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8 Attorneys for Plaintiffs
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

<p>16 In the Matter of the Counterclaim 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)</p>	<p>CASE NO. 2:19-cv-07693-PA- MRW</p> <p>TRUTH AQUATICS, INC. AND 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 CHRISTINE DIGNAM'S COUNTERCLAIM</p>
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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 (“Plaintiffs”), and
23 in response to Claimant/Respondent Christine Dignam’s Counterclaim, admits,
24 denies and alleges as follows:

25 1. Paragraph No. 1 of the Counterclaim contains allegations and
26 conclusions of law regarding to which an answer is not required from Plaintiffs.
27 To the extent the allegations in Paragraph No. 1 contain allegations of fact or law
28 to which an answer is required, Plaintiffs are without knowledge or information

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

4 2. In response to the second Paragraph of the Counterclaim, Plaintiffs
5 are without knowledge or information sufficient to form a belief as to the truth of
6 the allegations contained in said paragraph, and on that basis deny each and every
7 allegation contained therein.

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

12 4. In response to Paragraph No. 4 of the Counterclaim, Plaintiffs respond
13 that the Paragraph contains allegations and conclusions of law to which an answer
14 is not required. To the extent an answer to those allegations is required, Plaintiffs
15 respond that they are without knowledge or information sufficient to form a belief
16 as to the truth of the allegations contained in said paragraph, and on that basis deny
17 each and every allegation contained therein.

18 5. In response to the first Paragraph captioned "Paragraph No. 5" of the
19 Counterclaim, Lines 17-19, Plaintiffs respond that the Paragraph contains
20 allegations and conclusions of law to which an answer is not required. To the
21 extent an answer to those allegations is required, Plaintiffs respond that they are
22 without knowledge or information sufficient to form a belief as to the truth of the
23 allegations contained in said paragraph, and on that basis deny each and every
24 allegation contained therein.

25 6. In response to the second Paragraph captioned "Paragraph No. 5" of
26 the Counterclaim, Lines 20-24, Plaintiffs admit the allegations contained therein.

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1 7. In response to Paragraph No. 6 of the Counterclaim, Plaintiffs admit
2 and allege that GLEN RICHARD FRITZLER was and is an individual resident of
3 the State of California.

4 8. In response to Paragraph No. 7 of the Counterclaim, Plaintiffs admit
5 the allegations contained therein.

6 9. In response to Paragraph No. 8 of the Counterclaim, Plaintiffs admit
7 and allege that they were the owners and/or owners *pro hac vice* of the
8 *CONCEPTION* within the meaning of 46 U.S.C. Section 30501 *et seq.* The
9 remainder of Paragraph No. 8 of the Counterclaim contains allegations and
10 conclusions of law to which an answer is not required from Plaintiffs. To the
11 extent the remaining allegations in Paragraph No. 8 contain allegations of fact or
12 law to which an answer is required, Plaintiffs are without knowledge or
13 information sufficient to form a belief as to the truth of the remaining allegations
14 of fact or law contained in said paragraph, and on that basis deny each and every
15 remaining allegation of fact or law contained therein.

16 10. In response to Paragraph No. 9 of the Counterclaim, Plaintiffs admit
17 and allege the vessel *CONCEPTION* departed the Port of Santa Barbara on August
18 31, 2019 with thirty-three passengers (“Passengers”) and six crewmembers
19 (“Crewmembers”) on board for a three-day voyage off the Coast of California.
20 Except as expressly admitted or alleged herein, the remaining allegations and
21 conclusions of law do not require an answer from Plaintiffs. To the extent the
22 remaining allegations in Paragraph No. 9 contain allegations of fact or law to
23 which an answer is required, Plaintiffs are without knowledge or information
24 sufficient to form a belief as to the truth of the remaining allegations of fact or law
25 contained in said paragraph, and on that basis deny each and every remaining
26 allegation of fact or law contained therein.

27 11. In response to Paragraph No. 10 of the Counterclaim, Plaintiffs admit
28 and allege that the hull of the *CONCEPTION* was constructed of wood and

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1 fiberglass, that she had a net registered tonnage of 66 tons, and that as of August
2 31, 2019 she was inspected and licensed by the United States Coast Guard to carry
3 passengers on day and multi-day voyages on the Pacific Ocean, not on an
4 international voyage, between the San Luis Obispo/Monterey County line: 35-47.5
5 degrees North Latitude, and 31-45 degrees North Latitude, not more than 100
6 miles from the Mainland shore. Plaintiffs admit and allege that the *CONCEPTION*
7 had three decks, that the pilot house and primary crew's quarters were located on
8 the vessel's uppermost or sun deck, that the galley and salon were situated on the
9 main deck and that the main sleeping quarters were located in the lower deck
10 below the main deck, which did not have portholes, skylights or windows, and had
11 two means of ingress and egress via the stairway at the forward end of the sleeping
12 quarters and the escape at the aft end of the sleeping quarters. Plaintiffs admit and
13 allege the vessel's engine room, generator space, and fuel tanks were located
14 below the main deck, aft of the main sleeping quarters. Except as expressly
15 admitted or alleged herein, Plaintiffs deny each and every remaining allegations of
16 Paragraph No. 10 of the Counterclaim.

17 12. In response to Paragraph No. 11 of the Counterclaim, Plaintiffs admit
18 the *CONCEPTION* was equipped with an onboard electrical system that was
19 powered by diesel generators. Except as expressly admitted or alleged herein,
20 Plaintiffs deny each and every remaining allegation contained in Paragraph No. 11
21 of the Counterclaim.

22 13. In response to Paragraph No. 12 of the Counterclaim, Plaintiffs admit
23 that the vessel's dive station was situated on the main deck, aft of the galley and
24 salon. Plaintiffs are without knowledge or information sufficient to form a belief
25 as to the truth of the remaining allegations contained in Paragraph No. 12, and on
26 that basis deny each and every remaining allegation contained therein.

27 14. In response to Paragraph No. 13 of the Counterclaim, Plaintiffs are
28 without knowledge or information sufficient to form a belief as to the truth of the

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1 allegation that some of the CONCEPTION's passengers made a night dive on
2 Tuesday, September 1, 2019 and on that basis deny said allegation. In response to
3 the remaining allegations contained in Paragraph No. 13 of the Counterclaim,
4 Plaintiffs deny each and every remaining allegation contained therein

5 15. In response to Paragraph No. 14 of the Counterclaim, Plaintiffs admit
6 that there

7 was a fire on the vessel and that 5 members of the crew survived. Plaintiffs
8 are without knowledge or information sufficient to form a belief as to the truth of
9 the remaining allegations contained in said paragraph, and on that basis deny each
10 and every remaining allegation contained therein.

11 16. Paragraph No. 15 of the Counterclaim re-alleges and incorporates by
12 reference the allegations set forth in Paragraphs Nos. 1-14 of the Counterclaim
13 and, as such, Plaintiffs incorporate by reference their responses set forth in
14 Paragraphs 1 through 15 above, as though fully set forth herein.

15 17. Paragraph No. 16 of the Counterclaim contains allegations and
16 conclusions of law to which an answer is not required from Plaintiffs. To the
17 extent the allegations in Paragraph No. 16 contain allegations of fact or law to
18 which an answer is required, Plaintiffs are without knowledge or information
19 sufficient to form a belief as to the truth of the allegations of fact or law contained
20 in said paragraph, and on that basis deny each and every allegation of fact or law
21 contained therein.

22 18. In response to Paragraph No. 17 of the Counterclaim, Plaintiffs admit
23 and allege that they were the owners and/or owners *pro hac vice* of the
24 CONCEPTION within the meaning of 46 U.S.C. Section 30501 *et seq.* Plaintiffs
25 deny each and every remaining allegation contained in Paragraph No. 17 of the
26 Counterclaim.

27 19. In response to Paragraph No. 18 of the Counterclaim, Plaintiffs deny
28 each and every allegation contained therein.

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1 20. In response to Paragraph No. 19 of the Counterclaim, Plaintiffs are
2 without 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 21. In response to Paragraph No. 20 of the Counterclaim, Plaintiffs are
6 without knowledge or information sufficient to form a belief as to the truth of the
7 allegations contained in said paragraph, and on that basis deny each and every
8 allegation contained therein.

9 22. In response to Paragraph No. 21 of the Counterclaim, Plaintiffs are
10 without knowledge or information sufficient to form a belief as to the truth of the
11 allegations contained in said paragraph, and on that basis deny each and every
12 allegation contained therein.

13 23. In response to Paragraph No. 22 of the Counterclaim, Plaintiffs are
14 without knowledge or information sufficient to form a belief as to the truth of the
15 allegations contained in said paragraph, and on that basis deny each and every
16 allegation contained therein.

17 24. In response to Paragraph No. 23 of the Counterclaim, Plaintiffs deny
18 each and every allegation contained therein.

19 25. Paragraph No. 24 of the Counterclaim re-alleges and incorporates by
20 reference the allegations set forth in the First Cause of Action of the Counterclaim
21 and, as such, Plaintiffs incorporate by reference their responses set forth in
22 Paragraphs 1 through 24 above, as though fully set forth herein.

23 26. Paragraph No. 25 of the Counterclaim contains allegations and
24 conclusions of law to which an answer is not required from Plaintiffs. To the
25 extent the allegations in Paragraph No. 25 contain allegations of fact or law to
26 which an answer is required, Plaintiffs are without knowledge or information
27 sufficient to form a belief as to the truth of the allegations of fact or law contained
28 in said paragraph, and on that basis deny each and every allegation of fact or law

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1 contained therein.

2 27. In response to Paragraph No. 26 of the Counterclaim, Plaintiffs are
3 without knowledge or information sufficient to form a belief as to the truth of the
4 allegations contained in said paragraph, and on that basis deny each and every
5 allegation contained therein.

6 28. In response to Paragraph No. 27 of the Counterclaim, Plaintiffs deny
7 each and every allegation contained therein.

8 29. In response to Paragraph No. 28 of the Counterclaim, Plaintiffs deny
9 each and every allegation contained therein.

10 30. In response to Paragraph No. 29 of the Counterclaim, Plaintiffs deny
11 each and every allegation contained therein.

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 Claimant/Respondent’s Counterclaim, and each cause of action thereof, fails
15 to state facts sufficient to constitute a cause, or causes, of action as against
16 Plaintiffs.

17 **SECOND AFFIRMATIVE DEFENSE**

18 Claimant/Respondent’s Counterclaim fails to state a claim, or claims, upon
19 which relief can be granted.

20 **THIRD AFFIRMATIVE DEFENSE**

21 Any and all acts, happenings and/or damages, if any, referred to in
22 Claimant/Respondent’s Counterclaim, were proximately caused by and/or
23 contributed to by the negligence of Decedent and therefore, Claimant/Respondent
24 is completely barred from recovery herein or, in the alternative, under the doctrine
25 of comparative negligence, the negligence of Decent is imputed to
26 Claimant/Respondent’s reduce her//his/their/its right to recovery herein by the
27 amount which said negligence contributed to the incident alleged.

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FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

Claimant/Respondent is barred from asserting the claim or cause(s) of action herein against Plaintiffs by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

Plaintiffs allege that any injury, damage or loss was sustained by and caused in whole or in part by and attributable to the unreasonable, unforeseeable and totally inappropriate purpose and improper use made by Decedent of the vessel and premises alleged in the Counterclaim.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs 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

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1 assumed those risks, which assumption bars Claimant/Respondent’s Counterclaim,
2 or reduces her/their damages.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 Plaintiffs are informed and believe and thereon allege that in the event
5 Claimant/Respondent should establish any liability on the part of Plaintiffs, which
6 liability is expressly denied, Plaintiffs may not be obligated to pay sums
7 representing a proportion or percentage of fault not their own, but that of Decedent,
8 Claimant/Respondent, other parties to this action and/or third persons not parties to
9 this action. Plaintiff is entitled to an adjudication and determination of the
10 respective proportions or percentages of fault, if any, on Plaintiffs’ part and on the
11 part of the Claimant/Respondent and other parties to this action and third persons
12 not parties to this action pursuant to the Doctrine of Comparative Negligence and
13 the Fair Responsibility Act of 1986, codified in Civil Code Section 1431-1431.5.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 Plaintiffs allege that, on information and belief, Claimant/Respondent’s
16 alleged injuries and/or damages, if any there were, were caused by or aggravated
17 by Claimant/Respondent’s failure to use reasonable diligence to mitigate them.

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

19 Plaintiffs allege that the Counterclaim and each cause of action is barred by
20 the applicable statutes of limitation including but not limited to Sections 337.1,
21 337.15, 228, 339 and 340 of the Code of Civil Procedure and Section 2725 of the
22 California Commercial Code.

23 **FOURTEENTH AFFIRMATIVE DEFENSE**

24 Claimant/Respondent’s Counterclaim and each cause of action therein are
25 barred by the defense of primary assumption of the risk.

26 **FIFTEENTH AFFIRMATIVE DEFENSE**

27 Plaintiffs claim the right to exoneration from liability for the losses, damages
28 and personal injuries sustained by Claimant/Respondent, all as alleged in the

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1 Counterclaim, and Plaintiffs allege that they have a valid defense on the merits to
2 any and all such other claims as may be filed arising thereunder. Notwithstanding
3 that, Plaintiffs further claim the benefit of limitation of, or exoneration from,
4 liability as provided in 46 U.S.C. § 30501-30512, *et seq.*, and the various statutes
5 supplementary thereto and amendatory thereof. Plaintiffs allege further that if there
6 was any fault on their part, or on the part of any person for whom Plaintiffs are
7 responsible, all of which are denied, Plaintiffs’ liability should be limited to the
8 amount or value of Plaintiffs’ interest in the said vessel, and the pending freight.
9 Plaintiffs further allege that the injury complained of by Claimant/Respondent
10 occasioned or occurred without the knowledge or privity of Plaintiffs herein and
11 without any fault, neglect, want of care, or design on the part of Plaintiffs and that
12 said vessel was at the commencement of the tour tight, staunch, seaworthy and
13 strong.

14 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 Claimant/Respondent are not entitled to recover any punitive damages, and
23 any allegations in support of a claim for punitive damages should be stricken,
24 because California’s laws regarding the acts and omissions alleged are too vague to
25 permit the imposition of punitive damages, and because any award of punitive
26 damages in this action would violate Plaintiffs’ constitutional rights under the due
27 process clauses of the Fifth and Fourteenth Amendments to the United States
28 Constitution, and the excessive fines and cruel and unusual punishment clauses of

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1 the Eighth Amendment of the United States Constitution, as well as other
2 provisions of the United States Constitution and the California Constitution.

3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

7 **NINETEENTH AFFIRMATIVE DEFENSE**

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

14 **TWENTIETH AFFIRMATIVE DEFENSE**

15 Plaintiffs allege that, on information and belief, Counterclaimant Christine
16 Dignam, and/or others claiming through decedent, lack standing to pursue the
17 claim or claims for relief alleged in the Counterclaim.

18 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

19 Plaintiffs allege that, on information and belief, Counterclaimant Christine
20 Dignam, and/or others claiming through decedent, are barred from recovering both
21 loss of support damages and lost future earnings damages as prayed for in the
22 Counterclaim.

23 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

24 Plaintiffs 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-THIRD AFFIRMATIVE DEFENSE**

27 Plaintiffs allege, on information and belief, the claims, relief and/or damages
28 claimed by Counterclaimant Christine Dignam, 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-FOURTH AFFIRMATIVE DEFENSE**

5 Plaintiffs 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 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-FIFTH AFFIRMATIVE DEFENSE**

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

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1 WHEREFORE, Plaintiffs pray that Claimant/Respondent’s Counterclaim be
2 dismissed with prejudice, that judgment be entered for Plaintiffs and against
3 Claimant/Respondent; that their answer herein be deemed good and sufficient or,
4 alternatively, that should any judgment be rendered against Plaintiffs, that the
5 amount of said judgment should be limited to the value of Plaintiffs’ interest in
6 said vessel and pending freight, that Plaintiffs recover from Claimant/Respondent
7 their costs of suit incurred herein, and for such other and further relief as the Court
8 may deem just and proper under the circumstances.

9 Dated: December 2, 2019 GORDON REES SCULLY MANSUKHANI, LLP

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11 By: /s/Russell P. Brown
12 Russell P. Brown
13 James F. Kuhne, Jr.
14 Attorney for Plaintiffs
15 TRUTH AQUATICS, INC.,
16 AND GLEN RICHARD FRITZLER AND
17 DANA JEANNE FRITZLER,
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19 THE FRITZLER FAMILY TRUST DTD
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