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20 Personal Representative of the Estate of  
21 CHARLES SPENCER McILVAIN  
22 Claimant/Respondent

23 UNITED STATES DISTRICT COURT  
24 CENTRAL DISTRICT OF CALIFORNIA  
25 IN ADMIRALTY

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

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COMES NOW CLAIMANT/RESPONDENT JASMINE LORD  
 (“CLAIMANT/RESPONDENT”) WHO, acting as the Duly Appointed Personal  
 Representative of the Estate of CHARLES SPENCER McILVAIN (Deceased),  
 hereby answers the Complaint for Exoneration from or Limitation of Liability  
 filed herein by admitting, denying, and alleging, on information and belief, as  
 follows:

**ADMISSIONS AND DENIALS**

- 1. Admits the allegations and accepts the legal conclusions set forth in Paragraph 1.
- 2. Admits that Plaintiffs and Petitioners allege they are the owners or owners *pro hac vice* of the CONCEPTION, but currently lacks sufficient information to form a belief about the other allegations in Paragraph 2 and, on that basis, denies those allegations.
- 3. Admits that Venue is proper in this Court pursuant to Fed.R.Civ.P. Supp. Adm. R. F(9), and that the incident which forms the basis of this action occurred upon the navigable waters of the Santa Barbara Channel, within the territorial waters of the State of California, but currently lacks sufficient information to form a belief about the other allegations of Paragraph 3 and, on that basis, denies those allegations.
- 4. Admits that thirty-three passengers and one crew member died aboard the CONCEPTION as a direct and proximate result of the Fire on September 2, 2019, but currently lacks sufficient information to form a belief

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1 about the other allegations of Paragraph 4 and, on that basis, denies those  
2 allegations.

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4 5. Admits that she has not yet filed suit against the Plaintiffs and  
5 Petitioners in any other forum by reason of the premises herein, but otherwise  
6 lacks sufficient information to form a belief about the other allegations of  
7 Paragraph 5 and, on that basis, denies those allegations.

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9 6. Currently lacks sufficient information to form a belief about the  
10 allegations of Paragraph 6 and, on that basis, denies those allegations.

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12 7. Currently lacks sufficient information to form a belief about the  
13 allegations of Paragraph 7 and, on that basis, denies those allegations.

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15 8. Currently lacks sufficient information to form a belief about the  
16 allegations of Paragraph 8 and, on that basis, denies those allegations.

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

20 10. Denies the allegations in Paragraph 10.

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

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28 12. Admits that a fire broke out on board the CONCEPTION during the  
early morning hours of September 2, 2019, while that vessel was anchored upon  
the navigable waters of the Santa Barbara Channel less than one marine league

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1 from shore and within the territorial waters of the State of California, but denies  
2 each and every one of the other allegations in Paragraph 12.

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

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

9 15. Denies the allegations of Paragraph 15.

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11 16. The allegations and legal conclusions set forth in Paragraph 16 do  
12 not call for an answer from CLAIMANT/RESPONDENT LORD.

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14 17. Denies and disputes the allegations, beliefs, and legal conclusions  
15 set forth in Paragraph 17.

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

19 19. Admits the allegations of Paragraph 19.

20 **FIRST AFFIRMATIVE DEFENSE**

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22 20. As and for a first affirmative defense, CLAIMANT/RESPONDENT  
23 alleges that:

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

27 b.) This action should therefore be abated under *Langnes v.*  
28 *Green*, 282 U.S. 531 (1931), *Lewis v. Lewis & Clark Marine, Inc.*, 531  
U.S. 438 (2001), *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 152 (1957),

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1 *Newton v. Shipman*, 718 F.2d 959, 962 (9th Cir. 1983), and;

2 b.) CLAIMANT/RESPONDENT should be allowed to pursue her  
3 claims against Plaintiffs and Petitioners, at law and in the forum of her  
4 choice before a jury of her peers, under the “Saving to Suitors Clause,” 28  
5 U.S.C. § 1333(1).  
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8 **SECOND AFFIRMATIVE DEFENSE**

9 21. As and for a Second Affirmative Defense,  
10 CLAIMANT/RESPONDENT alleges that:  
11

12 a. Insofar as she is prepared to protect Plaintiffs’ and Petitioners’  
13 right to limitation, if any, as was alleged in Paragraph 20 hereinabove, the  
14 Vessel Owners Limitation Act, 46 U.S.C. §§ 30501 *et seq.*, and its rules of  
15 practice do not create a freestanding right to exoneration herein, and;  
16

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

25 22. As and for a Third Affirmative Defense, CLAIMANT/  
26 RESPONDENT alleges that the CONCEPTION was unseaworthy at the outset of  
27 her alleged August 31, 2019 voyage in that:  
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a. She was outfitted and furnished with dangerous and defective  
features, equipment, and apparel including, but not limited to, escape

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hatches, smoke detectors, fire extinguishers, electrical systems, and battery chargers which were not fit for their intended purposes;

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

c. She was deliberately and habitually operated in violation of Sub-chapter T of the United States Coast Guard Regulations, including but not limited to the provisions of 46 CFR § 185.410, as well as the requirements of her own Certificate of Inspection.

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 JASMINE LORD, acting as the duly appointed Personal Representative of the Estate of CHARLES SPENCER McILVAIN (DECEASED), prays that:

1. Petitioners be denied Exoneration from and/or Limitation of Liability herein;

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- 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,
- 4. The Court grant such other and further relief as it deems just and proper.

Dated: January 29, 2020

MCGUINN, HILLSMAN & PALEFSKY  
ROUDA FEDER TIETJEN & MCGUINN

By: JOHN R. HILLSMAN  
JOHN R. HILLSMAN

Attorneys for  
CLAIMANT/RESPONDENT  
JASMINE LORD, Personal  
Representative of the Estate of  
CHARLES SPENCER McILVAIN

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