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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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Paragraph No. 11 of the Claim.

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

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

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

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

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

17. In response to Paragraph No. 17 of the Claim, Petitioners respond that the Paragraph contains allegations and conclusions of law to which an answer is 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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25. Petitioners deny each and every allegation contained in Paragraph No. 25 of the Claim, and deny that the vessel was unseaworthy in any respect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **PRAYER FOR RELIEF**

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

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

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

#### **SECOND AFFIRMATIVE DEFENSE**

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

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

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 Petitioners' part and on the part of the Claimants (including those through whom they claim), other parties to this action, 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.

#### **NINTH AFFIRMATIVE DEFENSE**

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

#### **TENTH AFFIRMATIVE DEFENSE**

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

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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.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

Claimants are 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, the excessive fines and cruel and unusual punishment clauses of the Eighth Amendment of the United States Constitution, and/or other provisions of the United States Constitution and the California Constitution.

#### **TWELFTH AFFIRMATIVE DEFENSE**

Petitioners cannot be held liable for punitive damages because Petitioners did not engage in oppressive, fraudulent or malicious conduct toward Claimants or Alexandra Kurtz. 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.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

25 **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

operation of the Primary Duty Rule.

### **NINETEENTH AFFIRMATIVE DEFENSE**

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

### **TWENTIETH AFFIRMATIVE DEFENSE**

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

### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

### **TWENTY-SECOND AFFIRMATIVE DEFENSE**

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

### **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

### **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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

holding in *Dutra Group v. Batterton*, 588 U.S.\_\_\_\_ (2019).

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

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

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

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

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

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

By: /s/Russell P. Brown

Russell P. Brown

James F. Kuhne, Jr.

Attorney for Petitioners

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