

LAW OFFICES OF  
**WALKUP, MELODIA, KELLY & SCHOENBERGER**  
A PROFESSIONAL CORPORATION

650 CALIFORNIA STREET, 26<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94108-2615  
T: (415) 981-7210 · F: (415) 391-6965

MICHAEL A. KELLY (State Bar #71460)  
mkelly@walkuplawoffice.com  
RICHARD H. SCHOENBERGER (State Bar #122190)  
rschoenberger@walkuplawoffice.com  
MATTHEW D. DAVIS (State Bar #141986)  
mdavis@walkuplawoffice.com  
DOUGLAS S. SAELTZER (State Bar #173088)  
dsaeltzer@walkuplawoffice.com  
JUSTIN CHOU (State Bar #279137)  
jchou@walkuplawoffice.com  
**ATTORNEYS FOR NANCY FIEDLER,  
PERSONAL REPRESENTATIVE OF  
THE ESTATE OF LISA FIEDLER,  
CLAIMANT RESPONDENT**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
IN ADMIRALITY

In the Matter of the Complaint 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  
*pro hac vice* of the dive vessel  
CONCEPTION, Official Number  
638133, for Exoneration from or  
Limitation of Liability

Case No. CV 19-7693 PA (MRWx)

**CLAIMANT/RESPONDENT NANCY  
FIEDLER' ANSWER TO THE FIRST  
AMENDED COMPLAINT FOR  
EXONERATION FROM OR  
LIMITATION OF LIABILITY**

COMES NOW CLAIMANT/RESPONDENT NANCY FIEDLER  
("CLAIMANT/RESPONDENT") WHO, acting as the Duly Appointed Personal  
Representative of the Estate of LISA FIEDLER (DECEASED), hereby answers the  
Complaint for Exoneration From or Limitation of Liability filed herein by admitting,  
denying, and alleging, on information and belief, as follows:

///

ADMISSIONS AND DENIALS

1  
2 1. Admits the allegations and accepts the legal conclusions set forth in  
3 Paragraph 1.

4 2. Admits that Plaintiffs and Petitioners allege they are the owners or  
5 owners *pro hac vice* of the CONCEPTION, but currently lacks sufficient information  
6 to form a belief about the other allegations in Paragraph 2 and, on that basis, denies  
7 those allegations.

8 3. Admits that Venue is proper in this Court pursuant to Fed.R.Civ.P.  
9 Supp. Adm. R. F(9), and that the incident which forms the basis of this action  
10 occurred upon the navigable waters of the Santa Barbara Channel, within the  
11 territorial waters of the State of California, but currently lacks sufficient information  
12 to form a belief about the other allegations of Paragraph 3 and, on that basis, denies  
13 those allegations.

14 4. Admits that thirty-three passengers and one crew member died aboard  
15 the CONCEPTION as a direct and proximate result of the Fire on September 2, 2019,  
16 but currently lacks sufficient information to form a belief about the other allegations  
17 of Paragraph 4 and, on that basis, denies those allegations.

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

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

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

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

28 9. Currently lacks sufficient information to form a belief about the

1 allegations of Paragraph 9 and, on that basis, denies those allegations.

2 10. Denies the allegations in Paragraph 10.

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

8 12. Admits that a fire broke out on board the CONCEPTION during the  
9 early morning hours of September 2, 2019, while that vessel was anchored upon the  
10 navigable waters of the Santa Barbara Channel less than one marine league from  
11 shore and within the territorial waters of the State of California, but denies each and  
12 every one of the other allegations in Paragraph 12.

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

15 14. Currently lacks sufficient information to form a belief about the  
16 allegations of Paragraph 14.

17 15. Denies the allegations of Paragraph 15.

18 16. The allegations and legal conclusions set forth in Paragraph 16 do not  
19 call for an answer from CLAIMANT/RESPONDENT NANCY FIEDLER.

20 17. Denies and disputes the allegations, beliefs, and legal conclusions set  
21 forth in paragraph 17.

22 18. The allegations and legal conclusions set forth in Paragraph 18 do not  
23 call for an answer from CLAIMANT/RESPONDENT NANCY FIEDLER.

24 19. Admits the allegations of Paragraph 19.

25 **FIRST AFFIRMATIVE DEFENSE**

26 20. As for the first affirmative defense, CLAIMANT/RESPONDENT alleges  
27 that:

28 a. She is prepared to join with the other Claimants and Respondents

herein and offer stipulations that will fully protect Plaintiffs' and Petitioners' right to  
limitation, if any;

b. This action should therefore be abated under *Langnes v. Green*, 282 U.S. 531 (1931), *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438 (2001), *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 152 (1957), *Newton v. Shipman*, 718 F.2d 959, 962 (9<sup>th</sup> Cir. 1983), and;

c. CLAIMANT/RESPONDENT should be allowed to pursue her claims against Plaintiffs and Petitioners, at law and in the forum of his choice before a jury of his peers, under the “Saving to Suitors Clause,” 28 U.S.C. § 1333(1).

## SECOND AFFIRMATIVE DEFENSE

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

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

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

### THIRD AFFIRMATIVE DEFENSE

22. As and for a Third Affirmative Defense, CLAIMANT/RESPONDENT alleges that the CONCEPTION was unseaworthy at the outset of her alleged August 31, 2019 voyage in that:

a. She was outfitted and furnished with dangerous and defective features, equipment, and apparel including, but not limited to, escape hatches, smoke detectors, fire extinguishers, electrical systems, and battery chargers which were not

fit for their intended purposes;

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

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

23. Plaintiffs and Petitioners are charged with privity and knowledge of those unseaworthy conditions under *In the Matter of the Complaint of Villers Seafood Co.*, 813 F.2d 339, 343 (11<sup>th</sup> Cir., 1987).

## FOURTH AFFIRMATIVE DEFENSE

24. CLAIMANT/RESPONDENT presently lacks sufficient knowledge or information to formulate all affirmative defenses that may ultimately prove to be applicable herein and therefore reserves the right to later assert additional affirmative defenses in the event that additional facts become known to him which would justify the assertion of additional defenses.

## PRAYER

WHEREFORE, CLAIMANT/RESPONDENT NANCY FIEDLER, acting as the  
duly appointed Personal Representative of the Estate of LISA FIEDLER  
(DECEASED), prays that:

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

2. The Complaint be dismissed and judgment be rendered in favor of CLAIMANT/RESPONDENT:

3. CLAIMANT/RESPONDENT be awarded his costs of suit incurred in defense of this action; and,

///

///

4 | Dated: February 6, 2020

By: /S/ Michael A. Kelly  
MICHAEL A. KELLY  
RICHARD H. SCHOENBERGER  
MATTHEW D. DAVIS  
DOUGLAS S. SAELTZER  
JUSTIN CHOU  
Attorneys for CLAIMANT NANCY  
FIEDLER, PERSONAL REPRESENTATIVE  
OF THE ESTATE OF LISA FIEDLER,  
CLAIMANT RESPONDENT