an emergency, k) operated an unseaworthy
20 passenger vessel with non-existent or improper and/or outdated smoke detectors and
21 alarms, l) operated an unseaworthy passenger vessel with non-existent or improper
22 and/or outdated fire sprinklers and/or fire suppression devices, m) operated an
23 unseaworthy vessel with faulty electrical wiring and/or outdated and/or inadequate
24 power sources, incapable of safely charging multiple modern electronics at once, n)
25 operated an unseaworthy vessel with defective and/or inadequate electrical outlets,
26 wiring and panels different from their intended and permitted use as manufactured,
27 o) operated an unseaworthy vessel with neglected maintenance on electric outlets,
wiring and panels, p) operated an unseaworthy vessel with non-existent and/or

1 inadequate ventilation and air flow, capable of managing CO2 in the event of fire or
 2 other foreseeable emergencies, q) operated an unseaworthy vessel with blocked off,
 3 and/or neglected hatch doors with inadequate means of egress in and out of the
 4 passenger bunkroom area, r) failed to use reasonable care to provide and maintain
 5 proper and adequate, crew and equipment, s) failed to give crew members who were
 6 associated to this incident, reasonable work and rest hours of employment so as not
 7 to overwork them to the point of not being physically fit to carry out their duties and
 8 cause them to overwork to the point of fatigue, t) failed to maintain the vessel in a
 9 reasonably safe condition, u) failed to inspect the subject area, v) created dangerous
 10 conditions which were known by the Plaintiffs-in-Limitation and which in the
 11 exercise of reasonable care should have been known by the Plaintiffs-in-Limitation,
 12 w) failed to investigate the hazards to passengers and then take the necessary steps
 13 to eliminate those hazards, minimize those hazards, or to adequately warn the
 14 passengers of the danger of those hazards posed to them and give them the ability to
 15 avoid them, x) failed to reduce potential fire hazards, including limiting the
 16 unsupervised charging of lithium-ion batteries and extensive use of power cords, y)
 17 failed to retain and train, crewmembers with knowledge and experience in the safe
 18 operation and maintenance of a passenger vessel, z) failed to retain and train
 19 crewmembers with knowledge and experience of applicable local, state and federal
 20 regulations ensuring the safe operation and maintenance of a passenger vessel, aa)
 21 manned the vessel with diving instructors inexperienced and untrained in the safe
 22 operation and maintenance of a passenger vessel, and bb) operated a passenger
 23 vessel with defective and/or unseaworthy escape hatches – which could not be
 opened and used for their intended purpose at the time of this incident.

24 **ELEVENTH AFFIRMATIVE DEFENSE**

25 35. Plaintiffs-in-Limitation are not entitled to exoneration from, or limitation
 26 of liability pursuant to 46 U.S.C. §§ 30501, *et seq.*, because the vessel is an
 27 inherently defective and ultra-hazardous vessel, causing the incident in question.

TWELFTH AFFIRMATIVE DEFENSE

36. To the extent the insurers for the Plaintiffs-in-Limitation attempt to avail themselves of the exoneration and/or limitation defense, Claimants assert that the Limitation of Liability Act is unavailable to insurers of vessel owners under the circumstances. In the alternative, no *prima facie* case has been made establishing insurers are entitled to avail themselves of the Limitation of Liability Act. Additionally, the insurers of the Vessel are not entitled to exoneration from, or limitation of liability, because they failed to file a timely petition within the statutory period prescribed by Supplemental Admiralty Rule F.

THIRTEENTH AFFIRMATIVE DEFENSE

37. The events culminating in the killing of JUHA-PEKKA AHOPELTO were not the result of any negligence, fault, or want of due care by the Claimants.

FOURTEENTH AFFIRMATIVE DEFENSE

38. To the extent that this Court determines that the Limitation of Liability Act, 46 U.S.C. §§ 30501, *et seq.*, applies to this case, which it should not, this limitation proceeding should include any and all proceeds from insurance coverage on the Vessel, including insurance coverage of Vessel's flotilla of sister ships. Plaintiffs-in-Limitation have not complied with Rule F(1)(a), by failing to deposit with the court, for the benefit of Claimants, an adequate bond or security. Plaintiffs-in-Limitation are not entitled to exoneration from, or limitation of liability for failing to comply with Rule F(1)(a). This Court should, therefore, dismiss the Amended Complaint, or failing that, order Plaintiffs-in-Limitation to deposit an adequate bond, or security.

FIFTEENTH AFFIRMATIVE DEFENSE

39. To the extent that this Court determines that the Limitation of Liability Act, 46 U.S.C. §§ 30501, *et seq.*, applies to this case, which it should not, the limitation fund should include any and all proceeds from any judgment, award or settlement which may be received by the Plaintiffs-in-Limitation from any third party recompense of any losses or damages sustained herein to the property or

1 interests of Plaintiffs-in-Limitation as a result of the fault or alleged fault of said
 2 third party. Plaintiffs-in-Limitation have not complied with Rule F(1)(a), by failing
 3 to deposit with the court, for the benefit of Claimants, an adequate bond or security.
 4 Plaintiffs-in-Limitation are not entitled to exoneration from, or limitation of liability
 5 for failing to comply with Rule F(1)(a). This Court should, therefore, dismiss the
 6 Amended Complaint, or failing that, order Plaintiffs-in-Limitation to deposit an
 7 adequate bond, or security

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 40. Pursuant to the “Savings to Suitors” clause, 28 U.S.C. §1333, and all state
 10 law remedies, Claimants in filing their Answer, Affirmative Defenses, and
 11 Counterclaim reserve all rights to pursue all available claims in the forum of their
 12 choosing, including state court, for resolution of any and all issues beyond the
 13 exclusive jurisdiction of this Admiralty Court, and to have such claims and related
 14 damages tried to a jury. The filing of this Answer, Affirmative Defenses, and
 15 Counterclaim, in no way constitutes a waiver of these rights, and Claimants do not,
 16 through this filing, agree to join all issues in this proceeding.

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 41. Pursuant to the “Saving to Suitors” clause, 28 U.S.C. §1333, and all state
 19 law remedies, Claimants, in filing their Answer, Affirmative Defenses, and
 20 Counterclaim, reserve the right to move for bifurcation of this action so as to enable
 21 Claimants to select a court and/or forum of their choosing for all facts and issues
 22 *other than* Limitation Act questions such as whether, for purposes of limitation, the
 23 Plaintiffs-in-Limitation, their agents and/or apparent agents were negligent, whether
 24 the vessel was seaworthy, and whether such negligence and/or unseaworthiness was
 within Plaintiffs-in-Limitation knowledge or privity.

25 ///

26 ///

EIGHTEENTH AFFIRMATIVE DEFENSE

42. Claimants reserve the right to contest the appraisal value of the vessel and/or any additional vessels in the flotilla, their appurtenances, and the adequacy of the security thereof.

NINETEENTH AFFIRMATIVE DEFENSE

43. The Limitation of Liability Act does not apply to this case, because, at all relevant times, the vessel and/or other vessels within the flotilla were operated in a willful, wanton and reckless manner, or alternatively, the conduct and actions resulting in decedent JUHA-PEKKA AHOPELTO'S death, took place with the privity and knowledge of Plaintiffs-in-Limitation and/or their agents and apparent agents.

TWENTIETH AFFIRMATIVE DEFENSE

44. Plaintiffs-in-Limitation are not "vessel owners" as that term is defined pursuant to Limitation of Liability Act, 46 U.S.C. §§ 30501, *et seq.* Accordingly, Plaintiffs-in-Limitation are not entitled to exoneration from, or limitation of liability.

TWENTY-FIRST AFFIRMATIVE DEFENSE

45. The value of the limitation fund proposed by Plaintiffs-in-Limitation is insufficient and inaccurate, pursuant to 28 U.S.C. 46 U.S.C. §§ 30506 (b). Plaintiffs-in-Limitation have not complied with Rule F(1)(a), by failing to deposit with the court, for the benefit of Claimants, an adequate bond or security. Plaintiffs-in-Limitation are not entitled to exoneration from, or limitation of liability for failing to comply with Rule F(1)(a). This Court should, therefore, dismiss the Amended Complaint, or failing that, order Plaintiffs-in-Limitation to deposit an adequate bond, or security

RESERVATION OF RIGHTS

Claimants reserve the right, upon completion of their investigation and discovery, to file such additional defenses as may be appropriate.

ALLEGATIONS COMMON TO ALL COUNTS

1. This matter falls under the admiralty and maritime jurisdiction of this Court, pursuant to 28 U.S.C. §1333.

2. Pursuant to Federal Rule of Civil Procedure 13, this Counterclaim arises out of the same transaction and occurrence as Counter-Defendants/Plaintiffs-in-Limitation's Complaint for exoneration from, or limitation of liability.

3. The incident alleged in this Counterclaim occurred in navigable waters, during traditional maritime activity. JUHA-PEKKA AHOPELTO was killed on board the vessel CONCEPTION, in the early morning hours of September 2, 2019. The CONCEPTION caught fire and sank in Platts Harbor off Santa Cruz Island, within the territorial limits of the State of California, less than one-hundred yards from shore.

4. Counter-Plaintiff NINA HUTTEGGER, individually and as successor-in-interest to JUHA-PEKKA AHOPELTO, was at all times relevant to this Complaint a resident of California. NINA HUTTEGGER is wife and successor-in-interest of decedent, JUHA-PEKKA AHOPELTO and the biological mother of JUHA-PEKKA AHOPELTO's minor son C.A. Counter-Plaintiff NINA HUTTEGGER is entitled to bring this claim pursuant to California Code of Civil Procedure §§ 377.30 and 377.60 and California Probate Code § 6402. A Declaration signed pursuant to California Civil Procedure Code § 377.32 is attached herein as "Attachment 1" and incorporated by reference herein.

5. Counter-Plaintiff JULIA AHOPELTO was at all times relevant to this Complaint a resident of California. JULIA AHOPELTO is the surviving daughter and of decedent of JUHA-PEKKA AHOPELTO. Counter-Plaintiff JULIA AHOPELTO is entitled to bring this claim pursuant to California Code of Civil Procedure § 377.60.

1 6. At all times material hereto, TRUTH AQUATICS, INC. was and still
2 is a corporation organized and existing under the laws of the State of California that
3 maintained, and still maintains, its principal place of business at 301 Cabrillo
4 Boulevard, Santa Barbara, California, 93101.

5 7. At all times material hereto, RICHARD FRITZLER was and still is
6 an individual resident of the State of California.

7 8. At all times material hereto, DANA JEANNE FRITZLER was and
8 still is an individual resident of the State of California.

9 9. At all times material hereto, TRUTH AQUATICS, INC., RICHARD
10 FRITZLER, and DANA JEANNE FRITZLER (hereinafter "Counter-defendants")
11 and each of them, owned, maintained, equipped, controlled, and operated the 75-
12 foot commercial passenger vessel CONCEPTION.

13 10. Claimants do not know the true names and capacities of Counter-
14 Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these
15 defendants by such fictitious names. Claimants are informed and believe that each of
16 the Doe Counter-Defendants was in some manner legally responsible for the damages
17 alleged below. Claimants will amend this pleading to set forth the true names and
18 capacities of these Counter-Defendants when ascertained, along with appropriate
19 charging allegations.

20 11. Claimants are informed and believe, and thereupon allege, that each
21 of the Counter-Defendants designated herein as a Doe is responsible in some
22 actionable manner for the events and happenings referred to herein, and caused
23 injuries to Claimants, as hereinafter alleged, either through said Counter-
24 Defendants' conduct, or through the conduct of their agents, servants, employees.
25 The term "Counter-Defendant" or "Counter-Defendants" as used in this pleading
26 includes both the named Plaintiffs-in-Limitation and owners of the CONCEPTION,
27

1 and Counter-Defendants sued under the fictitious names of Does 1 through 10,
2 inclusive.

3 12. At all times material, Counter-Defendants were common carriers
4 pursuant to California Civil Code §2168.

5 13. The CONCEPTION was classified by the Coast Guard as a passenger
6 vessel that took passengers on dive excursions in the waters around the Channel
7 Islands off the Coast of Santa Barbara.

8 14. The CONCEPTION was built of wood and fiberglass in 1981. She
9 had registered tonnage of 66 net tons, and as of August 31, 2019, was licensed by the
10 United States Coast Guard to conduct overnight, near-coastal voyages within the
11 territorial waters of California between Port San Louis and Monterrey.

12 15. The CONCEPTION had three decks. The pilot wheelhouse house and
13 crew's quarters were located on the vessel's uppermost, or "sun" deck. The main deck
14 below, included the salon and galley. Finally, beneath the main deck, the hull of the
15 vessel housed passenger accommodations (hereinafter "bunkroom"), the vessel's
16 engine room, generator space, and fuel tanks.

17 16. The passenger accommodations below deck, were deep down in the
18 hull itself, and had no portholes, or skylights.

19 17. Upon information and belief, the passenger bunkroom did not have
20 proper ventilation, sprinklers and/or fire suppressants.

21 18. The passenger bunk room was accessed from the salon via a narrow
22 ladder in the forward, starboard corner of the bunkroom.

23 19. The passenger bunkroom additionally had a narrow escape hatch
24 which exited through the ceiling into the solon area, and which was virtually
25 unidentified and impossible to see.
26
27

1 20. Upon information and belief, Counter-defendants, as well as the
2 CONCEPTION crew, including the vessel's Master, did not require passengers and
3 crew to conduct drills to educate them in the use and access of the emergency escape
4 hatch in the bunkroom.

5 21. Upon information and belief, Counter-defendants, as well as the
6 CONCEPTION crew, including the vessel's Master, did not inform passengers of the
7 location of the emergency escape hatch, nor was the location adequately marked or
8 identified so that passengers would be aware of its existence.

9 22. Upon information and belief, the CONCEPTION was equipped with
10 an electrical system that was powered by diesel generators.

11 23. Upon information and belief, at all times material, the CONCEPTION
12 electrical system and wiring maintained most of its original components and design
13 from the 1980's.

14 24. Upon information and belief, Counter-defendants, as well as the
15 CONCEPTION crew, including the vessel's Master, not only permitted but actively
16 encouraged passengers to use that electrical system to charge digital cameras, vide-
17 cameras, smartphones, cell phones, strobe lights, GoPros, lap top tablets, underwater-
18 scooter power packs, and other battery-powered electronic equipment.

19 25. Counter-defendants, and each of them, equipped the
20 CONCEPTION'S galley – in the main deck house directly above the passenger
21 accommodations – with a battery-charging station comprising power strips and an
22 octopus charger.

23 26. The CONCEPTION's dives station was situated on the fantail, behind
24 the galley and salon. Among other things, that station housed multiple air
25 compressors, one or more nitrox membrane systems, high-pressure piping, one or
26 more banks of high-pressure, oxygen storage bottles, and thirty or more scuba bottles.

1 27. On Monday, August 31, 2019, JUHA-PEKKA AHOPELTO, departed
2 the Port of Santa Barbara aboard the CONCEPTION, along with six crewmembers
3 and thirty-two other passengers, for a three-day voyage through the Channel Islands.

4 28. Decedent JUHA-PEKKA AHOPELTO was a “passenger for hire,” as
5 that phrase is used in 33 CFR § 101.105, aboard the dive vessel CONCEPTION, and
6 a “non-seafarer” within the meaning of *Yamaha Motor Corp. v. Calhoun*, 516 U.S.
7 199, 215 (1996).

8 29. Some of the CONCEPTION’s passengers made a night dive on
9 Tuesday, September 1, 2019, that concluded some time before midnight.

10 30. By 02:30 a.m., Monday morning, September 2, 2019, everyone,
11 including all of six of the vessel’s crewmembers, were in their berths and sound
12 asleep. Five crewmembers were asleep in berths behind the wheelhouse, and one
13 crewmember was asleep in the bunkroom.

14 31. At all times material hereto, no roving watch was set; neither the
15 master nor anyone else directed any crew members to patrol the vessel through the
16 night, monitor the battery-charging station, or sound the alarm in the event of a fire,
17 smoke, man-overboard, or other dangerous situation.

18 32. Sometime after 03:00 a.m., a fire started in or near the galley and
19 quickly spread throughout the vessel, burning the CONCEPTION to the water line,
20 and killing JUHA-PEKKA AHOPELTO, and everyone else below-deck. The five
21 crew members berthed and the Master on the sun deck escaped with their lives and
22 abandoned the vessel.

23 33. At all relevant times, TRUTH AQUATICS, INC. also owned,
24 operated, managed, and/or chartered the commercial vessel, TRUTH.

25 34. The TRUTH was classified by the Coast Guard as a passenger vessel
26 that took passengers on dive excursions.
27

35. TRUTH AQUATICS, INC. also owned, operated, managed, and/or chartered the commercial vessel, VISION.

36. The VISION was classified by the Coast Guard as a passenger vessel that took passengers on dive excursions.

37. TRUTH AQUATICS, INC. owned, operated, managed, and/or chartered the commercial vessels CONCEPTION, TRUTH and VISION, as part of the same for-profit enterprise.

38. At all times material hereto, the CONCEPTION, TRUTH and VISION shared the same home port in Santa Barbara, California.

39. At the time of the fire, the dive vessel CONCEPTION was anchored in Platts Harbor off Santa Cruz Island, when it caught fire.

40. At the time of the fire, the CONCEPTION was anchored less than one-hundred yards from the shore of Santa Cruz Island.

41. Santa Cruz Island, including the area of Platts Harbor, is owned in part by the United States and the Nature Conservancy and it is part of Santa Barbara, California.

42. Santa Cruz Island is surrounded by the territorial waters of the state of California.

43. One nautical mile of water around Santa Cruz Island is part of the Channel Islands National Park.

44. Platts Harbor, also known as Dick's Cove and/or Dick's Harbor, is designated as an anchorage point on the north side of Santa Cruz island, to the west of Twin Harbors, with Orizaba Flats in between.

45. Platts Harbor's coordinates are 34.047504°N, -119.7351302°W

46. Platts Harbor is located in the territorial waters of the state of California.

**COUNT 1 –
NEGLIGENCE, NEGLIGENCE PER SE, CARELESSNESS, WANTONNESS
AND RECKLESSNESS AGAINST COUNTER-
DEFENDANTS/PLAINTIFFS-IN-LIMITATION**

48. This Cause of Action arises under the General Maritime Law of the United States as handed down in *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970), *Sea-Land Services v. Gaudet*, 414 U.S. 573 (1974), *Norfolk Shipbuilding & Drydock Corp., v. Garriss*, 532 U.S. 811 (2001), and *Yahama Motor Corp., v. Calhoun*, 516 U.S. 199 (1996).

50. At all times material hereto, Counter-Defendants owed a duty to exercise reasonable care for the health, welfare, and safety of their passengers, including decedent JUHA-PEKKA AHOPELTO.

52. At all times material, Counter-Defendants were subject to 46 CFR §15.705 (a), requiring roving watches, routinely controlled and performed in a scheduled and fixed rotation – and further providing that “performance of maintenance and work necessary to vessel’s safe operation on a daily basis does not in itself constitute the establishment of a watch.”

1 and crewmembers, were negligent, careless, wanton, and reckless, and breached
2 their duty of care to decedent JUHA-PEKKA AHOPELTO, including, but not
3 limited to, by committing the following acts and/or omissions:

- 4 a. Failing to have crewmembers roving the vessel, while passengers were
5 asleep in the hull/bunkroom area;
- 6 b. Failing to promulgate and enforce reasonable rules and regulations
7 designed to ensure the safety and health of passengers, including having
8 crewmembers roving the vessel while passengers were asleep in the
9 hull/bunkroom area;
- 10 c. Failing to promulgate and enforce reasonable rules and regulations
11 designed to ensure the safety and health of passengers, including rules
12 and regulations designed to prevent all crewmembers from being asleep
13 during the time that the fire started and spread to the hull/bunkroom
14 area;
- 15 d. Failing to promulgate and enforce formal roving watch schedules;
- 16 e. Misrepresenting to the United States Coast Guard that the
17 CONCEPTION promulgated and enforced formal roving watch
18 schedules;
- 19 f. Failing to supervise and/or audit the crew and master to ensure that
20 formal roving watch schedules were implemented and enforced aboard
21 the CONCEPTION;
- 22 g. Failing to install common electronic devises in the wheelhouse and
23 galley areas of the vessel to track compliance with roving watch
24 regulations, including, for example by requiring crewmembers on
25 roving watch to punch during set periods (i.e. every 15 minutes), or an
26 alarm will go off;

- 1 h. Failing to maintain an electronic position fixing device aboard the
- 2 CONCEPTION on the morning of the incident, in violation of 46 CFR
- 3 184.410 and the requirement of the CONCEPTION'S vessel's
- 4 Certificate of Inspection;
- 5 i. Operating a passenger vessel with a tightly packed passenger bunkroom
- 6 area in the bottom deck of the ship with inadequate ventilation,
- 7 surrounded by wood, fiberglass and other flammable materials, and
- 8 without adequate alternative means to evacuate in the event of fire,
- 9 smoke, or other foreseeable emergencies;
- 10 j. Allowing crewmembers to sleep on the top deck by the wheelhouse
- 11 isolated from passenger sleeping quarters, preventing those
- 12 crewmembers to hear and/or notice foreseeable emergencies, including
- 13 fire and smoke in the bunkroom area of the vessel;
- 14 k. Failing to promulgate and enforce reasonable rules implementing pre-
- 15 departure muster drills – with the objective of providing passengers and
- 16 crew with life-saving training and information, including, but not
- 17 limited to, the location of all hatch doors in and out of the
- 18 hull/bunkroom area, and where they are to assemble in the event of an
- 19 emergency;
- 20 l. Operating and maintaining an unseaworthy vessel, not staunch, not
- 21 tight, not strong, improperly manned, improperly equipped, improperly
- 22 supplied, defective and in all respects, unfit for the operational service
- 23 for which it was engaged;
- 24 m. Operating an unseaworthy passenger vessel with non-existent and/or
- 25 improper and/or outdated smoke detectors and alarms;
- 26
- 27

- n. Operating an unseaworthy passenger vessel with non-existent and/or improper and/or outdated fire sprinklers and/or fire suppression devices;
- o. Failing to exercise reasonable care to equip the CONCEPTION with fire-fighting equipment that was safe, suitable, and reasonably fit for its intended purpose;
- p. Operating an unseaworthy vessel with faulty electrical wiring and/or outdated and/or inadequate power sources, incapable of safely charging multiple modern electronics at the same time;
- q. Operating an unseaworthy vessel with defective and/or inadequate electrical outlets, wiring and panels different from their intended and permitted use as manufactured;
- r. Operating an unseaworthy vessel with neglected maintenance on electric outlets, wiring and panels;
- s. Failing to exercise reasonable care to equip the CONCEPTION with an electrical system that was safe, suitable and reasonably fit for its intended use;
- t. Operating an unseaworthy passenger vessel with non-existent and/or inadequate ventilation and air flow, capable of managing CO₂ and smoke in the event of fire or other foreseeable emergencies;
- u. Operating an unseaworthy passenger vessel with blocked off, and/or neglected hatch doors with inadequate means of egress in and out of the passenger bunkroom area;
- v. Failing to exercise reasonable care to equip the CONCEPTION with emergency exits that were safe, suitable, properly designed, and sufficient in size and number;

- 1 w. Failing to use reasonable care to provide and maintain proper and
- 2 adequate, crew and equipment;
- 3 x. Failing to give crew members, reasonable work and rest hours of
- 4 employment so as not to overwork them to the point of not being
- 5 physically fit to carry out their duties and cause them to overwork to
- 6 the point of fatigue;
- 7 y. Failing to maintain the vessel in a reasonably safe condition;
- 8 z. Failing to inspect the subject area;
- 9 aa. Creating dangerous conditions which were known by the Counter-
- 10 Defendants and which in the exercise of reasonable care should have
- 11 been known by the Counter-Defendants;
- 12 bb. Failing to investigate the hazards to its passengers and then take the
- 13 necessary steps to eliminate those hazards, minimize those hazards, or
- 14 to adequately warn passengers of the danger of those hazards. In
- 15 addition, Counter-defendants violated the International Safety
- 16 Management Code and failed to have a proper, adequate Safety
- 17 Management System Manual and/or to follow it on board the vessel;
- 18 and; and,
- 19 cc. Any and all other acts or omissions constituting a breach of Counter-
- 20 Defendants' duty to use reasonable care discovered during litigation.
- 21 All of the above, caused the death of JUHA-PEKKA AHOPELTO.

22 54. At all times material, Counter-Defendants, their agents and/or apparent
 23 agents, knew or, in the exercise of reasonable care should have known that the
 24 dangers and risks associated with defects and unseaworthy conditions on the
 25 CONCEPTION, could cause severe injuries and death to others.

1 55. Counter-Defendants knew of the foregoing conditions causing the
2 death of JUHA-PEKKA AHOPELTO. Counter-Defendants did not correct these
3 conditions, or the conditions existed for a sufficient length of time so that Counter-
4 Defendants in the exercise of reasonable care should have learned of them and
5 corrected them.

6 56. All of the above-mentioned acts occurred within the privity and/or
7 knowledge of Counter-Defendants.

8 57. Moreover, the facts in this matter warrant the imposition of punitive /
9 exemplary damages against TRUTH AQUATICS, INC., GLEN RICHARD
10 FRITZLER and DANA JEANNE FRITZLER and DOES 1-10, under the General
11 Maritime Law of the United States and California law. The facts include, but are not
12 limited to:

- 13 a. Upon information and belief, at all times material, Counter-Defendants,
14 its employees, agents, servants and representatives operated the
15 CONCEPTION with reckless disregard for the rights and safety of its
16 passengers, including JUHA-PEKKA AHOPELTO.
- 17 b. Upon information and belief, at all times material, Counter-Defendants,
18 its employees, agents, servants and representatives acted with complete
19 indifference to the safety of its passengers, including JUHA-PEKKA
20 AHOPELTO.
- 21 c. Upon information and belief, at all times material, the conditions
22 causing the death of JUHA-PEKKA AHOPELTO, were known to
23 Counter-Defendants based on prior similar incidents, including a fire on
24 board their sister vessel, VISION, that occurred within one year of the
25 CONCEPTION fire;

1 d. Upon information and belief, following the fire on the VISION, Counter-
2 Defendants did nothing to prevent a similar or other fire on board the
3 CONCEPTION, although they were aware of facts demonstrating the
4 likelihood that such a fire could occur; and,

5 e. All of the allegations in paragraphs 53(a) – 53 (cc).

6 58. As a direct and proximate result of Counter-Defendants negligence,
7 negligence per se, carelessness, wantonness and recklessness, JUHA-PEKKA
8 AHOPELTO was killed.

9 59. As a direct and proximate result of the acts and omissions of Counter-
10 Defendants, prior to his death, JUHA-PEKKA AHOPELTO experienced physical
11 pain, mental suffering, grief, anxiety and emotional distress, in an amount to be
12 determined according to proof at trial.

13 60. As a direct and proximate result of the death of JUHA-PEKKA
14 AHOPELTO, his wife, and successor-in-interest, NINA HUTTEGGER, experienced
15 in the past and will experience in the future grief, loss of her husband's consortium,
16 love, companionship, services, comfort care, assistance, protection, affection and
17 moral support that were provided before the occurrence, in an amount to be
18 determined according to proof at trial.

19 61. As a direct and proximate result of the death of JUHA-PEKKA
20 AHOPELTO, his minor son C.A. experienced in the past and will experience in the
21 future grief, loss of parental consortium, love, companionship, services, comfort, care,
22 assistance, protection, affection and moral support that were provided before the
23 occurrence, in an amount to be determined according to proof at trial. Claimant
24 NINA HUTTEGGER brings this claim on C.A.'s behalf.

25 62. As a direct and proximate result of the death of JUHA-PEKKA
26 AHOPELTO, his daughter and successor-in-interest JULIA AHOPELTO
27

1 experienced in the past and will experience in the future grief, loss of parental
 2 consortium, love, companionship, services, comfort, care, assistance, protection,
 3 affection and moral support that were provided before the occurrence, in an amount
 4 to be determined according to proof at trial.

5 **COUNT II -**
 6 **NEGLIGENCE AND NEGLIGENCE PER SE OF A COMMON**
 7 **CARRIER AGAINST COUNTER-DEFENDANTS, PURSUANT TO**
 8 **CALIFORNIA CIVIL CODE SECTION 2100**

9 63. Counter-Plaintiffs incorporate paragraphs one (1) through forty-seven (47) as
 10 though originally alleged herein, and further allege as follows:

11 64. Pursuant to California Civil Code Section 2100, the Counter-Defendants, as
 12 common carriers, had a duty to use the highest care and vigilance to avoid causing
 13 harm to the Counter-Plaintiffs. The duty included using the highest care in servicing,
 14 inspecting, maintaining and operating the vessel.

15 65. At all times material, Counter-Defendants, by and through their agents,
 16 servants, officers, and/or employees, including the CONCEPTION's master and
 17 crewmembers, were negligent, careless, wanton, and reckless, and breached their
 18 duty of care to decedent JUHA-PEKKA AHOPELTO, including, but not limited to,
 19 by committing the following acts and/or omissions, which acts and/or omissions lead
 20 to his death:

- 21 a. Failing to have crewmembers roaming the vessel, while passengers were
 22 asleep in the hull/bunkroom area;
- 23 b. Failing to promulgate and enforce reasonable rules and regulations
 24 designed to ensure the safety and health of passengers, including having
 25 crewmembers roaming the vessel while passengers were asleep in the
 26 hull/bunkroom area;
- 27 c. Failing to promulgate and enforce reasonable rules and regulations
 28 designed to ensure the safety and health of passengers, including rules and

- 1 regulations designed to prevent all crewmembers from being asleep during
2 the time that the fire started and spread to the hull/bunkroom area;
- 3 d. Failing to promulgate and enforce formal roving watch schedules;
- 4 e. Misrepresenting to the United States Coast Guard that the CONCEPTION
5 promulgated and enforced formal roving watch schedules;
- 6 f. Failing to supervise and/or audit the crew and master to ensure that formal
7 roving watch schedules were implemented and enforced aboard the
8 CONCEPTION;
- 9 g. Failing to install common electronic devices in the wheelhouse and galley
10 areas of the vessel to track compliance with roving watch regulations,
11 including, for example by requiring crewmembers on roving watch to
12 punch during set periods (i.e. every 15 minutes), or an alarm will go off;
- 13 h. Failing to maintain an electronic position fixing device aboard the
14 CONCEPTION on the morning of the incident, in violation of 46 C.F.R.
15 184.410 and the requirement of the CONCEPTION'S vessel's Certificate
16 of Inspection;
- 17 i. Operating a passenger vessel with a tightly packed passenger bunkroom
18 area in the bottom deck of the ship with inadequate ventilation, surrounded
19 by wood, fiberglass and other flammable materials, and without adequate
20 alternative means to evacuate in the event of fire, smoke, or other
21 foreseeable emergencies;
- 22 j. Allowing crewmembers to sleep on the top deck by the wheelhouse isolated
23 from passenger sleeping quarters, preventing those crewmembers to hear
24 and/or notice foreseeable emergencies, including fire and smoke in the
25 bunkroom area of the vessel;
- 26
27
28

- k. Failing to promulgate and enforce reasonable rules implementing pre-departure muster drills – with the objective of providing passengers and crew with life-saving training and information, including, but not limited to, the location of all hatch doors in and out of the hull/bunkroom area, and where they are to assemble in the event of an emergency;
- l. Operating and maintaining an unseaworthy vessel, not staunch, not tight, not strong, improperly manned, improperly equipped, improperly supplied, defective and in all respects, unfit for the operational service for which it was engaged;
- m. Operating an unseaworthy passenger vessel with non-existent and/or improper and/or outdated smoke detectors and alarms;
- n. Operating an unseaworthy passenger vessel with non-existent and/or improper and/or outdated fire sprinklers and/or fire suppression devices;
- o. Failing to exercise reasonable care to equip the CONCEPTION with fire-fighting equipment that was safe, suitable, and reasonably fit for its intended purpose;
- p. Operating an unseaworthy vessel with faulty electrical wiring and/or outdated and/or inadequate power sources, incapable of safely charging multiple modern electronics at the same time;
- q. Operating an unseaworthy vessel with defective and/or inadequate electrical outlets, wiring and panels different from their intended and permitted use as manufactured;
- r. Operating an unseaworthy vessel with neglected maintenance on electric outlets, wiring and panels;

- s. Failing to exercise reasonable care to equip the CONCEPTION with an electrical system that was safe, suitable and reasonably fit for its intended use;
- t. Operating an unseaworthy vessel with non-existent and/or inadequate ventilation and air flow, capable of managing CO2 and smoke in the event of fire or other foreseeable emergencies;
- u. Operating an unseaworthy vessel with blocked off, and/or neglected hatch doors with inadequate means of egress in and out of the passenger bunkroom area;
- v. Failing to exercise reasonable care to equip the CONCEPTION with emergency exits that were safe, suitable, properly designed, and sufficient in size and number;
- w. Failing to use reasonable care to provide and maintain proper and adequate, crew and equipment;
- x. Failing to give crew members, reasonable work and rest hours of employment so as not to overwork them to the point of not being physically fit to carry out their duties and cause them to overwork to the point of fatigue;
- y. Failing to maintain the vessel in a reasonably safe condition;
- z. Failing to inspect the subject area;
- aa. Creating dangerous conditions which were known by the Counter-Defendants and which in the exercise of reasonable care should have been known by the Counter-Defendants;
- bb. Failing to investigate the potential hazards to passengers and then take necessary steps to eliminate those hazards, minimize those hazards, or to adequately warn passengers of the danger of those hazards. In addition,

1 Counter-Defendants violated the International Safety Management Code
2 and failed to have a proper, adequate Safety Management System Manual
3 and/or to follow it on board the vessel; and; and

4 cc. Any and all other acts or omissions constituting a breach of Counter-
5 Defendants' duty to use reasonable care discovered during litigation.

6 66. As a direct and proximate result of Counter-Defendant's breach of its duty
7 to exercise the highest care, in violation of California Civil Code Section 2100, the
8 Claimant suffered the harm and damages alleged herein.

9 67. Counter-Plaintiffs suffered the type of harm and damages that Civil Code
10 Section 2100 was designed to prevent.

11 68. As a direct and proximate result of Counter-Defendants negligence,
12 negligence per se, carelessness, wantonness and recklessness, JUHA-PEKKA
13 AHOPELTO was killed.

14 69. As a direct and proximate result of the acts and omissions of Counter-
15 Defendants, prior to his death, JUHA-PEKKA AHOPELTO experienced physical
16 pain, mental suffering, grief, anxiety and emotional distress, in an amount to be
17 determined according to proof at trial.

18 70. As a direct and proximate result of the death of JUHA-PEKKA
19 AHOPELTO, his wife, and successor-in-interest, NINA HUTTEGGER, experienced
20 in the past and will experience in the future grief, loss of her husband's consortium,
21 love, companionship, services, comfort care, assistance, protection, affection and
22 moral support that were provided before the occurrence, in an amount to be
23 determined according to proof at trial.

24 71. As a direct and proximate result of the death of JUHA-PEKKA
25 AHOPELTO, his minor son C.A. experienced in the past and will experience in the
26 future grief, loss of parental consortium, love, companionship, services, comfort, care,
27

1 assistance, protection, affection and moral support that were provided before the
 2 occurrence, in an amount to be determined according to proof at trial. Claimant
 3 NINA HUTTEGGER brings this claim on C.A.'s behalf.

4 72. As a direct and proximate result of the death of JUHA-PEKKA
 5 AHOPELTO, his daughter and successor-in-interest JULIA AHOPELTO
 6 experienced in the past and will experience in the future grief, loss of parental
 7 consortium, love, companionship, services, comfort, care, assistance, protection,
 8 affection and moral support that were provided before the occurrence, in an amount
 9 to be determined according to proof at trial

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Claimants/Counter-Plaintiffs pray for judgment against
 12 Plaintiffs-in-Limitation/Counter-Defendants, and each of them, as follows:

13 1. The Complaint seeking Exoneration from or Limitation of Liability be
 14 dismissed and the injunction or restraining order granted in this matter be
 15 dissolved;

16 2. Alternatively, that Plaintiffs-in-Limitation/Counter-Defendants be required
 17 to deposit additional security by way of a cash deposit into the registry of the Court
 18 or a bond issued by a surety approved by the Court and be based upon an appraisal
 19 issued by a commissioner appointed by the Court. Claimants/Counter-Plaintiffs
 20 further pray that pending such deposit, any injunction and/or restraining order be
 21 dissolved. If Plaintiffs-in-Limitation/Counter-Defendants fail to deposit the requisite
 22 security, Claimants/Counter-Plaintiffs pray for a dismissal of the Complaint seeking
 23 exoneration from, or Limitation of, liability;

24 3. Survival and wrongful death damages including, but not limited to, pre-
 25 death physical pain, mental suffering, grief, anxiety and emotional distress, in an
 26 amount to be determined according to proof at trial to NINA HUTTEGGER, as
 27

1 successor-in-interest to JUHA-PEKKA AHOPELTO and/or on behalf of the estate
2 of JUHA-PEKKA AHOPELTO and all eligible beneficiaries under law;

3 4. Punitive / exemplary damages under the General Maritime Law of the
4 United States and California law to NINA HUTTEGGER, as successor-in-interest
5 to JUHA-PEKKA AHOPELTO and all eligible beneficiaries under law;

6 5. General damages to NINA HUTTEGGER, including, but not limited to, past
7 and future grief, loss of JUHA-PEKKA AHOPELTO's love, consortium,
8 companionship, comfort, care, assistance, protection, affection and moral support
9 that were provided before the occurrence, in an amount to be determined according
10 to proof at trial;

11 6. General damages to JUHA-PEKKA AHOPELTO's minor son, C.A.,
12 including but not limited to, past and future grief, loss of JUHA-PEKKA
13 AHOPELTO's love, consortium, companionship, comfort, care, assistance,
14 protection, affection and moral support that were provided before the occurrence, in
15 an amount to be determined according to proof at trial;

16 7. General damages to JULIA AHOPELTO, as surviving daughter of JUHA-
17 PEKKA AHOPELTO, including but not limited to, past and future grief, loss of
18 JUHA-PEKKA AHOPELTO's love, consortium, companionship, comfort care,
19 assistance, protection, affection and moral support that were provided before the
20 occurrence, in an amount to be determined according to proof at trial;

21 8. Prejudgment interest awarded to the Claimants/Counter-Plaintiffs as
22 allowed by law;

23 9. For costs of suit incurred herein awarded to the Claimants/Counter-
24 Plaintiffs; and

25 10. For such other and further relief as the Court may deem proper.

26 ///

DEMAND FOR JURY TRIAL

Claimants/Counter-Plaintiffs respectfully request a trial by jury, after the limitation portion of the proceedings is completed and further preserve their right to seek a trial by jury in state court.

Respectfully submitted on June 8, 2020.

NELSON & FRAENKEL LLP

Gretchen M. Nelson

Carlos F. Llinás Negret

By: /s/Carlos F. Llinás Negret

Carlos F. Llinás Negret

KREINDLER & KREINDLER LLP

Daniel O. Rose

Kevin J. Mahoney

*Attorneys for Claimants/Counter-
Plaintiffs* Nina Huttegger and Julia
Ahopelto