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9 TRUTH AQUATICS, INC. AND
10 GLEN RICHARD FRITZLER AND DANA
11 JEANNE FRITZLER, INDIVIDUALLY AND AS
12 TRUSTEES OF THE FRITZLER FAMILY TRUST
13 DTD 7/27/92

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 In the Matter of the Complaint of Truth)
17 Aquatics, Inc. and Glen Richard Fritzler and)
18 Dana Jeanne Fritzler, individually and as)
19 Trustees of the Fritzler Family Trust DTD)
20 7/27/92 as owners and/or owners *pro hac vice*)
21 of the dive vessel CONCEPTION, Official)
22 Number 638133, for Exoneration from or)
23 Limitation of Liability)
24)
25)
26)
27)
28)
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
CLAIM OF ROBERT KURTZ
AND CHERIE
MCDONOUGH**

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20 Come now Plaintiffs TRUTH AQUATICS, INC. AND GLEN RICHARD
21 FRITZLER AND DANA JEANNE FRITZLER, INDIVIDUALLY AND AS
22 TRUSTEES OF THE FRITZLER FAMILY TRUST dtd 7/27/92 (“Petitioners” or
23 “Plaintiffs”), and in response to the Claim of ROBERT KURTZ and CHERIE
24 MCDONOUGH (“Claimants”) admit, deny and allege as follows¹:

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

27 _____
28 ¹ The Claim filed by Mr. Kurtz and Ms. McDonough (Doc. 26) to which this
Answer is directed is referred to herein as the “Claim.”

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

11 4. Paragraph No. 4 of the Claim contains allegations and conclusions of
12 law to which an answer is not required. To the extent an answer is required,
13 Petitioners respond that they are without knowledge or information sufficient to
14 form a belief as to the truth of the allegations contained in said paragraph, and on
15 that basis deny each and every one of them.

16 5. In response to Paragraph 5 of the Claim, Petitioners admit that Truth
17 Aquatics, Inc. was Ms. Kurtz’s employer at the time of the events in question.
18 Petitioners are without knowledge or information sufficient to form a belief as to
19 the truth of the remaining allegations contained therein, and on that basis deny
20 each and every one of them.

21 6. In response to Paragraph No. 6 of the Claim, Petitioners respond that
22 the Paragraph contains allegations and conclusions of law to which an answer is
23 not required. To the extent an answer to those allegations is required, Petitioners
24 admit and allege that they were the owners and/or owners *pro hac vice* of the
25 CONCEPTION within the meaning of 46 U.S.C. Section 30501, *et seq.* With
26 respect to the remaining allegations in Paragraph No. 6, Petitioners respond that
27 they are without knowledge or information sufficient to form a belief as to the truth
28 of the remaining allegations contained in said paragraph, and on that basis deny

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1 such allegations.

2 7. In response to Paragraph No. 7 of the Claim, Petitioners admit and
3 allege that on August 31, 2019, the CONCEPTION departed the Port of Santa
4 Barbara with six crewmembers and thirty-three passengers on board for a three-day
5 voyage. Petitioners deny the voyage commenced on a Monday. As to the
6 remaining allegations contained in Paragraph 6, except as expressly alleged and
7 admitted, or denied, Petitioners are without knowledge or information sufficient to
8 form a belief as to the truth of the remaining allegations contained in said
9 paragraph and on that basis deny them allegations contained in said paragraph, and
10 on that basis deny such allegations.

11 8. In response to Paragraph No. 8 of the Claim, Petitioners respond that
12 the Paragraph contains allegations and conclusions of law to which an answer is
13 not required. To the extent an answer to those allegations is required, Petitioners
14 admit the CONCEPTION was a “seagoing vessel” for purposes of 46 U.S.C. §
15 30502.

16 9. In response to Paragraph No. 9 of the Claim, Petitioners admit and
17 allege that the CONCEPTION had three decks, that the pilot house and primary
18 crew’s quarters were located on the vessel’s uppermost or sun deck, that the galley
19 and salon were situated on the main deck and that the main sleeping quarters were
20 located in the lower deck below the main deck. Petitioners deny all remaining
21 allegations in Paragraph No. 9 of the Counterclaim.

22 10. In response to Paragraph 10 of the Counterclaim, Petitioners admit the
23 CONCEPTION was equipped with an onboard electrical system that was powered
24 by diesel generators.

25 11. In response to Paragraph No. 11 of the Claim, Petitioners admit and
26 allege they allowed crewmembers and passengers to use the CONCEPTION’s
27 electrical system to charge lithium battery-powered electronics. Except as
28 expressly admitted or alleged, Petitioners deny all remaining allegations in

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1 Paragraph No. 11 of the Claim.

2 12. In response to Paragraph No. 12 of the Claim, Petitioners admit and
3 allege that the CONCEPTION’s galley was located on the main deck one level
4 above the vessel’s main sleeping quarters. Petitioners deny the allegation that they
5 equipped the vessel’s galley with a “battery-charging station.” With respect to the
6 remaining allegations in Paragraph No. 12, Petitioners respond that they are
7 without knowledge or information sufficient to form a belief as to the truth of the
8 remaining allegations contained in said paragraph, and on that basis deny such
9 allegations.

10 13. In response to Paragraph No. 13 of the Claim, Petitioners deny the
11 allegation that the vessel was equipped with a “battery charging station.”
12 Petitioners are without knowledge or information sufficient to form a belief as to
13 the truth of the remaining allegations contained in said paragraph, and on that basis
14 deny them.

15 14. In response to Paragraph No. 14 of the Claim, Petitioners admit that
16 on September 2, 2019 there was a fire on the vessel. Petitioners are without
17 knowledge or information sufficient to form a belief as to the truth of the
18 remaining allegations contained in said paragraph, and on that basis deny each and
19 every one of them.

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

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

26 17. In response to Paragraph No. 17 of the Claim, Petitioners respond that
27 the Paragraph contains allegations and conclusions of law to which an answer is
28 not required. To the extent an answer to those allegations is required, Petitioners

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

3 18. Petitioners deny each and every allegation contained in Paragraph 18
4 of the Claim.

5 19. Petitioners deny each and every allegation contained in Paragraph 19
6 of the Claim.

7 20. Responding to Paragraph 20 of the Claim, Petitioners respond that
8 they are without knowledge or information sufficient to form a belief as to the truth
9 of the allegations contained in that paragraph, and on that basis deny each and
10 every allegation contained therein.

11 21. Petitioners deny each and every allegation contained in Paragraph No.
12 21 of the Claim.

13 22. In response to Paragraph No. 22 of the Claim, Petitioners admit that
14 Glen Fritzler was an owner and/or owner *pro hac vice* of the CONCEPTION
15 within the meaning of 46 U.S.C. Section 30501, *et seq.* Petitioners deny that Glen
16 Fritzler lied.

17 23. Petitioners deny each and every allegation contained in Paragraph No.
18 23 of the Claim.

19 24. Paragraph No. 24 of the Claim contains allegations and conclusions of
20 law to which an answer is not required. To the extent an answer to those
21 allegations is required, Petitioners admit and allege the stairway at the forward end
22 of the vessel's main sleeping quarters and the escape hatch at the aft end of the
23 main sleeping quarters provided egress to the vessel's galley/salon. Petitioners
24 deny the vessel CONCEPTION was defectively designed. In responses to the
25 remaining allegations contained in Paragraph No. 24, Petitioners respond that they
26 are without knowledge or information sufficient to form a belief as to the truth of
27 the remaining allegations contained in said paragraph, and on that basis deny each
28 and every allegation contained therein.

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1 25. Petitioners deny each and every allegation contained in Paragraph No.
2 25 of the Claim, and deny that the vessel was unseaworthy in any respect.

3 26. In response to Paragraph No. 26 of the Claim, Petitioners admit that the
4 stairway at the forward end of the vessel’s main sleeping quarters and the escape
5 hatch at the aft end of the main sleeping quarters provided egress to the vessel’s
6 galley/salon. Petitioners are without knowledge or information sufficient to form a
7 belief as to the truth of the remaining allegations contained in said paragraph, and
8 on that basis deny each and every remaining allegation contained therein.

9 27. Petitioners deny each and every allegation of Paragraph No. 27 of the
10 Claim.

11 28. Petitioners deny each and every allegation of Paragraph No. 28 of the
12 Claim.

13 29. Petitioners deny each and every allegation of Paragraph No. 29 of the
14 Claim.

15 30. In response to Paragraph No. 30 of the Claim, Petitioners deny that they
16 “caused and/or contributed” to the “tragedy and the damages” alleged. Petitioners
17 are without knowledge or information sufficient to form a belief as to the truth of
18 the remaining allegations contained in said paragraph, and therefore deny them.

19 31. Paragraph 31 of the Claim re-alleges and incorporates by reference the
20 allegations set forth in Paragraph 1-30 of the Claim. As such, Petitioners re-allege
21 and incorporate by reference the responses set forth in Paragraphs 1 through 30,
22 above, as though fully set forth herein.

23 32. In response to Paragraph 32 of the Claim, Petitioners admit that Ms.
24 Kurtz was employed by Truth Aquatics, Inc. at the time of the events in question.
25 Petitioners lack information or knowledge sufficient to enable them to form a
26 belief as to the truth of the remaining allegations of Paragraph 32 of the Claim, and
27 on that basis deny them.

28 ///

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

3 34. Petitioners deny each and every allegation contained in Paragraph No.
4 34 of the Claim.

5 35. Petitioners deny each and every allegation contained in Paragraph No.
6 35 of the Claim.

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

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

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

13 39. Petitioners deny each and every allegation contained in Paragraph No.
14 39 of the Claim.

15 40. Paragraph 40 of the Claim incorporates Paragraphs 1 through 39 of the
16 Claim as though fully set forth therein. Thus, in responding to Paragraph 40,
17 Petitioners reassert, re-allege and incorporate their responses to Paragraphs 1
18 through 39 of the Claim as though fully set forth herein.

19 41. In response to Paragraph 41 of the Counterclaim, Petitioners admit that
20 Truth Aquatics, Inc. is and was the owner and/or owner *pro hac vice* of the
21 CONCEPTION, within the meaning of 46 U.S.C. section 30501, *et seq.* at the time
22 of the events in question.

23 42. In response to Paragraph 42 of the Claim, Petitioners admit that at all
24 relevant times they were the owners and/or owners *pro hac vice* of the
25 CONCEPTION within the meaning of 46 U.S.C. Section 30501, *et seq.*

26 43. Petitioners deny each and every allegation contained in Paragraph 43
27 of the Claim.

28 44. Petitioners deny each and every allegation contained in Paragraph 44

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1 of the Claim.

2 45. Responding to the allegations in Paragraph 45 of the Claim,
3 Petitioners respond that they lack knowledge or information sufficient to form a
4 belief as to the truth of the matters alleged, and on that basis deny them.

5 46. The allegations of Paragraph 46 of the Claim contain conclusions of
6 law to which no answer is required. To the extent a response to those allegations is
7 required, Petitioners respond that they lack knowledge or information sufficient to
8 form a belief as to the truth of the matters alleged, and on that basis deny them.

9 47. Petitioners deny each and every allegation contained in Paragraph 47
10 of the Claim.

11 48. Petitioners deny each and every allegation contained in Paragraph 48
12 of the Claim.

13 49. Petitioners deny each and every allegation contained in Paragraph 49
14 of the Claim.

15 50. Petitioners deny each and every allegation contained in Paragraph 50
16 of the Claim.

17 51. Petitioners deny each and every allegation contained in Paragraph 51
18 of the Claim.

19 52. Petitioners deny each and every allegation contained in Paragraph 52
20 of the Claim.

21 53. Petitioners deny each and every allegation contained in Paragraph 53
22 of the Claim.

23 54. Petitioners deny each and every allegation contained in Paragraph 54
24 of the Claim.

25 55. Petitioners deny each and every allegation contained in Paragraph 55
26 of the Claim.

27 56. Paragraph 56 of the Claim incorporates the allegations of Paragraphs
28 1 through 55 of the Claim as though set forth therein. Thus, responding to

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1 Paragraph 56, Petitioners re-assert, re-allege, and incorporate by reference the
2 responses contained in Paragraphs 1 through 55 of their Answer as though fully set
3 forth herein.

4 57. Petitioners deny each and every allegation contained in Paragraph 57
5 of the Claim.

6 58. Petitioners deny each and every allegation contained in Paragraph 58
7 of the Claim.

8 59. Petitioners deny each and every allegation contained in Paragraph 59
9 of the Claim.

10 60. Petitioners deny each and every allegation contained in Paragraph 60
11 of the Claim.

12 61. Petitioners deny each and every allegation contained in Paragraph 61
13 of the Claim.

14 62. Petitioners deny each and every allegation contained in Paragraph 62
15 of the Claim.

16 **PRAYER FOR RELIEF**

17 No response is required to Claimants’ Prayer for Relief. To the extent a
18 response is required, Petitioners deny that Claimants are entitled to the relief
19 requested, or any relief whatsoever, from these Petitioners.

20 **AFFIRMATIVE DEFENSES**

21 **FIRST AFFIRMATIVE DEFENSE**

22 Claimants’ Claim fails to state a claim, or claims, upon which relief can be
23 granted.

24 **SECOND AFFIRMATIVE DEFENSE**

25 Any and all acts, happenings and/or damages, if any, referred to in the Claim
26 were proximately caused and/or contributed to by the negligence of Alexandra
27 Kurtz. Claimants are therefore completely barred from recovery herein or,
28 alternatively, their right to recovery, if any, is reduced under the doctrine of

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1 comparative negligence by the amount which said negligence contributed to the
2 incident alleged.

3 **THIRD AFFIRMATIVE DEFENSE**

4 If any injuries and/or damages were sustained by Claimants or by Ms. Kurtz,
5 which is expressly denied, they were caused solely and/or proximately by the
6 natural progression of Alexandra Kurtz’s pre-existing medical conditions over
7 which Petitioners had no control and for which Petitioners are not liable.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 Claimants’ and/or Ms. Kurtz’s injuries and/or damages, if any, were caused
10 or contributed to by the negligence of third parties whose identities are presently
11 unknown to Petitioners, and Petitioners’ liability, if any, should be reduced by the
12 proportion caused or contributed to by such persons.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 Petitioners aver as a separate and complete defense that in the event
15 Petitioners are found liable for the claims asserted, which is denied, Petitioners are
16 entitled to indemnification or contribution from any other responsible party.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 Claimants are barred from asserting the claim or cause(s) of action herein
19 alleged against Petitioners by the doctrine of estoppel.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 Claimants are barred from asserting the claim or cause(s) of action herein
22 alleged against Plaintiff by the doctrine of waiver.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 Petitioners are informed and believe and thereon allege that, in the event
25 Claimants establish any liability on the part of Petitioners, which liability is
26 expressly denied, Petitioners may not be obligated to pay sums representing a
27 proportion or percentage of fault not their own, but which fault is instead
28 attributable that of Alexandra Kurtz, Claimants, other parties to this action and/or

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1 third persons not parties to this action. Petitioners are entitled to an adjudication
2 and determination of the respective proportions or percentages of fault, if any, on
3 Petitioners’ part and on the part of the Claimants (including those through whom
4 they claim), other parties to this action, and third persons not parties to this action
5 pursuant to the doctrine of comparative negligence and the Fair Responsibility Act
6 of 1986, codified in Civil Code Section 1431-1431.5.

7 **NINTH AFFIRMATIVE DEFENSE**

8 Petitioners claim the right to exoneration from liability for the losses,
9 damages and personal injuries sustained by Claimants and/or Alexandra Kurtz, all
10 as alleged in the Claim, and Petitioners allege that they have a valid defense on the
11 merits to any and all such other claims as may be filed arising thereunder.

12 Petitioners further claim the benefit of limitation of, or exoneration from, liability
13 as provided in 46 U.S.C. § 30501-30512, *et seq.*, and the various statutes
14 supplementary thereto and amendatory thereof. Petitioners allege further that if
15 there was any fault on their part, or on the part of any person for whom Petitioners
16 are responsible, all of which are denied, Petitioners’ liability should be limited to
17 the amount or value of Petitioners’ interest in the said vessel, and the then-pending
18 freight. Petitioners further allege that the injury(ies) complained of by Claimants
19 was/were occasioned or occurred without the knowledge or privity of Petitioners
20 herein and without any fault, neglect, want of care, or design on the part of
21 Petitioners, and that said vessel was at the commencement of the tour tight,
22 staunch, seaworthy and strong.

23 **TENTH AFFIRMATIVE DEFENSE**

24 Petitioners cannot be held liable for punitive damages because no
25 Petitioners, nor the officers, directors or managing agents, committed any alleged
26 oppressive, fraudulent or malicious act, authorized or ratified such an act, nor had
27 advanced knowledge of the unfitness, if any, of the employee or employees, if any,
28 who allegedly committed such an act, nor employed any such employee or

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1 employees with a conscious disregard of the rights or safety of others. Cal. Civ.
2 Code § 3294.

3 This Affirmative Defense was stricken in the Court’s Order, dated January
4 27, 2020 (Docket No. 45). To the extent that the Court’s ruling in that Order
5 constitutes “the law of the case,” and, as such, the Order striking this affirmative
6 defense applies to the case overall, to this Answer, and to the Claim to which it
7 responds, Petitioners hereby reserve their appellate rights with respect to that
8 ruling on this defense.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 Claimants are not entitled to recover any punitive damages, and any
11 allegations in support of a claim for punitive damages should be stricken, because
12 California’s laws regarding the acts and omissions alleged are too vague to permit
13 the imposition of punitive damages, and because any award of punitive damages in
14 this action would violate Petitioners’ constitutional rights under the due process
15 clauses of the Fifth and Fourteenth Amendments to the United States Constitution,
16 the excessive fines and cruel and unusual punishment clauses of the Eighth
17 Amendment of the United States Constitution, and/or other provisions of the
18 United States Constitution and the California Constitution.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 Petitioners cannot be held liable for punitive damages because Petitioners
21 did not engage in oppressive, fraudulent or malicious conduct toward Claimants or
22 Alexandra Kurtz. Cal. Civ. Code § 3294.

23 This Affirmative Defense was stricken in the Court’s Order, dated January
24 27, 2020 (Docket No. 45). To the extent that the Court’s ruling in that Order
25 constitutes “the law of the case,” and, as such, the Order striking this affirmative
26 defense applies to the case overall, to this Answer, and to the Claim to which it
27 responds, Petitioners hereby reserve their appellate rights with respect to that
28 ruling on this defense.

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THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

Petitioners allege the claims, relief and/or damages claimed by the Claim are subject to and/or limited by the uniformity principles set forth in *Miles v Apex Marine Corp.*, 498 U.S. 19 (1990), the Jones Act (including its incorporation of the Federal Employers’ Liability Act), and/or General Maritime Law.

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

If Claimants sustained any injuries and/or losses, which injuries and/or losses are specifically denied, Petitioners are not responsible for such injuries and/or losses as they were caused by Ms. Kurtz’s own willful failure to follow the directives of the owners and/or captain and/or crew of the vessel and/or posted signs.

SEVENTEENTH AFFIRMATIVE DEFENSE

If any injuries were sustained by Claimants, which is expressly denied, they were caused solely and/or proximately by Ms. Kurtz’s failure to follow the policies and directions of her employer.

EIGHTEENTH AFFIRMATIVE DEFENSE

Claimants alleged injuries were caused by Ms. Kurtz’s failure to perform duties assigned to her, and not by negligence or other breach of duty on the part of Petitioners. Claimants are therefore barred from recovering under their Claim by

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1 operation of the Primary Duty Rule.

2 **NINETEENTH AFFIRMATIVE DEFENSE**

3 Petitioners allege that Claimants’ injuries and damages, if any, were not due
4 to any negligence of Petitioners or any failure by Petitioners to provide a
5 seaworthy vessel, seaworthy vessel appurtenances, or a safe place to work.

6 **TWENTIETH AFFIRMATIVE DEFENSE**

7 Petitioners allege that at all relevant times they acted with reasonable
8 diligence and due care, including with respect to the seaworthiness of the vessel
9 and her appurtenances.

10 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

11 Petitioners allege that no acts or omissions of them were or could have been
12 a substantial factor, contributing cause or even featherweight cause of the damages
13 and/or injuries alleged, and that any alleged act or omission of Petitioners was
14 superseded by the acts or omissions of others, including Alexandra Kurtz, which
15 were the independent, intervening, superseding, and proximate cause of the injuries
16 and/or damages, if any, sustained by Claimants.

17 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

18 Petitioners allege that Claimants’ and or Ms. Kurtz’s recovery, if any, is
19 limited to the recovery of pecuniary damages under *Miles v. Apex Marine Corp.*,
20 498 U.S. 19 (1990), and its progeny.

21 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

22 Petitioners allege that Claimants are barred from recovery of non-pecuniary
23 damages under the terms of the Jones Act, the Federal Employers’ Liability Act,
24 and the principles set forth in *Michigan Central R.R. v. Vrieland*, 227 U.S. 59
25 (1939).

26 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

27 Petitioners allege that Claimants are barred from recovery of punitive
28 damages on the grounds of unseaworthiness by the United States Supreme Court’s

1 holding in *Dutra Group v. Batterton*, 588 U.S.____ (2019).

2 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

3 Petitioners allege that Claimants’ recovery, if any, from Petitioners is
4 limited, diminished, or barred entirely by Claimants’ and/or Ms. Kurtz’s failure to
5 mitigate their damages.

6 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

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

12 WHEREFORE, Petitioners pray that Claimants’ Claim be dismissed with
13 prejudice, that judgment be entered for Petitioners and against Claimants; that
14 Petitioners’ Answer herein be deemed good and sufficient or, alternatively, that
15 should any judgment be rendered against Petitioners, that the amount of said
16 judgment should be limited to the value of Petitioners’ interest in said vessel and
17 pending freight, that Petitioners recover from Claimants their costs of suit incurred
18 herein, and for such other and further relief as the Court may deem just and proper
19 under the circumstances.

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

21
22 By: /s/Russell P. Brown
23 Russell P. Brown
24 James F. Kuhne, Jr.
25 Attorney for Petitioners
26 TRUTH AQUATICS, INC.,
27 AND GLEN RICHARD FRITZLER AND
28 DANA JEANNE FRITZLER,
INDIVIDUALLY AND AS TRUSTEES OF
THE FRITZLER FAMILY TRUST DTD
7/27/92

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