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13 al.

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

18 **IN THE MATTER OF THE**
19 **COMPLAINT OF TRUTH**
20 **AQUATICS, INC. and GLEN**
21 **RICHARD FRITZLER and DANA**
22 **JEANNE FRITZLER, individually**
23 **and as Trustees of the FRITZLER**
24 **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

Case No. 2:19-cv-07693 PA (MRWx)
ANSWER OF CLAIMANTS,
ROBERT KURTZ and CHERIE
McDONOUGH, individually and as
the successors in interest of
ALEXANDRA KURTZ, deceased,
TO LIMITATION PLAINTIFFS’
FIRST AMENDED COMPLAINT
FOR EXONERATION FROM OR
LIMITATION OF LIABILITY,
WITH CLAIMS AGAINST
LIMITATION PLAINTIFFS

25 Claimants, Robert Kurtz and Cherie McDonough, individually and as the
26 successors in interest of Alexandra Kurtz, deceased (hereinafter “Claimants”), by and
27 through their undersigned counsel, hereby appear within the time period specified by
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1 this Honorable Court to present their existing and contingent claims and hereby answer
2 the First Amended Complaint of Truth Aquatics, Inc. and Glen Richard Fritzler and
3 Dana Jeanne Fritzler, individually and as Trustees of the Fritzler Family Trust DTD
4 7/27/92 (hereinafter collectively the “Limitation Plaintiffs”) as Owners and/or Owners
5 *pro hac vice* of the dive vessel *Conception*, official Number 638133, for Exoneration
6 From or Limitation of Liability (hereinafter the “First Amended Complaint”) pursuant
7 to Rule F(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims,
8 and in support thereof, allege upon information and belief as follows in response to
9 each allegation of the petitioning Limitation Plaintiffs:

10 **ANSWER**

11 1. The allegations contained in Paragraph 1 of the First Amended Complaint
12 contain conclusions of law to which no responses are required, and they are therefore
13 denied.

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

16 3. To the extent the allegations contained in Paragraph 3 of the First
17 Amended Complaint contain conclusions of law to which no responses are required,
18 they are denied. The remaining allegations contained in Paragraph 3 of the First
19 Amended Complaint are denied for lack of sufficient information to justify a belief
20 therein.

21 4. It is admitted that thirty-three passengers and one crew member died as a
22 result of the fire that broke out on the vessel on September 2, 2019. The remainder of
23 the allegations contained in Paragraph 4 of the First Amended Complaint are denied for
24 lack of sufficient information to justify a belief therein.

25 5. Claimants admit that they have not filed any lawsuit or claim against the
26 Limitation Plaintiffs arising out of the fire of September 2, 2019. The remainder of the
27 allegations contained in Paragraph 5 of the First Amended Complaint are denied for
28 lack of sufficient information to justify a belief therein.

1 6. The allegations contained in Paragraph 6 of the Complaint are denied for
2 lack of sufficient information to justify a belief therein.

3 7. The allegations contained in Paragraph 7 of the First Amended Complaint
4 are denied for lack of sufficient information to justify a belief therein.

5 8. The allegations contained in Paragraph 8 of the First Amended Complaint
6 are denied for lack of sufficient information to justify a belief therein.

7 9. The allegations contained in Paragraph 9 of the First Amended Complaint
8 are denied for lack of sufficient information to justify a belief therein.

9 10. Denied. It is specifically denied that the *Conception* was seaworthy. By
10 way of further response, the *Conception* lacked sufficient means of ingress and egress,
11 its captain failed to properly implement required watch policies and procedures at all
12 times on the *Conception*, and the *Conception* failed to have an adequate fire
13 suppression and detection system. The remainder of the allegations contained in
14 Paragraph 10 of the First Amended Complaint contain conclusions of law to which no
15 responses are required, and they are therefore denied.

16 11. It is admitted that the *Conception's* voyage commenced on August 31,
17 2019 with thirty-three passengers and six crewmembers. The remaining allegations
18 contained in Paragraph 11 of the First Amended Complaint contain conclusions of law
19 to which no responses are required, and they are therefore denied.

20 12. Denied in part; admitted in part. The allegations contained in Paragraph
21 12 of the First Amended Complaint are denied for lack of sufficient information to
22 justify a belief therein. The allegations contained in Paragraph 12 of the First Amended
23 Complaint also contain conclusions of law to which no responses are required, and they
24 are therefore denied. It is admitted only that, as a result of the fire onboard the
25 *Conception*, its thirty-three passengers and one crewmember died.

26 13. The allegations contained in Paragraph 13 of the First Amended Complaint
27 are denied for lack of sufficient information to justify a belief therein.

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

3 15. Denied. It is specifically denied that the *Conception* was seaworthy. By
4 way of further response, the *Conception* lacked sufficient means of ingress and egress,
5 its captain failed to properly implement required watch policies and procedures at all
6 times on the *Conception*, and the *Conception* failed to have an adequate fire
7 suppression and detection system. The remainder of the allegations contained in
8 Paragraph 15 of the First Amended Complaint contain conclusions of law to which no
9 responses are required, and they are therefore denied.

10 16. The allegations contained in Paragraph 16 of the First Amended Complaint
11 contain conclusions of law to which no responses are required, and they are therefore
12 denied. It is specifically denied that Limitation Plaintiffs are entitled to exoneration
13 from or limitation of liability for the losses and damages arising out of the *Conception*
14 fire.

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

17 18. The allegations contained in Paragraph 18 of the First Amended Complaint
18 contain conclusions of law to which no responses are required, and they are therefore
19 denied.

20 19. The allegations contained in Paragraph 19 of the First Amended Complaint
21 are admitted.

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CLAIMANTS' AFFIRMATIVE DEFENSES

FIRST DEFENSE

The allegations of the First Amended Complaint fail to state a claim upon which relief may be granted.

SECOND DEFENSE

Claimants reserve the right to challenge the Limitation Plaintiffs' alleged interest in the *Conception* and/or the alleged valuation of the Vessel.

THIRD DEFENSE

The limitation fund is inadequate and the First Amended Complaint should be dismissed because Limitation Plaintiffs have failed to deposit "a sum equal to the amount or value of the owner's interest in the Vessel" or adequate security for the Vessel.

FOURTH DEFENSE

The limitation fund is inadequate and the First Amended Complaint should be dismissed because Limitation Plaintiffs have failed to deposit adequate security for the Vessel identified in the First Amended Complaint.

FIFTH DEFENSE

Limitation Plaintiffs, or certain of them, are not a proper party plaintiff under the Shipowner's Limitation of Liability Act and should be dismissed from the action.

SIXTH DEFENSE

Limitation Plaintiffs are not entitled to Limitation of Liability in the instant case

1 because at all times pertinent herein, the *Conception* was operated in a willful, wanton,
2 and reckless manner or, in the alternative, the conduct and actions which lead to
3 Claimants' injuries and damages took place with the privity and knowledge of the
4 owners, managing owners, owners *pro hac vice*, and/or operators of the *Conception*.

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6 **SEVENTH DEFENSE**

7 Limitation Plaintiffs are not entitled to Limitation of Liability in the instant case
8 because at all relevant times, the *Conception* was known by the owner and/or owner
9 *pro hac vice* to be unseaworthy and that unseaworthiness caused and/or contributed to
10 Claimants' injuries and damages.

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12 **EIGHTH DEFENSE**

13 The incident and resulting damages which are the subject of Limitation
14 Plaintiffs' First Amended Complaint were caused by the fault, negligence, breach of
15 warranty, statutory and regulatory violations of Limitation Plaintiffs, their agents,
16 servants, contractors, and/or employees, all of which was within the privity and
17 knowledge of Limitation Plaintiffs and, therefore, Limitation Plaintiffs' prayer for a
18 decree of exoneration from liability must be denied.

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20 **NINTH DEFENSE**

21 The incident and resulting damages which are the subject of Limitation
22 Plaintiffs' First Amended Complaint were caused by the unseaworthiness of the
23 *Conception* and the negligence of the Vessel's crew and shoreside management, and,
24 therefore, Limitation Plaintiffs' prayer for a decree of exoneration from liability must
25 be denied.

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27 **TENTH DEFENSE**

28 Limitation Plaintiffs' First Amended Complaint for Exoneration From or

1 Limitation of Liability contains vague and ambiguous statements which are
2 objectionable under Federal Rule of Civil Procedure 12(e), and Claimants seek more
3 definite statements of the allegations, regardless of the nature, manner and extent of the
4 Answer and Claim herein.

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6 **ELEVENTH DEFENSE**

7 The events culminating in the injuries and damages of Claimants were the result
8 of negligence, fault, or want of due care on the part of Limitation Plaintiffs and/or those
9 for whom Limitation Plaintiffs are responsible, and/or the unseaworthiness of the
10 *Conception*, all of which was within the privity and knowledge of Limitation Plaintiffs,
11 for which the First Amended Complaint for Exoneration From or Limitation of
12 Liability should be denied.

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14 **TWELFTH DEFENSE**

15 The events culminating in the injuries and damages sustained by Claimants were
16 not the result of any negligence, fault, or want of due care on the part of Claimants or
17 Claimants' decedent.

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19 **THIRTEENTH DEFENSE**

20 In filing this Answer and Claim, Claimants specifically reserve all rights to
21 pursue all available claims in federal court.

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23 **FOURTEENTH DEFENSE**

24 Claimants specifically reserve all rights to pursue all available claims and no part
25 of this Answer and Claim shall be construed to be a waiver of these rights.

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27 **FIFTEENTH DEFENSE**

28 Claimants specifically reserve the right to pursue all available claims in State

1 Court, pursuant to the “Savings to Suitors” clause, 28 U.S.C. § 1333, for resolution of
2 any and all issues beyond a determination of whether admiralty jurisdiction exists and
3 whether limitation is required.

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5 **SIXTEENTH DEFENSE**

6 Claimants presently lack sufficient knowledge or information to formulate all
7 affirmative defenses that may ultimately prove to be applicable herein and reserve the
8 right to later assert additional affirmative defenses in the event that additional facts
9 become known to them that would justify the assertion of additional defenses.

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11 **CLAIM ON BEHALF OF ROBERT KURTZ and CHERIE McDONOUGH,**
12 **individually and as the successors in interest of ALEXANDRA KURTZ,**
13 **deceased,**

14
15 **AGAINST LIMITATION PLAINTIFFS**

16 Specifically reserving all rights and defenses asserted herein, Answering
17 Claimants hereby demand a jury trial and make this claim pursuant to Rule F(5) of the
18 Supplemental Rules for Admiralty or Maritime Claims against Truth Aquatics, Inc. and
19 Glen Richard Fritzler and Dana Jeanne Fritzler, individually and as Trustees of the
20 Fritzler Family Trust DTD 7/27/92, as owners, owners *pro hac vice*, operators and
21 alleged owners and operators of the vessel *Conception* (the “Vessel”) and in support
22 thereof aver as follows:

- 23
- 24 1. Claimant, Robert Kurtz, is an adult citizen of Illinois, residing at 1340
25 Deerfield Court, Highland Park, IL 60035.
 - 26 2. Claimant, Cherie McDonough, is an adult citizen of Ohio, residing at 3041
27 Westknolls Lane, Cincinnati, OH 45211.
- 28

1 3. Claimants, Robert Kurtz and Cherie McDonough, are the natural parents
2 of Alexandra Kurtz, deceased.

3 4. Alexandra Kurtz, deceased, had no spouse and had no children at the time
4 of her death; Claimants are the only successors in interest to Alexandra Kurtz,
5 deceased, and are entitled to file this claim for damages arising from the death of
6 Alexandra Kurtz pursuant to California Code of Civil Procedure §§ 377.30 and 377.60
7 and California Probate Code § 6402.

8 5. On or about September 2, 2019, Alexandra Kurtz, deceased, was employed
9 by Truth Aquatics, Inc. as a crew member of the Vessel.

10 6. At all times material hereto the Limitation Plaintiffs owned, maintained,
11 equipped, controlled, and operated the Vessel.

12 7. On Monday, August 31, 2019, the *Conception* departed the Port of Santa
13 Barbara with Alexander Kurtz, along with five other crew members and thirty-three
14 passengers onboard, for a three-day voyage.



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15. Upon information and belief, the fire was caused, at least in part, by the lithium battery powered equipment that the Limitation Plaintiffs permitted and encouraged to be charged and stored in the Vessel's galley, directly above the passenger accommodations where Claimants' decedent and the Vessel's passengers were sleeping.

1 16. Upon information and belief, a year before the fire onboard the Vessel, the
2 Limitation Plaintiffs experienced a lithium-battery-caused fire aboard the Vessel's
3 sister ship, the *Vision*.

4 17. The Limitation Plaintiffs failed to report this fire for further investigation,
5 failed to perform safety risk assessments after this fire, and failed to warn the Vessel's
6 crew and passengers about the risk of fire caused by lithium batteries.

7 18. Despite having actual knowledge of the dangers posed by lithium batteries,
8 the Limitation Plaintiffs ignored these dangers and continued to encourage the Vessel's
9 crew and passengers to continue charging and storing lithium batteries in the galley's
10 charging station.

11 19. Despite having actual knowledge of the dangers posed by lithium batteries,
12 the Limitation Plaintiffs failed to implement proper policies and procedures to ensure
13 that devices with lithium batteries were properly handled while onboard the Vessel.

14 20. At all times relevant hereto, the Vessel failed to have watchmen patrolling
15 throughout the Vessel during the night time.

16 21. Due to the lack of the night watch, the fire went undetected until it was too
17 late.

18 22. In the aftermath of this horrific fire, the Vessel's owner, Glen Fritzler, lied
19 and stated that a watchman was on rotation at the time of the fire, but in a different area
20 of the Vessel.

21 23. After the fire broke out on the Vessel, Claimants' decedent and the
22 Vessel's passengers were unaware of the fire that broke out until it was too late due to
23 the Vessel's inadequate and defective fire detection systems.

24 24. Due to the defective design of the Vessel, there were only two means of
25 egress for Claimants' decedent and for the passengers sleeping below deck.

26 25. This condition rendered the Vessel unseaworthy.

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- a. *Failing to implement policies, procedures and training to ensure the safety of people onboard the Vessel;*
- b. *Failing to maintain the Vessel in a reasonable manner;*
- c. *Failing to properly train its captain;*
- d. *Failing to ensure that the captain was properly trained to operate the Vessel;*
- e. *Failing to ensure that the captain was properly trained to maintain required watch policies and procedures at all times on the Vessel;*
- f. *Failing to have a dead man's switch or similar device to ensure a roving watchman was on duty at all times;*
- g. *Failing to have a policy requiring the use of a dead man's switch or similar device to ensure a roving watchman was on duty at all times;*
- h. *Failing to implement standard operating procedures;*
- i. *Operating the Vessel in a careless and negligent manner in the face of hazards that were within Truth Aquatics, Inc.'s privity and/or knowledge;*
- j. *Failing to properly oversee the fleet to ensure that the Vessel was being operated in accordance with company policies and procedures, principles of good seamanship, and in accordance with all applicable laws and regulations;*
- k. *Failing to exercise reasonable care under all of the circumstances;*

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- l. *Failing to equip the Vessel with a properly-functioning electrical system;*
- m. *Failing to equip the Vessel with an electrical system that was safe, suitable, and reasonably fit for its intended use;*
- n. *Failing to equip the Vessel with a properly-functioning fire detection system;*
- o. *Failing to equip the Vessel with a fire detection system that was safe, suitable, and reasonably fit for its intended use;*
- p. *Failing to equip the Vessel with a properly-functioning fire alarm system;*
- q. *Failing to equip the Vessel with a fire alarm system that was safe, suitable, and reasonably fit for its intended use;*
- r. *Failing to equip the Vessel with a properly-functioning fire suppression system;*
- s. *Failing to equip the Vessel with a fire suppression system that was safe, suitable, and reasonably fit for its intended use;*
- t. *Failing to equip the Vessel with firefighting equipment throughout the Vessel;*
- u. *Failing to train its captain on the hazards associated with the improper handling and storage of devices with lithium ion batteries;*
- v. *Failing to ensure that those on the Vessel followed safety standards for the handling and storage of devices with lithium ion batteries;*

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- w. *Allowing the improper handling and storage of devices with lithium ion batteries on the Vessel;*
- x. *Allowing the improper handling and storage of devices with lithium ion batteries on the Vessel and failing to warn those on the Vessel about the risks;*
- y. *Being aware of the risk of fires caused by lithium ion batteries and failing to take appropriate and necessary steps to remedy that risk;*
- z. *Failing to report a prior fire that was caused by lithium ion batteries on the Vessel's sister ship, the Vision, for investigation and failing to report the fire to passengers and crew members on the Vessel;*
- aa. *Continuing to allow the improper handling and storage of devices with lithium ion batteries on the Vessel despite having knowledge of the risk of fires caused by lithium ion batteries;*
- bb. *Continuing to allow the improper handling and storage of devices with lithium ion batteries on the Vessel despite having knowledge of the risk of fires caused by lithium ion batteries and failing to warn those on the Vessel about the risks;*
- cc. *Failing to require passengers and crew to charge lithium ion devices in secured fireproof containers;*
- dd. *Failing to have a policy in effect which required passengers and crew to charge lithium ion devices in secured fireproof containers;*
- ee. *Failing to avoid or minimize foreseeable dangers to the passengers and crew resulting from potential fire;*

- 1 ff. Failing to provide adequate safety equipment;
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- 3 gg. Failing to provide adequate safety rules;
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- 5 hh. Failing to provide the fleet with effective safety policies and
- 6 procedures;
- 7 ii. Failing to have properly operating safety equipment on board;
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- 9 jj. Failing to develop and implement sufficient safety procedures for
- 10 emergency situations;
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- 12 kk. Failing to provide passengers and crew members below deck with
- 13 sufficient means of ingress and egress;
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- 15 ll. Failing to ensure the means of escape for passengers and crew was
- 16 sufficient for rapid evacuation in an emergency for the number of
- 17 persons served;
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- 19 mm. Failing to provide passengers and crew members below deck with
- 20 emergency exits that were safe, suitable, properly designed, and
- 21 sufficient in size and number;
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- 23 nn. Failing to comply with all requirements of Subchapter T, Small
- 24 Passenger Vessels, including, but not limited to, 46 CFR §§
- 25 177.500 and 185.410, et seq.;
- 26
- 27 oo. Failing to comply with other industry standards and guidelines,
- 28 including, but not limited to, NFPA 302 Section 4.1.1.2, et seq.;
- pp. Failing to provide adequate maintenance and cure;
- qq. Failing to provide adequate warnings of a known hazard;

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- rr. Failing to address the known dangers associated with Vessel;*
- ss. Failing to comply with industry standards, customs and practices;*
- tt. Operating the Vessel with an obvious dangerous condition;*
- uu. Failing to recognize danger and take corrective action;*
- vv. Failing to provide adequate means of emergency evacuation;*
- ww. Failing to adequately repair and/or maintain the Vessel;*
- xx. Failing to timely eliminate known hazards;*
- yy. Failing to timely rectify known deficiencies;*
- zz. Failing to inspect the Vessel;*
- aaa. Failing to incorporate the safety recommendations of the NTSB;
and*
- bbb. Failing to comply with local, state, and/or federal law.*

34. As a direct and proximate cause of the negligence of Truth Aquatics, Inc., in whole or in part, Claimants' decedent was caused to suffer horrific personal injuries, a prolonged period of pain and suffering, and eventual death.

35. Claimants' decedent was injured and died through no fault of her own, but as a direct and proximate cause of the negligence of Truth Aquatics, Inc., and the unseaworthiness of the Vessel.

36. As a result of the negligence of Truth Aquatics, Inc., and the unseaworthiness of the Vessel, Claimants' decedent suffered injuries and damages and claim the full measure of damages recoverable under law for her surviving parents, including, but not limited to, damages for medical, funeral, and burial expenses;

1 expenses of administration necessitated by reason of injuries causing Claimants'
2 decedent's death; damages for pecuniary support that Claimants' decedent would have
3 provided to her beneficiaries during her lifetime; damages for services provided or
4 which could have been expected to have been performed in the future by Claimants'
5 decedent; damages for loss of earnings and economic loss to Claimants' decedent
6 estate; damages for medical expenses; damages for loss of life's pleasures; damages for
7 all loss of income, retirement, and Social Security income as a result of Claimants'
8 decedent's death; damages for loss of society, comfort, guidance and tutelage; and
9 damages for pain, suffering, and inconvenience endured by Claimants' decedent prior
10 to her death, including, but not limited to, physical and conscious pain and suffering,
11 mental and conscious pain and suffering, and the fright and mental suffering attributed
12 to the peril leading to Claimants' decedent's death.

13 37. As a legal result of the aforesaid negligent acts or wrongful acts or
14 omissions, among others, Truth Aquatics, Inc. breached the duty of care it owed to
15 Claimants' decedent and Claimants.

16 38. The foregoing wrongful acts or omissions occurred as a result of Truth
17 Aquatics, Inc.'s willful and/or arbitrary and/or wanton and/or conscious and/or reckless
18 disregard of their obligations under the Jones Act.

19 39. Claimants therefore are entitled to an award of punitive damages,
20 including without limitation, general punitive damages and reasonable attorney's fees
21 and costs against Truth Aquatics, Inc.

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COUNT II - UNSEAWORTHINESS

**CLAIMANTS 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**

40. Claimants incorporate all foregoing paragraphs of this Claim as though fully set forth herein.

41. Upon information and belief, Truth Aquatics, Inc. is alleged to have been the owner or owner *pro hac vice* of the Vessel at all times relevant hereto.

42. Upon information and belief, Glen Richard Fritzler and Dana Jeanne Fritzler, individually and as Trustees of the Fritzler Family Trust DTD 7/27/92, are alleged to have been the legal and equitable owners of the Vessel at all times relevant hereto.

43. At all times relevant hereto, the Vessel was unseaworthy.

44. At all times relevant hereto, the Vessel lacked sufficient means of ingress and egress.

45. At all times herein relevant, Claimants' decedent was acting in the service of the Vessel and the Limitation Plaintiffs and was performing her regular duties aboard the Vessel.

46. At the time and place alleged herein, the Limitation Plaintiffs warranted to Claimants' decedent that the Vessel, its decks, gear, equipment, galley, appurtenances, tools, safety equipment, crewmembers, training, instruction, safety policies, safety procedures, safety management system and work methods were seaworthy and in compliance with applicable statutes and regulations enacted for the safety of the crew.

47. The Limitation Plaintiffs breached this warranty in that the Vessel, its decks, gear, equipment, galley, appurtenances, tools, safety equipment, crewmembers, training, instruction, safety policies, safety procedures, safety management system and

1 work methods were neither seaworthy nor in compliance with applicable laws, rules,
2 regulations, industry customs and practices enacted or followed for the safety of the
3 crew.

4 48. At all times relevant hereto, the Vessel's captain was incompetent and
5 inadequately trained to captain the Vessel.

6 49. The acts of negligence set forth in this Claim were of such a duration as to
7 become conditions of the Vessel and therefore were further breaches of the warranty of
8 seaworthiness.

9 50. Upon information and belief, the Limitation Plaintiffs had actual and
10 subjective awareness of the issues with the Vessels and failed to rectify them.

11 51. The Vessel was at all relevant times unseaworthy and not reasonably fit for
12 its intended purpose.

13 52. As a direct and proximate cause of the unseaworthiness of the Vessel, as
14 described herein, Claimants' decedent was caused to suffer horrific personal injuries, a
15 prolonged period of pain and suffering, and eventual death.

16 53. As a result of the unseaworthiness of the Vessel, Claimants' decedent
17 suffered injuries and damages and claim the full measure of damages recoverable under
18 law for her surviving parents, including, but not limited to, damages for medical,
19 funeral, and burial expenses; expenses of administration necessitated by reason of
20 injuries causing Claimants' decedent's death; damages for pecuniary support that
21 Claimants' decedent would have provided to her beneficiaries during her lifetime;
22 damages for services provided or which could have been expected to have been
23 performed in the future by Claimants' decedent; damages for loss of earnings and
24 economic loss to Claimants' decedent estate; damages for medical expenses; damages
25 for loss of life's pleasures; damages for all loss of income, retirement, and Social
26 Security income as a result of Claimants' decedent's death; damages for loss of society,
27 comfort, guidance and tutelage; and damages for pain, suffering, and inconvenience
28 endured by Claimants' decedent prior to her death, including, but not limited to,

1 physical and conscious pain and suffering, mental and conscious pain and suffering,
2 and the fright and mental suffering attributed to the peril leading to Claimants'
3 decedent's death.

4 54. The foregoing wrongful acts or omissions occurred as a result of the
5 Limitation Plaintiffs' willful and/or arbitrary and/or wanton and/or conscious and/or
6 reckless disregard of their obligations under the General Maritime Law.

7 55. Claimants therefore are entitled to an award of punitive damages,
8 including without limitation, general punitive damages and reasonable attorney's fees
9 and costs against the Limitation Plaintiffs.

10 **COUNT III - GENERAL MARITIME NEGLIGENCE**

11 **CLAIMANTS v. TRUTH AQUATICS, INC. and GLEN RICHARD**
12 **FRITZLER**

13 **and DANA JEANNE FRITZLER, individually and as Trustees of the**
14 **FRITZLER FAMILY TRUST DTD 7/27/92**

15 56. Claimants incorporate all foregoing paragraphs of this Claim as though
16 fully set forth herein.

17 57. The Limitation Plaintiffs were negligent for the following reasons:

- 18 a. *Failing to implement policies, procedures and training to ensure*
19 *the safety of people onboard the Vessel;*
- 20 b. *Failing to maintain the Vessel in a reasonable manner;*
- 21 c. *Failing to properly train its captain;*
- 22 d. *Failing to ensure that the captain was properly trained to operate*
23 *the Vessel;*
- 24 e. *Failing to ensure that the captain was properly trained to maintain*
25 *required watch policies and procedures at all times on the Vessel;*
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- f. *Failing to have a dead man's switch or similar device to ensure a roving watchman was on duty at all times;*
- g. *Failing to have a policy requiring the use of a dead man's switch or similar device to ensure a roving watchman was on duty at all times;*
- h. *Failing to implement standard operating procedures;*
- i. *Operating the Vessel in a careless and negligent manner in the face of hazards that were within Truth Aquatics, Inc.'s privity and/or knowledge;*
- j. *Failing to properly oversee the fleet to ensure that the Vessel was being operated in accordance with company policies and procedures, principles of good seamanship, and in accordance with all applicable laws and regulations;*
- k. *Failing to exercise reasonable care under all of the circumstances;*
- l. *Failing to equip the Vessel with a properly-functioning electrical system;*
- m. *Failing to equip the Vessel with an electrical system that was safe, suitable, and reasonably fit for its intended use;*
- n. *Failing to equip the Vessel with a properly-functioning fire detection system;*
- o. *Failing to equip the Vessel with a fire detection system that was safe, suitable, and reasonably fit for its intended use;*

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- p. *Failing to equip the Vessel with a properly-functioning fire alarm system;*
- q. *Failing to equip the Vessel with a fire alarm system that was safe, suitable, and reasonably fit for its intended use;*
- r. *Failing to equip the Vessel with a properly-functioning fire suppression system;*
- s. *Failing to equip the Vessel with a fire suppression system that was safe, suitable, and reasonably fit for its intended use;*
- t. *Failing to equip the Vessel with firefighting equipment throughout the Vessel;*
- u. *Failing to train its captain on the hazards associated with the improper handling and storage of devices with lithium ion batteries;*
- v. *Failing to ensure that those on the Vessel followed safety standards for the handling and storage of devices with lithium ion batteries;*
- w. *Allowing the improper handling and storage of devices with lithium ion batteries on the Vessel;*
- x. *Allowing the improper handling and storage of devices with lithium ion batteries on the Vessel and failing to warn those on the Vessel about the risks;*
- y. *Being aware of the risk of fires caused by lithium ion batteries and failing to take appropriate and necessary steps to remedy that risk;*

- 1 z. *Failing to report a prior fire that was caused by lithium ion*
2 *batteries on the Vessel's sister ship, the Vision, for investigation*
3 *and failing to report the fire to passengers and crew members on*
4 *the Vessel;*
- 5 aa. *Continuing to allow the improper handling and storage of devices*
6 *with lithium ion batteries on the Vessel despite having knowledge of*
7 *the risk of fires caused by lithium ion batteries;*
- 8 bb. *Continuing to allow the improper handling and storage of devices*
9 *with lithium ion batteries on the Vessel despite having knowledge of*
10 *the risk of fires caused by lithium ion batteries and failing to warn*
11 *those on the Vessel about the risks;*
- 12 cc. *Failing to require passengers and crew to charge lithium ion*
13 *devices in secured fireproof containers;*
- 14 dd. *Failing to have a policy in effect which required passengers and*
15 *crew to charge lithium ion devices in secured fireproof containers;*
- 16 ee. *Failing to avoid or minimize foreseeable dangers to the passengers*
17 *and crew resulting from potential fire;*
- 18 ff. *Failing to provide adequate safety equipment;*
- 19 gg. *Failing to provide adequate safety rules;*
- 20 hh. *Failing to provide the fleet with effective safety policies and*
21 *procedures;*
- 22 ii. *Failing to have properly operating safety equipment on board;*
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- jj. *Failing to develop and implement sufficient safety procedures for emergency situations;*
- kk. *Failing to provide passengers and crew members below deck with sufficient means of ingress and egress;*
- ll. *Failing to ensure the means of escape for passengers and crew was sufficient for rapid evacuation in an emergency for the number of persons served;*
- mm. *Failing to provide passengers and crew members below deck with emergency exits that were safe, suitable, properly designed, and sufficient in size and number;*
- nn. *Failing to comply with all requirements of Subchapter T, Small Passenger Vessels, including, but not limited to, 46 CFR §§ 177.500 and 185.410, et seq.;*
- oo. *Failing to comply with other industry standards and guidelines, including, but not limited to, NFPA 302 Section 4.1.1.2, et seq.;*
- pp. *Failing to provide adequate maintenance and cure;*
- qq. *Failing to provide adequate warnings of a known hazard;*
- rr. *Failing to address the known dangers associated with Vessel;*
- ss. *Failing to comply with industry standards, customs and practices;*
- tt. *Operating the Vessel with an obvious dangerous condition;*
- uu. *Failing to recognize danger and take corrective action;*
- vv. *Failing to provide adequate means of emergency evacuation;*

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ww. Failing to adequately repair and/or maintain the Vessel;

xx. Failing to timely eliminate known hazards;

yy. Failing to timely rectify known deficiencies;

zz. Failing to inspect the Vessel;

*aaa. Failing to incorporate the safety recommendations of the NTSB;
and*

bbb. Failing to comply with local, state, and/or federal law.

58. As a result of the aforesaid negligent acts or wrongful acts or omissions, among others, the Limitation Plaintiffs breached the duty of care they owed to Claimants' decedent.

59. As a direct and proximate result of the aforesaid acts and omissions of the Limitation Plaintiffs, Claimants' decedent was caused to suffer horrific personal injuries, a prolonged period of pain and suffering, and eventual death.

60. As a direct and proximate result of the aforesaid acts and omissions of the Limitation Plaintiffs, Claimants' decedent suffered injuries and damages and claim the full measure of damages recoverable under law for her surviving parents, including, but not limited to, damages for medical, funeral, and burial expenses; expenses of administration necessitated by reason of injuries causing Claimants' decedent's death; damages for pecuniary support that Claimants' decedent would have provided to her beneficiaries during her lifetime; damages for services provided or which could have been expected to have been performed in the future by Claimants' decedent; damages for loss of earnings and economic loss to Claimants' decedent estate; damages for medical expenses; damages for loss of life's pleasures; damages for all loss of income, retirement, and Social Security income as a result of Claimants' decedent's death;

1 damages for loss of society, comfort, guidance and tutelage; and damages for pain,
2 suffering, and inconvenience endured by Claimants' decedent prior to her death,
3 including, but not limited to, physical and conscious pain and suffering, mental and
4 conscious pain and suffering, and the fright and mental suffering attributed to the peril
5 leading to Claimants' decedent's death.

6 61. The foregoing wrongful acts or omissions occurred as a result of the
7 Limitation Plaintiffs' willful and/or arbitrary and/or wanton and/or conscious and/or
8 reckless disregard of their obligations under the General Maritime Law.

9 62. Claimants therefore are entitled to an award of punitive damages,
10 including without limitation, general punitive damages and reasonable attorney's fees
11 and costs against the Limitation Plaintiffs.

12 **PRAYER FOR RELIEF**

13
14 **WHEREFORE**, Claimants pray for judgment against Truth Aquatics, Inc. and
15 Glen Richard Fritzler and Dana Jeanne Fritzler, individually and as Trustees of the
16 Fritzler Family Trust DTD 7/27/92, as follows:

17 1. Damages as are permitted under the Merchant Marine Act of 1920,
18 commonly called the Jones Act, 46 U.S.C. § 30104 *et seq.*, and General Maritime Law,
19 28 U.S.C. § 1367, and/or the laws of the State of California;

20 2. Damages for medical, funeral, and burial expenses;

21 3. Damages for expenses of administration necessitated by reason of injuries
22 causing Claimants' decedent's death;

23 4. Damages for pecuniary support that Claimants' decedent would have
24 provided to her beneficiaries during her lifetime;

25 5. Damages for services provided or which could have been expected to have
26 been performed in the future by Claimants' decedent;

27 6. Damages for loss of earnings and economic loss to Claimants' decedent
28 estate; damages for medical expenses;

