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Attorneys for Plaintiffs
TRUTH AQUATICS, INC. AND
GLEN RICHARD FRITZLER AND DANA
JEANNE FRITZLER, INDIVIDUALLY AND AS
TRUSTEES OF THE FRITZLER FAMILY TRUST
DTD 7/27/92

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In the Matter of the Counterclaim of Truth Aquatics, Inc. and Glen Richard Fritzler and Dana Jeanne Fritzler, individually and as Trustees of the Fritzler Family Trust DTD 7/27/92 as owners and/or owners <i>pro hac vice</i> of the dive vessel CONCEPTION, Official Number 638133, for Exoneration from or Limitation of Liability ,	)	CASE NO. 2:19-cv-07693-PA-MRW
	)	TRUTH AQUATICS, INC.,
	)	GLEN RICHARD FRITZLER
	)	AND DANA
	)	JEANNE FRITZLER,
	)	INDIVIDUALLY AND AS
	)	TRUSTEES OF THE
	)	FRITZLER FAMILY TRUST
	)	DTD 7/27/92'S ANSWER TO
	)	CLAIMANT/RESPONDENT
	)	GREGORY KRASHENNY'S
	)	CLAIM

Come now Plaintiffs TRUTH AQUATICS, INC. AND GLEN RICHARD FRITZLER AND DANA JEANNE FRITZLER, INDIVIDUALLY AND AS TRUSTEES OF THE FRITZLER FAMILY TRUST dtd 7/27/92 ("Petitioners"), and in response to Claimant/Respondent Gregory Krashenny's Claim, admit, deny, and allege as follows¹:

1. In response to Paragraph No. 1 of the Claim, Petitioners are without knowledge or information sufficient to form a belief as to the truth of the

¹ Claimant/Respondent Gregory Krashenny is referred to herein as "Claimant Krashenny," or simply as "Claimant."

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1 allegations contained in said paragraph, and on that basis deny each and every
2 allegation contained therein.

3 2. In response to Paragraph No. 2 of the Claim, Petitioners are without
4 knowledge or information sufficient to form a belief as to the truth of the
5 allegations contained in said paragraph, and on that basis deny each and every
6 allegation contained therein.

7 3. Paragraph No. 3 of the Claim contains allegations and conclusions of
8 law to which an answer is not required. To the extent an answer is required,
9 Petitioners respond that they are without knowledge or information sufficient to
10 form a belief as to the truth of the allegations contained in said paragraph, and on
11 that basis deny each and every one of them.

12 4. Petitioners lack knowledge or information sufficient to form a belief
13 as to the truth of the matters alleged in Paragraph No. 4 of the Claim, and on that
14 basis deny them.

15 5. In response to Paragraph No. 5 of the Claim, Petitioners respond that
16 the Paragraph contains allegations and conclusions of law to which an answer is
17 not required. To the extent an answer to those allegations is required, Petitioners
18 admit and allege that they were the owners and/or owners *pro hac vice* of the
19 CONCEPTION within the meaning of 46 U.S.C. Section 30501 *et seq.* With
20 respect to the remaining allegations in Paragraph No. 5, Petitioners respond that
21 they are without knowledge or information sufficient to form a belief as to the truth
22 of the allegations contained in said paragraph, and on that basis deny such
23 allegations.

24 6. In response to Paragraph No. 6 of the Claim, Petitioners admit and
25 allege that on August 31, 2019, the CONCEPTION departed the Port of Santa
26 Barbara with six crewmembers and thirty-three passengers on board for a three-day
27 voyage. Petitioners deny the voyage commenced on a Monday. As to the
28 remaining allegations contained in Paragraph 6, except as expressly alleged and

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1 admitted, or denied, Petitioners are without knowledge or information sufficient to
2 form a belief as to the truth of the remaining allegations contained in said
3 paragraph and on that basis deny them.

4 7. In response to Paragraph No. 7 of the Claim, Petitioners respond that
5 the Paragraph contains allegations and conclusions of law to which an answer is
6 not required. To the extent an answer to those allegations is required, Petitioners
7 deny that the CONCEPTION was a seagoing vessel for purposes of 46 U.S.C. §
8 30502.

9 8. In response to Paragraph No. 8 of the Claim, Petitioners admit and
10 allege that the CONCEPTION had three decks, that the pilot house and primary
11 crew's quarters were located on the vessel's uppermost or sun deck, that the galley
12 and salon were situated on the main deck and that the main sleeping quarters were
13 located in the lower deck below the main deck. Petitioners deny any remaining
14 allegations in Paragraph No. 8 of the Claim.

15 9. In response to Paragraph No. 9 of the Claim, Petitioners admit the
16 CONCEPTION was equipped with an onboard electrical system that was powered
17 by diesel generators.

18 10. In response to Paragraph No. 10 of the Claim, Petitioners admit and
19 allege they allowed passengers to use the CONCEPTION's electrical system to
20 charge lithium battery-powered electronics. Except as expressly admitted or
21 alleged herein, Petitioners deny all remaining allegations in Paragraph No. 10 of
22 the Claim.

23 11. In response to Paragraph No. 11 of the Claim, Petitioners admit and
24 allege that the CONCEPTION's galley was located on the main deck one level
25 above the vessel's main sleeping quarters. Petitioners deny the allegation that they
26 equipped the vessel's galley with a "battery-charging station." With respect to the
27 remaining allegations in Paragraph No. 11, Petitioners respond that they are
28 without knowledge or information sufficient to form a belief as to the truth of the

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1 remaining allegations contained in said paragraph, and on that basis deny such
2 allegations.

3 12. In response to Paragraph No. 12 of the Claim, Petitioners deny the
4 allegation that the vessel was equipped with a “battery charging station.”
5 Petitioners are without knowledge or information sufficient to form a belief as to
6 the truth of the remaining allegations contained in said paragraph, and on that basis
7 deny them.

8 13. In response to Paragraph No. 13 of the Claim, Petitioners admit that
9 on September 2, 2019 there was a fire on the vessel. Petitioners are without
10 knowledge or information sufficient to form a belief as to the truth of the
11 remaining allegations contained in said paragraph, and on that basis deny each and
12 every one of them.

13 14. In response to Paragraph No. 14 of the Claim, Petitioners are without
14 knowledge or information sufficient to form a belief as to the truth of the
15 allegations and on that basis deny them.

16 15. In response to Paragraph No. 15 of the Claim, Petitioners are without
17 knowledge or information sufficient to form a belief as to the truth of the
18 allegations contained in said paragraph, and on that basis deny such allegations.

19 16. In response to Paragraph No. 16 of the Claim, Petitioners respond that
20 the Paragraph contains allegations and conclusions of law to which an answer is
21 not required. To the extent an answer to those allegations is required, Petitioners
22 are without knowledge or information sufficient to form a belief as to the truth of
23 the allegations contained in said paragraph, and on that basis deny such allegations.

24 17. Petitioners deny each and every allegation contained in Paragraph No.
25 17 of the Claim.

26 18. Petitioners deny each and every allegation contained in Paragraph No.
27 18 of the Counterclaim.

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1 19. In response to Paragraph No. 19 of the Claim, Petitioners are without
2 knowledge or information sufficient to form a belief as to the truth of the
3 allegations contained in said paragraph, and on that basis deny each and every
4 allegation contained therein.

5 20. Petitioners deny each and every allegation contained in Paragraph No.
6 20 of the Claim.

7 21. In response to Paragraph No. 21 of the Claim, Petitioners admit that
8 Glen Fritzler was an owner and/or owner *pro hac vice* of the CONCEPTION
9 within the meaning of 46 U.S.C. Section 30501, *et seq.* Petitioners deny that Glen
10 Fritzler lied.

11 22. Petitioners deny each and every allegation contained in Paragraph No.
12 22 of the Claim.

13 23. Paragraph No. 23 of the Claim contains allegations and conclusions of
14 law to which an answer is not required. To the extent an answer to those
15 allegations is required, Petitioners admit and allege the stairway at the forward end
16 of the vessel's main sleeping quarters and the escape hatch at the aft end of the
17 main sleeping quarters provided egress to the vessel's galley/salon. Petitioners
18 deny the vessel CONCEPTION was defectively designed. In response to the
19 remaining allegations contained in Paragraph No. 23, Petitioners respond that they
20 are without knowledge or information sufficient to form a belief as to the truth of
21 the remaining allegations contained in said paragraph, and on that basis deny each
22 and every allegation contained therein.

23 24. Petitioners deny each and every allegation contained in Paragraph No.
24 24 of the Claim, and deny that the vessel was unseaworthy in any respect.

25 25. In response to Paragraph No. 25 of the Claim, Petitioners admit that
26 the stairway at the forward end of the vessel's main sleeping quarters and the
27 escape hatch at the aft end of the main sleeping quarters provided egress to the
28 vessel's galley/salon. Petitioners are without knowledge or information sufficient

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1 to form a belief as to the truth of the remaining allegations contained in said
2 paragraph, and on that basis deny each and every allegation contained therein.

3 26. Petitioners deny each and every allegation of Paragraph No. 26 of the
4 Claim.

5 27. Petitioners deny each and every allegation of Paragraph No. 27 of the
6 Claim.

7 28. Petitioners deny each and every allegation of Paragraph No. 28 of the
8 Claim.

9 29. In response to Paragraph No. 29 of the Claim, Petitioners deny that
10 they “caused and/or contributed” to the “tragedy and the damages” alleged.
11 Petitioners are without knowledge or information sufficient to form a belief as to
12 the truth of the remaining allegations contained in said paragraph, and therefore
13 deny them.

14 30. Paragraph No. 30 of the Claim re-alleges and incorporates by
15 reference the allegations set forth in Paragraphs Nos. 1-29 of the Claim and, as
16 such, Petitioners incorporate by reference their responses set forth in Paragraphs 1
17 through 29 above, as though fully set forth herein.

18 31. Paragraph No. 31 of the Claim contains allegations and conclusions of
19 law to which an answer is not required. To the extent an answer to those
20 allegations is required, Petitioners admit and allege that they were and are the
21 owners and/or owners *pro hac vice* of the CONCEPTION within the meaning of
22 46 U.S.C. Section 30501 *et seq.* Petitioners are without knowledge or information
23 sufficient to form a belief as to the truth of the other allegations contained in
24 Paragraph No. 31, and on that basis deny such allegations.

25 32. Petitioners deny the allegations contained in Paragraph No. 32 of the
26 Claim.

27 33. Petitioners deny the allegations contained in Paragraph No. 33 of the
28 Claim, including each of its subparts.

1 || 34. Petitioners deny the allegations of Paragraph No. 34 of the Claim.

2 35. Paragraph No. 35 of the Claim contains allegations and conclusions of
3 law to which an answer is not required. To the extent an answer is required,
4 Petitioners respond that they are without knowledge or information sufficient to
5 form a belief as to the truth of any factual allegations contained in said paragraph,
6 and on that basis deny each and every allegation in Paragraph No. 35, including
7 each of its subparts.

8 36. Petitioners deny each and every allegation contained in Paragraph No.
9 36 of the Claim.

10 37. Petitioners deny each and every allegation contained in Paragraph No.
11 37 of the Claim.

12 38. Petitioners deny each and every allegation contained in Paragraph No.
13 38 of the Claim.

PRAAYER FOR RELIEF

15 No response is required to Claimant/Respondent's Prayer for Relief. To the
16 extent a response is required, Petitioners deny that Claimant is entitled to the
17 requested relief, or any relief whatsoever, from these Petitioners.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

20 Claimant/Respondent's Counterclaim, and each cause of action thereof, fails
21 to state facts sufficient to constitute a cause, or causes, of action as against
22 Petitioners.

SECOND AFFIRMATIVE DEFENSE

24 Claimant/Respondent's Counterclaim fails to state a claim, or claims, upon
25 which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Any and all acts, happenings and/or damages, if any, referred to in
Claimant/Respondent's Counterclaim, were proximately caused by and/or

1 contributed to by the negligence of Decedent and therefore, Claimant/Respondent
 2 is completely barred from recovery herein or, in the alternative, under the doctrine
 3 of comparative negligence, the negligence of Decedent is imputed to
 4 Claimant/Respondent such that it reduces her/his/their right to recovery herein by
 5 the amount which said negligence contributed to the incident alleged.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 If any injuries and/or damages were sustained by Claimant/Respondent,
 8 which are expressly denied, they were caused solely and/or proximately by the
 9 natural progression of Decedent's pre-existing medical conditions over which
 10 Petitioners had no control and for which Petitioners are not liable.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 Claimant/Respondent's injuries and/or damages, if any, were caused or
 13 contributed to by the negligence of third parties whose identities are presently
 14 unknown to Petitioners and Petitioners' liability, if any, should be reduced by the
 15 proportion caused or contributed to by such persons.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 Petitioners aver as a separate and complete defense that in the event
 18 Petitioners are found liable for the claims asserted, which is denied, Petitioners are
 19 entitled to indemnification or contribution from any other responsible party(ies).

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 Claimant/Respondent is barred from asserting the claim or cause(s) of action
 22 herein against Petitioners by the doctrine of estoppel.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 Claimant/Respondent is barred from asserting the claim or cause(s) of action
 25 herein against Petitioners by the doctrine of waiver.

26 **NINTH AFFIRMATIVE DEFENSE**

27 Petitioners allege that any injury, damage or loss suffered, in any, was
 28 caused (in whole or in part) by, attributable to, and/or sustained as a result of the

unreasonable, unforeseeable and totally inappropriate purpose and improper use made by Decedent of the vessel and premises alleged in the Claim.

TENTH AFFIRMATIVE DEFENSE

Petitioners allege that Decedent knew or should have known of the risks and hazards inherent in being a passenger on the subject vessel, as well as the magnitude of said risks and hazards and thereafter knowingly and willingly assumed those risks, which assumption bars Claimant/Respondent's Claim, or reduces his/her/their damages accordingly.

This Affirmative Defense was stricken in the Court's Order, dated January 27, 2020 (Docket No. 45). To the extent that the Court's ruling in that Order constitutes "the law of the case," and, as such, the Order striking this affirmative defense applies to the case overall, to this Answer, and to the Claim to which it responds, Petitioners hereby reserve their appellate rights with respect to that ruling on this defense.

ELEVENTH AFFIRMATIVE DEFENSE

Petitioners are informed and believe and thereon allege that in the event Claimant/Respondent should establish any liability on the part of Petitioners, which liability is expressly denied, Petitioners may not be obligated to pay sums representing a proportion or percentage of fault not their own, but that of Decedent, Claimant/Respondent, other parties to this action and/or third persons not parties to this action. Petitioners are entitled to an adjudication and determination of the respective proportions or percentages of fault, if any, on the part of Petitioners, Claimant/Respondent, and other parties to this action (including those through whom they claim), and third persons not parties to this action pursuant to the doctrine of comparative negligence and the Fair Responsibility Act of 1986, codified in Civil Code Section 1431-1431.5.

TWELFTH AFFIRMATIVE DEFENSE

Petitioners allege that, on information and belief, Claimant/Respondent's

1 alleged injuries and/or damages, if any there were, were caused by or aggravated
2 by Claimant/Respondent's failure to use reasonable diligence to mitigate them.

3 **THIRTEENTH AFFIRMATIVE DEFENSE**

4 Claimant/Respondent's Claim and each cause of action therein are barred by
5 the defense of primary assumption of the risk.

6 This Affirmative Defense was stricken in the Court's Order, dated January
7 27, 2020 (Docket No. 45). To the extent that the Court's ruling in that Order
8 constitutes "the law of the case," and, as such, the Order striking this affirmative
9 defense applies to the case overall, to this Answer, and to the Claim to which it
10 responds, Petitioners hereby reserve their appellate rights with respect to that
11 ruling on this defense.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 Petitioners claim the right to exoneration from liability for the losses,
14 damages and personal injuries sustained by Claimant/Respondent, all as alleged in
15 the Claim, and Petitioners allege that they have a valid defense on the merits to any
16 and all such other claims as may be filed arising thereunder. Notwithstanding that,
17 Petitioners further claim the benefit of limitation of, or exoneration from, liability
18 as provided in 46 U.S.C. § 30501-30512, *et seq.*, and the various statutes
19 supplementary thereto and amendatory thereof. Petitioners allege further that if
20 there was any fault on their part, or on the part of any person for whom Petitioners
21 are responsible, all of which are denied, Petitioners' liability should be limited to
22 the amount or value of Petitioners' interest in the said vessel, and the pending
23 freight. Petitioners further allege that the injury complained of by
24 Claimant/Respondent occasioned or occurred without the knowledge or privity of
25 Petitioners herein and without any fault, neglect, want of care, or design on the part
26 of Petitioners and that said vessel was at the commencement of the tour tight,
27 staunch, seaworthy and strong.

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FIFTEENTH AFFIRMATIVE DEFENSE

Petitioners cannot be held liable for punitive damages because no Plaintiff, nor the officers, directors or managing agents, committed any alleged oppressive, fraudulent or malicious act, authorized or ratified such an act, or had advanced knowledge of the unfitness, if any, of the employee or employees, if any, who allegedly committed such an act, or employed any such employee or employees with a conscious disregard of the rights or safety of others. Cal. Civ. Code §3294.

This Affirmative Defense was stricken in the Court's Order, dated January 27, 2020 (Docket No. 45). To the extent that the Court's ruling in that Order constitutes "the law of the case," and, as such, the Order striking this affirmative defense applies to the case overall, to this Answer, and to the Claim to which it responds, Petitioners hereby reserve their appellate rights with respect to that ruling on this defense.

SIXTEENTH AFFIRMATIVE DEFENSE

Claimant/Respondent is not entitled to recover any punitive damages, and any allegations in support of a claim for punitive damages should be stricken, because California's laws regarding the acts and omissions alleged are too vague to permit the imposition of punitive damages, and because any award of punitive damages in this action would violate Petitioners' constitutional rights under the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the excessive fines and cruel and unusual punishment clauses of the Eighth Amendment of the United States Constitution, as well as other provisions of the United States Constitution and the California Constitution.

SEVENTEENTH AFFIRMATIVE DEFENSE

Petitioners cannot be held liable for punitive damages because Petitioners did not engage in oppressive, fraudulent or malicious conduct toward Plaintiff. Cal. Civ. Code §3294.

This Affirmative Defense was stricken in the Court's Order, dated January

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27, 2020 (Docket No. 45). To the extent that the Court’s ruling in that Order constitutes “the law of the case,” and, as such, the Order striking this affirmative defense applies to the case overall, to this Answer, and to the Claim to which it responds, Petitioners hereby reserve their appellate rights with respect to that ruling on this defense.

EIGHTEENTH AFFIRMATIVE DEFENSE

Petitioners allege that there is no cause or support for an award of punitive or exemplary damages against these answering Petitioners and furthermore, that Claimant/Respondent’s claim for punitive or exemplary damages violates Petitioners’ right to substantive and procedural due process as provided in the Fifth and Fourteenth Amendments of the Constitution of the United States and the Constitution of the State of California.

NINETEENTH AFFIRMATIVE DEFENSE

Petitioners allege that, on information and belief, Claimant Gregory Krashenny, and/or others claiming through decedent, lack standing to pursue the claim or claims for relief alleged in the Claim.

TWENTIETH AFFIRMATIVE DEFENSE

Petitioners allege that, on information and belief, Claimant Gregory Krashenny, and/or others claiming through decedent, are barred from recovering both loss of support damages and lost future earnings damages as prayed for in the Claim.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Petitioners allege that the Counterclaim fails to join one or more necessary and/or indispensable parties as required by Fed. R. Civ. P. 19.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Petitioners allege, on information and belief, the claims, relief and/or damages claimed by Claimant Gregory Krashenny, and/or others claiming through decedent are subject to and/or limited by the provisions of the Death on the High

1 Seas Act 46 U.S.C. 30301, *et seq.*, and/or the uniformity principles set forth in
 2 *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), and/or General Maritime Law.

3 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

4 Petitioners allege, on information and belief, that they are entitled to the
 5 benefit of each and every term of the agreement(s), contract(s), and/or disclosure(s)
 6 that exist(s) by and between the parties to these proceedings, or those by, under or
 7 through whom they claim, including any waivers, releases or limitation of liability,
 8 or exonerating language contained therein.

9 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

10 Petitioners presently have insufficient knowledge or information on which to
 11 form a belief as to whether Petitioners may have additional, as yet unstated,
 12 affirmative defenses available for Petitioners' benefits. Petitioners thereby reserve
 13 herein their right to assert additional affirmative defenses in the event discovery
 14 indicates that such affirmative defenses would be appropriate.

15 WHEREFORE, Petitioners pray that Claimant/Respondent's Claim be
 16 dismissed with prejudice, that judgment be entered for Petitioners and against
 17 Claimant/Respondent; that their answer herein be deemed good and sufficient or,
 18 alternatively, that should any judgment be rendered against Petitioners, that the
 19 amount of said judgment should be limited to the value of Petitioners' interest in
 20 said vessel and pending freight, that Petitioners recover from Claimant/Respondent
 21 their costs of suit incurred herein, and for such other and further relief as the Court

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1 may deem just and proper under the circumstances.

2 Dated: February 3, 2020 GORDON REES SCULLY MANSUKHANI, LLP

3
4 By: /s/Russell P. Brown

Russell P. Brown

5 James F. Kuhne, Jr.

6 Attorney for Plaintiffs

7 TRUTH AQUATICS, INC.,

8 AND GLEN RICHARD FRITZLER AND

9 DANA JEANNE FRITZLER,

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