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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
	)	SEEMA SHARMA'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 Seema Sharma'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 Seema Sharma is referred to herein as "Claimant Sharma," 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 respond that
4 the Paragraph contains allegations and conclusions of law to which an answer is
5 not required. To the extent an answer to those allegations is required, Petitioners
6 respond that they are without knowledge or information sufficient to form a belief
7 as to the truth of the allegations contained in said paragraph, and on that basis deny
8 each and every allegation contained therein.

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

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

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

26 6. In response to Paragraph No. 6 of the Counterclaim, Petitioners admit
27 and allege that on August 31, 2019, the CONCEPTION departed the Port of Santa
28 Barbara with six crewmembers and thirty-three passengers on board for a three-day

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1 voyage. Petitioners deny the voyage commenced on a Monday. As to the
2 remaining allegations contained in Paragraph 6, except as expressly alleged and
3 admitted, or denied, Petitioners are without knowledge or information sufficient to
4 form a belief as to the truth of the remaining allegations contained in said
5 paragraph and on that basis deny them.

6 7. In response to Paragraph No. 7 of the Claim, Petitioners respond that
7 the Paragraph contains allegations and conclusions of law to which an answer is
8 not required. To the extent an answer to those allegations is required, Petitioners
9 admit the CONCEPTION was a “seagoing vessel” for purposes of 46 U.S.C. §
10 30502.

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

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

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

25 11. In response to Paragraph No. 11 of the Claim, Petitioners admit and
26 allege that the CONCEPTION’s galley was located on the main deck one level
27 above the vessel’s main sleeping quarters. Petitioners deny the allegation that they
28 equipped the vessel’s galley with a “battery-charging station.” With respect to the

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1 remaining allegations in Paragraph No. 11, Petitioners respond that they are
2 without knowledge or information sufficient to form a belief as to the truth of the
3 remaining allegations contained in said paragraph, and on that basis deny such
4 allegations.

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

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

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

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

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

26 17. Petitioners deny each and every allegation contained in Paragraph No.
27 17 of the Claim.

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1 18. Petitioners deny each and every allegation contained in Paragraph No.
2 18 of the Claim.

3 19. In response to Paragraph No. 19 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 20. Petitioners deny each and every allegation contained in Paragraph No.
8 20 of the Claim.

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

13 22. Petitioners deny each and every allegation contained in Paragraph No.
14 22 of the Claim.

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

25 24. Petitioners deny each and every allegation contained in Paragraph No.
26 24 of the Claim, and deny that the vessel was unseaworthy in any respect.

27 25. In response to Paragraph No. 25 of the Claim, Petitioners admit that
28 the stairway at the forward end of the vessel's main sleeping quarters and the

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1 escape hatch at the aft end of the main sleeping quarters provided egress to the
2 vessel's galley/salon. Petitioners are without knowledge or information sufficient
3 to form a belief as to the truth of the remaining allegations contained in said
4 paragraph, and on that basis deny each and every allegation contained therein.

5 26. Petitioners deny each and every allegation of Paragraph No. 26 of the
6 Claim.

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

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

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

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

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

27 32. Petitioners deny the allegations contained in Paragraph No. 32 of the
28 Claim.

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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 the allegations of Paragraph No. 34 of the Claim.

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

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.

PRAYER FOR RELIEF

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

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

Any and all acts, happenings and/or damages, if any, referred to in

1 Claimant/Respondent's Claim, were proximately caused by and/or contributed to
 2 by the negligence of Decedent and therefore, Claimant/Respondent is completely
 3 barred from recovery herein or, in the alternative, under the doctrine of
 4 comparative negligence, the negligence of Decedent is imputed to
 5 Claimant/Respondent's reduce her/his/their right to recovery by the amount which
 6 said negligence contributed to the incident alleged.

7 **FOURTH AFFIRMATIVE DEFENSE**

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

12 **FIFTH AFFIRMATIVE DEFENSE**

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

17 **SIXTH AFFIRMATIVE DEFENSE**

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

22 **SEVENTH AFFIRMATIVE DEFENSE**

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

25 **EIGHTH AFFIRMATIVE DEFENSE**

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

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1 **NINTH AFFIRMATIVE DEFENSE**

2 Petitioners allege that any injury, damage or loss suffered, if any, was caused
3 (in whole or in part) by, attributable to, and/or sustained as a result of the
4 unreasonable, unforeseeable and totally inappropriate purpose and improper use
5 made by Decedent of the vessel and premises alleged in the Claim.

6 **TENTH AFFIRMATIVE DEFENSE**

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

12 This Affirmative Defense was stricken in the Court's Order, dated January
13 27, 2020 (Docket No. 45). To the extent that the Court's ruling in that Order
14 constitutes "the law of the case," and, as such, the Order striking this affirmative
15 defense applies to the case overall, to this Answer, and to the Claim to which it
16 responds, Petitioners hereby reserve their appellate rights with respect to that
17 ruling on this defense.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

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

1 codified in Civil Code Section 1431-1431.5.

2 **TWELFTH AFFIRMATIVE DEFENSE**

3 Petitioners allege that, on information and belief, Claimant/Respondent's
4 alleged injuries and/or damages, if any there were, were caused by or aggravated
5 by Claimant/Respondent's failure to use reasonable diligence to mitigate them.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

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

15 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

1 of Petitioners and that said vessel was at the commencement of the tour tight,
2 staunch, seaworthy and strong.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

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

16 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

26 **SEVENTEENTH AFFIRMATIVE DEFENSE**

27 Petitioners cannot be held liable for punitive damages because Petitioners
28 did not engage in oppressive, fraudulent or malicious conduct toward Plaintiff.

1 Cal. Civ. Code §3294.

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

8 **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

15 **NINETEENTH AFFIRMATIVE DEFENSE**

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

19 **TWENTIETH AFFIRMATIVE DEFENSE**

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

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

26 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

27 Petitioners allege, on information and belief, the claims, relief and/or
28 damages claimed by Claimant Seema Sharma, and/or others claiming through

1 decedent, are subject to and/or limited by the provisions of the Death on the High
 2 Seas Act 46 U.S.C. 30301, *et seq.*, and/or the uniformity principles set forth in
 3 *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), and/or General Maritime Law.

4 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

10 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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

16 WHEREFORE, Petitioners pray that Claimant/Respondent's Claim be
 17 dismissed with prejudice, that judgment be entered for Petitioners and against
 18 Claimant/Respondent; that their answer herein be deemed good and sufficient or,
 19 alternatively, that should any judgment be rendered against Petitioners, that the
 20 amount of said judgment should be limited to the value of Petitioners' interest in
 21 said vessel and pending freight, that Petitioners recover from Claimant/Respondent
 22 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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