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12 Attorneys for CHRISTINE DIGNAM
 13 Personal Representative of the Estate of
 14 JUSTIN CARROLL DIGNAM
 15 Claimant/Respondent

16 UNITED STATES DISTRICT COURT

17 CENTRAL DISTRICT OF CALIFORNIA

18 IN ADMIRALTY

19 In the Matter of the Complaint of)	Case No. CV 19-7693 PA (MRWx)
20 TRUTH AQUATICS, INC. and)	
21 GLEN RICHARD FRITZLER and)	CLAIMANT/RESPONDENT
22 DANA JEANNE FRITZLER,)	CHRISTINE DIGNAM'S
23 Individually and as Trustees of the)	ANSWER TO THE FIRST
24 Fritzler Family Trust DTD 7/27/92 as)	AMENDED COMPLAINT FOR
25 owners and/or owners <i>pro hac vice</i> of)	EXONERATION FROM OR
26 the dive vessel CONCEPTION,)	LIMITATION OF LIABILITY
Official Number 638133, for)	
Exoneration from or Limitation of)	
Liability)	

1 COMES NOW CLAIMANT/RESPONDENT CHRISTINA DIGNAM
 2 (“CLAIMANT/RESPONDENT”) WHO, acting as the Duly Appointed Personal
 3 Representative of the Estate of JUSTIN CARROLL DIGNAM (Deceased),
 4 hereby answers the Complaint for Exoneration from or Limitation of Liability
 5 filed herein by admitting, denying, and alleging, on information and belief, as
 6 follows:
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9 ADMISSIONS AND DENIALS

10 1. Admits the allegations and accepts the legal conclusions set forth in
 11 Paragraph 1.
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13 2. Admits that Plaintiffs and Petitioners allege they are the owners or
 14 owners *pro hac vice* of the CONCEPTION, but currently lacks sufficient
 15 information to form a belief about the other allegations in Paragraph 2 and, on
 16 that basis, denies those allegations.
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19 3. Admits that Venue is proper in this Court pursuant to Fed.R.Civ.P.
 20 Supp. Adm. R. F(9), and that the incident which forms the basis of this action
 21 occurred upon the navigable waters of the Santa Barbara Channel, within the
 22 territorial waters of the State of California, but currently lacks sufficient
 23 information to form a belief about the other allegations of Paragraph 3 and, on
 24 that basis, denies those allegations.
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27 4. Admits that thirty-three passengers and one crew member died
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1 aboard the CONCEPTION as a direct and proximate result of the Fire on
2 September 2, 2019, but currently lacks sufficient information to form a belief
3 about the other allegations of Paragraph 4 and, on that basis, denies those
4 allegations.
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6 5. Admits that she has not yet filed suit against the Plaintiffs and
7 Petitioners in any other forum by reason of the premises herein, but otherwise
8 lacks sufficient information to form a belief about the other allegations of
9 Paragraph 5 and, on that basis, denies those allegations.
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11 6. Currently lacks sufficient information to form a belief about the
12 allegations of Paragraph 6 and, on that basis, denies those allegations.
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14 7. Currently lacks sufficient information to form a belief about the
15 allegations of Paragraph 7 and, on that basis, denies those allegations.
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17 8. Currently lacks sufficient information to form a belief about the
18 allegations of Paragraph 8 and, on that basis, denies those allegations.
19

20 9. Currently lacks sufficient information to form a belief about the
21 allegations of Paragraph 9 and, on that basis, denies those allegations.
22

23 10. Denies the allegations in Paragraph 10.

24 11. Admits that the CONCEPTION departed Santa Barbara, California
25 on August 31, 2019, with thirty-three passengers and six crew members on board
26 for a three-day voyage upon the navigable waters of the Santa Barbara Channel,
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1 within the territorial limits of the State of California, but denies each and every
2 one of the other allegations in Paragraph 11.

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4 12. Admits that a fire broke out on board the CONCEPTION during the
5 early morning hours of September 2, 2019, while that vessel was anchored upon
6 the navigable waters of the Santa Barbara Channel less than one marine league
7 from shore and within the territorial waters of the State of California, but denies
8 each and every one of the other allegations in Paragraph 12.

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10 13. Currently lacks sufficient information to form a belief about the
11 allegations of Paragraph 13.

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13 14. Currently lacks sufficient information to form a belief about the
14 allegations of Paragraph 14.

15 15. Denies the allegations of Paragraph 15.

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17 16. The allegations and legal conclusions set forth in Paragraph 16 do
18 not call for an answer from CLAIMANT/RESPONDENT DIGNAM.

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20 17. Denies and disputes the allegations, beliefs, and legal conclusions set
21 forth in Paragraph 17.

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23 18. The allegations and legal conclusions set forth in Paragraph 18 do
24 not call for an answer from CLAIMANT/RESPONDENT DIGNAM.

25 19. Admits the allegations of Paragraph 19.

1 **FIRST AFFIRMATIVE DEFENSE**

2 20. As and for a first affirmative defense, CLAIMANT/RESPONDENT
3
4 alleges that:

5 a.) She is prepared to join with the other Claimants and
6 Respondents herein and offer stipulations that will fully protect Plaintiffs'
7 and Petitioners' right to limitation, if any;

8 b.) This action should therefore be abated under *Langnes v.*
9
10 *Green*, 282 U.S. 531 (1931), *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S.
11 438 (2001), *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 152 (1957),
12 *Newton v. Shipman*, 718 F.2d 959, 962 (9th Cir. 1983), and;

13 b.) CLAIMANT/RESPONDENT should be allowed to pursue her
14 claims against Plaintiffs and Petitioners, at law and in the forum of her
15 choice before a jury of her peers, under the "Saving to Suitors Clause," 28
16 U.S.C. § 1333(1).
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20 **SECOND AFFIRMATIVE DEFENSE**

21 21. As and for a Second Affirmative Defense,
22 CLAIMANT/RESPONDENT alleges that:

23 a. Insofar as she is prepared to protect Plaintiffs' and Petitioners'
24 right to limitation, if any, as was alleged in Paragraph 20 hereinabove, the
25 Vessel Owners Limitation Act, 46 U.S.C. §§ 30501 *et seq.*, and its rules of
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1 practice do not create a freestanding right to exoneration herein, and;

2 b. This Court should therefore defer any decisions about the
3 merits of her claims to the California Superior Courts in accordance with
4 the decisions in *Lewis v. Lewis & Clark Marine*, 531 U.S. 438, 453 (2001),
5 *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 152 (1957), and *In re*
6 *Tidewater Inc.*, 249 F.3d 342, 347 (5th Cir. 2001).
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9 **THIRD AFFIRMATIVE DEFENSE**

10 22. As and for a Third Affirmative Defense,
11 CLAIMANT/RESPONDENT alleges that the CONCEPTION was unseaworthy at
12 the outset of her alleged August 31, 2019 voyage in that:
13

14 a. She was outfitted and furnished with dangerous and defective
15 features, equipment, and apparel including, but not limited to, escape
16 hatches, smoke detectors, fire extinguishers, electrical systems, and battery
17 chargers which were not fit for their intended purposes;
18
19

20 b. She was commanded by an unfit master and manned by an
21 unfit crew, and;
22

23 c. She was deliberately and habitually operated in violation of
24 Sub-chapter T of the United States Coast Guard Regulations, including but
25 not limited to the provisions of 46 CFR § 185.410, as well as the
26 requirements of her own Certificate of Inspection.
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23. Plaintiffs and Petitioners are charged with privity and knowledge of those unseaworthy conditions under *In the Matter of the Complaint of Villers Seafood Co*, 813 F.2d 339, 343 (11th Cir., 1987).

FOURTH AFFIRMATIVE DEFENSE

24. CLAIMANT/RESPONDENT presently lacks sufficient knowledge or information to formulate all affirmative defenses that may ultimately prove to be applicable herein and therefore reserves the right to later assert additional affirmative defenses in the event that additional facts become known to her which would justify the assertion of additional defenses.

PRAYER

WHEREFORE, CLAIMANT/RESPONDENT CHRISTINE DIGNAM, acting as the duly appointed Personal Representative of the Estate of JUSTIN CARROLL DIGNAM (DECEASED), prays that:

1. Petitioners be denied Exoneration from and/or Limitation of Liability herein;
2. The Complaint be dismissed and judgment rendered in favor of CLAIMANT/RESPONDENT;
3. CLAIMANT/RESPONDENT be awarded her costs of suit incurred in defense of this action; and,

1 4. The Court grant such other and further relief as it deems just and
2 proper.
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5 Dated: November 11, 2019

6 McGUINN, HILLSMAN & PALEFSKY

7 By: JOHN R. HILLSMAN
8 JOHN R. HILLSMAN

9 Attorneys for CLAIMANT/RESPONDENT
10 CHRISTINE DIGNAM, Personal
11 Representative of the Estate of
12 JUSTIN CARROLL DIGNAM

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