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

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

17  
 18 In the matter of the Complaint of  
 19 Truth Aquatics, Inc. and Glen Richard  
 20 Fritzler and Dana Jeanne Fritzler,  
 21 individually and as Trustees of the  
 22 Fritzler Family Trust DTD 7/27/92 as  
 23 owners and/or owners pro hac vice of  
 24 the dive vessel CONCEPTION,  
 Official Number 638133, for  
 Exoneration from or Limitation of  
 Liability

25 *Plaintiffs-in-Limitation*

26 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**

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

5 and

6 JULIA AHOPELTO, individually, as  
7 surviving daughter of JUHA-PEKKA  
8 AHOPELTO,

9 *Claimants / Counter-Plaintiffs*

10 v.

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

18 *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**

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

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

26 By and through undersigned counsel, file this *Answer and Affirmative*  
27 *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 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.*  
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1 **SECOND AFFIRMATIVE DEFENSE**

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

7 **THIRD AFFIRMATIVE DEFENSE**

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

13 **FOURTH AFFIRMATIVE DEFENSE**

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

23 **FIFTH AFFIRMATIVE DEFENSE**

24 25. The value of the vessel at the end of the voyage alleged in the Amended  
25 Complaint is neither sufficient nor adequate to properly discharge Plaintiffs-in-  
26 Limitation’s liabilities and obligations, nor does it reflect the correct values required  
27 by law. This Court should, therefore, dismiss the Complaint, or failing that, order  
28 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  
28 on the CONCEPTION, could cause severe injuries and death to others.

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**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.

1           31. In particular, upon information and belief, on or before the date of the  
2 subject incident, the Plaintiffs-in-Limitation, among other things: a) failed to have  
3 crewmembers roaming the vessel, while passengers were asleep in the  
4 hull/bunkroom area, b) failed to promulgate and enforce reasonable rules and  
5 regulations designed to ensure the safety and health of passengers, including having  
6 crewmembers roaming the vessel while passengers were asleep in the hull/bunkroom  
7 area, c) failed to promulgate and enforce reasonable rules and regulations designed  
8 to ensure the safety and health of passengers, including rules and regulations  
9 designed to prevent all crewmembers from being asleep during the time that the fire  
10 started and spread to the hull/bunkroom area, d) failed to promulgate and enforce  
11 formal roving watch schedules, e) misrepresented to the United States Coast Guard  
12 that the CONCEPTION promulgated and enforced formal roving watch schedules,  
13 f) failed to supervise and/or audit the crew and master to ensure that formal roving  
14 watch schedules were implemented and enforced aboard the CONCEPTION, g)  
15 failed to install common electronic devices in the wheelhouse and galley areas of the  
16 Vessel requiring crewmembers on roving watch to punch during set periods (i.e.  
17 every 15 minutes), or an alarm will go off, h) operated a passenger vessel with a  
18 tightly packed passenger bunkroom area in the bottom deck of the ship with  
19 inadequate ventilation, surrounded by wood, fiberglass and other flammable  
20 materials, and without adequate alternative means to evacuate in the event of fire or  
21 other foreseeable emergencies, i) allowed crewmembers to sleep on the top deck by  
22 the wheelhouse isolated from passenger sleeping quarters, preventing those  
23 crewmembers to hear and/or notice foreseeable emergencies, including fire and  
24 smoke in the bunkroom area of the Vessel, j) failed to promulgate and enforce  
25 reasonable rules implementing pre-departure muster drills – with the objective of  
26 providing passengers and crew with life-saving training and information, including,  
27 but not limited to the location of all hatch doors in and out of the hull/bunkroom  
28 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,  
28 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  
24 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**

1  
2 36. To the extent the insurers for the Plaintiffs-in-Limitation attempt to avail  
3 themselves of the exoneration and/or limitation defense, Claimants assert that the  
4 Limitation of Liability Act is unavailable to insurers of vessel owners under the  
5 circumstances. In the alternative, no *prima facie* case has been made establishing  
6 insurers are entitled to avail themselves of the Limitation of Liability Act.  
7 Additionally, the insurers of the Vessel are not entitled to exoneration from, or  
8 limitation of liability, because they failed to file a timely petition within the statutory  
9 period prescribed by Supplemental Admiralty Rule F.

**THIRTHEENTH AFFIRMATIVE DEFENSE**

10  
11 37. The events culminating in the killing of JUHA-PEKKA AHOPELTO were  
12 not the result of any negligence, fault, or want of due care by the Claimants.

**FOURTEENTH AFFIRMATIVE DEFENSE**

13  
14 38. To the extent that this Court determines that the Limitation of Liability Act,  
15 46 U.S.C. §§ 30501, *et seq.*, applies to this case, which it should not, this limitation  
16 proceeding should include any and all proceeds from insurance coverage on the Vessel,  
17 including insurance coverage of Vessel’s flotilla of sister ships. Plaintiffs-in-Limitation  
18 have not complied with Rule F(1)(a), by failing to deposit with the court, for the benefit  
19 of Claimants, an adequate bond or security. Plaintiffs-in-Limitation are not entitled to  
20 exoneration from, or limitation of liability for failing to comply with Rule F(1)(a). This  
21 Court should, therefore, dismiss the Amended Complaint, or failing that, order  
22 Plaintiffs-in-Limitation to deposit an adequate bond, or security.

**FIFTEENTH AFFIRMATIVE DEFENSE**

23  
24 39. To the extent that this Court determines that the Limitation of Liability  
25 Act, 46 U.S.C. §§ 30501, *et seq.*, applies to this case, which it should not, the  
26 limitation fund should include any and all proceeds from any judgment, award or  
27 settlement which may be received by the Plaintiffs-in-Limitation from any third  
28 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.

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

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

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

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

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



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.

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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1 47. Platts Harbor is within 3 nautical miles from the shore of Santa Cruz  
2 Island.

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

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

9 48. This Cause of Action arises under the General Maritime Law of the  
10 United States as handed down in *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375  
11 (1970), *Sea-Land Services v. Gaudet*, 414 U.S. 573 (1974), *Norfolk Shipbuilding &*  
12 *Drydock Corp., v. Garris*, 532 U.S. 811 (2001), and *Yahama Motor Corp., v. Calhoun*,  
13 516 U.S. 199 (1996).

14 49. At all times material hereto, Counter-Defendants had exclusive  
15 custody and control of the CONCEPTION.

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

19 51. Counter-Defendants’ duty included the duty to exercise reasonable  
20 care to maintain and operate the CONCEPTION, in a reasonably safe condition.

21 52. At all times material, Counter-Defendants were subject to 46 CFR  
22 §15.705 (a), requiring roving watches, routinely controlled and performed in a  
23 scheduled and fixed rotation – and further providing that “performance of  
24 maintenance and work necessary to vessel’s safe operation on a daily basis does not  
25 in itself constitute the establishment of a watch.”

26 53. At all times material, Counter-Defendants, by and through their  
27 agents, servants, officers, and/or employees, including the CONCEPTION’s master

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;
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- 1 n. Operating an unseaworthy passenger vessel with non-existent and/or  
2 improper and/or outdated fire sprinklers and/or fire suppression  
3 devises;
- 4 o. Failing to exercise reasonable care to equip the CONCEPTION with  
5 fire-fighting equipment that was safe, suitable, and reasonably fit for its  
6 intended purpose;
- 7 p. Operating an unseaworthy vessel with faulty electrical wiring and/or  
8 outdated and/or inadequate power sources, incapable of safely charging  
9 multiple modern electronics at the same time;
- 10 q. Operating an unseaworthy vessel with defective and/or inadequate  
11 electrical outlets, wiring and panels different from their intended and  
12 permitted use as manufactured;
- 13 r. Operating an unseaworthy vessel with neglected maintenance on  
14 electric outlets, wiring and panels;
- 15 s. Failing to exercise reasonable care to equip the CONCEPTION with an  
16 electrical system that was safe, suitable and reasonably fit for its  
17 intended use;
- 18 t. Operating an unseaworthy passenger vessel with non-existent and/or  
19 inadequate ventilation and air flow, capable of managing CO2 and  
20 smoke in the event of fire or other foreseeable emergencies;
- 21 u. Operating an unseaworthy passenger vessel with blocked off, and/or  
22 neglected hatch doors with inadequate means of egress in and out of the  
23 passenger bunkroom area;
- 24 v. Failing to exercise reasonable care to equip the CONCEPTION with  
25 emergency exits that were safe, suitable, properly designed, and  
26 sufficient in size and number;

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- 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  
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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**

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

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

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

- 20 a. Failing to have crewmembers roaming the vessel, while passengers were  
21 asleep in the hull/bunkroom area;
- 22 b. Failing to promulgate and enforce reasonable rules and regulations  
23 designed to ensure the safety and health of passengers, including having  
24 crewmembers roaming the vessel while passengers were asleep in the  
25 hull/bunkroom area;
- 26 c. Failing to promulgate and enforce reasonable rules and regulations  
27 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;
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- 1 k. Failing to promulgate and enforce reasonable rules implementing pre-  
2 departure muster drills – with the objective of providing passengers and  
3 crew with life-saving training and information, including, but not limited  
4 to, the location of all hatch doors in and out of the hull/bunkroom area, and  
5 where they are to assemble in the event of an emergency;
- 6 l. Operating and maintaining an unseaworthy vessel, not staunch, not tight,  
7 not strong, improperly manned, improperly equipped, improperly supplied,  
8 defective and in all respects, unfit for the operational service for which it  
9 was engaged;
- 10 m. Operating an unseaworthy passenger vessel with non-existent and/or  
11 improper and/or outdated smoke detectors and alarms;
- 12 n. Operating an unseaworthy passenger vessel with non-existent and/or  
13 improper and/or outdated fire sprinklers and/or fire suppression devises;
- 14 o. Failing to exercise reasonable care to equip the CONCEPTION with fire-  
15 fighting equipment that was safe, suitable, and reasonably fit for its  
16 intended purpose;
- 17 p. Operating an unseaworthy vessel with faulty electrical wiring and/or  
18 outdated and/or inadequate power sources, incapable of safely charging  
19 multiple modern electronics at the same time;
- 20 q. Operating an unseaworthy vessel with defective and/or inadequate  
21 electrical outlets, wiring and panels different from their intended and  
22 permitted use as manufactured;
- 23 r. Operating an unseaworthy vessel with neglected maintenance on electric  
24 outlets, wiring and panels;

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

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**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  
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