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SUSANA SOLANO ROSAS

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
IN ADMIRALTY

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.) No. 2:19-cv-07693 PA (MRWx)
) ANSWER OF CLAIMANT SUSANA SOLANO ROSAS TO LIMITATION PLAINTIFFS' FIRST AMENDED COMPLAINT FOR EXONERATION FROM OR LIMITATION OF LIABILITY WITH CLAIMS AGAINST LIMITATION PLAINTIFFS
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CLAIMANT SUSANA SOLANO-ROSAS, acting in her capacity as the Duly Appointed Personal Representative of the Estates of Evan Michel Solano Quitasol (Deceased), Angela Rose Solano Quitasol (Deceased), and Nicole Storm Solano Quitasol (Deceased) (hereinafter "the Decedents"), and individually as a wrongful death beneficiary, by and through her counsel, hereby appears within the time period specified by this Honorable Court to present her existing and contingent claims and hereby answers the First Amended 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 (hereinafter collectively the "Limitation Plaintiffs") as Owners and/or Owners pro hac vice of the dive vessel CONCEPTION, official number 638 133, for Exoneration From or

1 Limitation of Liability (hereinafter the "First Amended Complaint") pursuant to Rule
2 F(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; in
3 support thereof, Claimant SUSANA SOLANO ROSAS also responds to each
4 allegation of the Limitation Plaintiffs as follows:

5 **ANSWER**

6 1. Admits the allegations and accepts the legal conclusions set forth in
7 paragraph 1.

8 2. Admits that Limitation Plaintiffs allege they are the owners or owners
9 pro hac vice of the CONCEPTION, but currently lacks sufficient information to form
10 a belief about the other allegations in paragraph 2 and, on that basis, denies those
11 allegations.

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

18 4. Admits that thirty-three passengers and one crew member died
19 aboard the CONCEPTION as a direct and proximate result of the fire on
20 September 2, 2019, but currently lacks sufficient information to form a belief about
21 the other allegations of paragraph 4 and, on that basis, denies those allegations.

22 5. Admits that she has not yet filed suit against the Limitation Plaintiffs
23 in any other forum related to personal injuries, property loss, death, damages,
24 and/or losses arising out of the fire on the CONCEPTION on September 2, 2019, but
25 otherwise lacks sufficient information to form a belief about the other allegations
26 of paragraph 5 and, on that basis, denies those allegations.

27 6. Currently lacks sufficient information to form a belief about the
28 allegations of paragraph 6 and, on that basis, denies those allegations.

1 7. Currently lacks sufficient information to form a belief about the
2 allegations of paragraph 7 and, on that basis, denies those allegations.

3 8. Currently lacks sufficient information to form a belief about the
4 allegations of paragraph 8 and, on that basis, denies those allegations.

5 9. Currently lacks sufficient information to form a belief about the
6 allegations of paragraph 9 and, on that basis, denies those allegations.

7 10. Denies the allegations in paragraph 10. It is specifically denied that
8 the CONCEPTION was seaworthy. By way of further response, the CONCEPTION
9 lacked sufficient means of ingress and egress, its captain failed to properly
10 implement watch policies and procedures at all times on the CONCEPTION, and
11 the CONCEPTION failed to have an adequate fire suppression and detection
12 system. The remainder of paragraph 10 of the First Amended Complaint contains
13 conclusions of law to which no responses are required, and they are therefore
14 denied.

15 11. Admits that the CONCEPTION departed Santa Barbara, California, on
16 August 31, 2019, with thirty-three passengers and six crew members on board for
17 a three-day voyage upon the navigable waters of the Santa Barbara Channel, within
18 the territorial limits of the State of California. The remaining allegations contained
19 in paragraph 11 of the First Amended Complaint contain conclusions of law to
20 which no responses are required, and they are therefore denied.

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

26 13. Currently lacks sufficient information to form a belief about the
27 allegations of paragraph 13 and, on that basis, denies those allegations.

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1 14. Currently lacks sufficient information to form a belief about the
2 allegations of paragraph 14 and, on that basis, denies those allegations.

3 15. Denies the allegations in paragraph 15. It is specifically denied that
4 the CONCEPTION was seaworthy. By way of further response, the CONCEPTION
5 lacked sufficient means of ingress and egress, its captain failed to properly
6 implement watch policies and procedures at all times on the CONCEPTION, and
7 the CONCEPTION failed to have an adequate fire suppression and detection
8 system. The remainder of paragraph 15 of the First Amended Complaint contains
9 conclusions of law to which no responses are required, and they are therefore
10 denied.

11 16. The allegations contained in paragraph 16 of the First Amended
12 Complaint contain conclusions of law to which no responses are required, and
13 they are therefore denied. It is specifically denied that the Limitation Plaintiffs are
14 entitled to exoneration from or limitation of liability for the losses arising out of the
15 CONCEPTION fire.

16 17. The allegations contained in paragraph 17 of the First Amended
17 Complaint are denied for lack of sufficient information to justify a believe therein.

18 18. The allegations contained in paragraph 18 of the First Amended
19 Complaint contain conclusions of law to which no responses are required, and
20 they are therefore denied.

21 19. Admits the allegations of paragraph 19.

22 **AFFIRMATIVE DEFENSES OF CLAIMANT**
23 **SUSANA SOLANO ROSAS**

24 **FIRST DEFENSE**

25 20. Claimant SUSANA SOLANO ROSAS alleges that:

26 a. She is prepared to join with the other claimants herein and offer
27 stipulations that will fully protect the Limitation Plaintiffs' right to limitation, if any;

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1 equal to the amount or value of the owner's interest in the vessel" or adequate
2 security for the vessel.

3 SIXTH DEFENSE

4 25. The limitation fund is inadequate and the First Amended Complaint
5 should be dismissed because Limitation Plaintiffs have failed to deposit adequate
6 security for the vessel identified in the First Amended Complaint.

7 SEVENTH DEFENSE

8 26. Limitation Plaintiffs, or certain of them, are not proper party plaintiffs
9 under the Shipowner's Limitation of Liability Act and should be dismissed from the
10 action.

11 EIGHTH DEFENSE

12 27. Limitation Plaintiffs are not entitled to Limitation of Liability in the
13 instant case because at all times pertinent herein, the CONCEPTION was operated
14 in a willful, wanton, and reckless manner, or in the alternative, the conduct and
15 actions which led to Claimant SUSANA SOLANO ROSAS' injuries and damages took
16 place with the privity and knowledge of the owners, managing owners, owners pro
17 hac vice, and/or operators of the CONCEPTION.

18 NINTH DEFENSE

19 28. Limitation Plaintiffs are not entitled to Limitation of Liability in the
20 instant case because at all relevant times, the Conception was known by the
21 owner and/or owner pro hac vice to be unseaworthy, and that unseaworthiness
22 caused and/or contributed to the injuries and damages of Claimant SUSANA
23 SOLANO ROSAS.

24 TENTH DEFENSE

25 29. The incident and resulting damages which are the subject of
26 Limitation Plaintiffs' First Amended Complaint were caused by the fault,
27 negligence, breach of warranty, statutory and regulatory violations of Limitation
28 Plaintiffs, their agents, servants, contractors, and/or employees, all of which was

1 within the privity and knowledge of Limitation Plaintiffs and, therefore, Limitation
2 Plaintiffs' prayer for a decree of exoneration from liability must be denied.

3 ELEVENTH DEFENSE

4 30. The incident and resulting damages which are the subject of
5 Limitation Plaintiffs' First Amended Complaint were caused by the
6 unseaworthiness of the CONCEPTION and the negligence of the vessel's crew and
7 shoreside management in the following respects, among others:

8 a. The CONCEPTION was unseaworthy at the time and place of the
9 incident on September 2, 2019;

10 b. The CONCEPTION was outfitted and furnished with dangerous and
11 defective features, equipment, appurtenances and apparel including, but not
12 limited to, life-safety equipment, escape hatches, means of ingress and egress,
13 smoke detectors, fire extinguishers, electrical systems, and battery chargers that
14 were not fit for their intended purposes;

15 c. The CONCEPTION was commanded by an unfit master and manned
16 by an unfit crew;

17 d. The CONCEPTION was willfully operated in violation of Subchapter
18 T of the U.S. Coast Guard Regulations, including, but not limited to the provisions
19 of 46 C.F.R. § 185.410 and the requirements of her own Certificates of Inspection;

20 e. Limitation Plaintiffs knew or should have known of the
21 unseaworthiness of the CONCEPTION prior to the incident; and

22 f. All of the conditions and/or circumstances giving rise to and causing
23 the injuries to Claimant SUSANA SOLANO ROSAS were within the privity and
24 knowledge of the Limitation Plaintiffs, and Limitation Plaintiffs are charged with
25 privity and knowledge of those unseaworthy conditions under *In the Matter of the*
26 *Complaint of Villers Seafood Co.*, 813 F.2d 339 (11th Cir. 1987).

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1 TWELFTH DEFENSE

2 31. Limitation Plaintiffs' First Amended Complaint for Exoneration From
3 or Limitation of Liability contains vague and ambiguous statements which are
4 objectionable under Federal Rule of Civil Procedure 12(e), and Claimant SUSANA
5 SOLANO ROSAS seeks more definite statements of the allegations, regardless of
6 the nature, manner, and extent of the answer and claim filed herewith.

7 THIRTEENTH DEFENSE

8 32. The events culminating in the injuries and damages to Claimant
9 SUSANA SOLANO ROSAS were the result of negligence, fault, or want of due care
10 on the part of Limitation Plaintiffs and/or those for whom Limitation Plaintiffs are
11 responsible, and/or the unseaworthiness of the CONCEPTION, all of which was
12 within the privity and knowledge of Limitation Plaintiffs, for which the First
13 Amended Complaint for Exoneration From or Limitation of Liability should be
14 denied.

15 FOURTEENTH DEFENSE

16 33. The events culminating in the injuries and damages sustained by
17 Claimant SUSANA SOLANO ROSAS were not the result of any negligence, fault, or
18 want of due care on her part or on the part of the Decedents.

19 FIFTEENTH DEFENSE

20 34. In filing this answer and claim, Claimant SUSANA SOLANO ROSAS
21 specifically reserves all rights to pursue all available claims in federal court.

22 SIXTEENTH DEFENSE

23 35. Claimant SUSANA SOLANO ROSAS specifically reserves all rights to
24 pursue all available claims, and no part of this answer and claim shall be construed
25 to be a waiver of these rights.

26 SEVENTEENTH DEFENSE

27 36. Claimant SUSANA SOLANO ROSAS specifically reserves the right to
28 pursue all available claims in state court, pursuant to the "Savings to Suitors"

1 clause, 28 U.S.C. § 1333, for resolution of any and all issues beyond a determination
2 of whether admiralty jurisdiction exists and whether limitation is required.

3 **EIGHTEENTH DEFENSE**

4 37. The negligence or fault of Limitation Plaintiffs' employees and agents
5 was the legal cause of the incident and resulting injuries and damages sustained
6 by Claimant SUSANA SOLANO ROSAS for which the Limitation Plaintiffs are liable
7 under the doctrine of respondeat superior and/or other agency principles.

8 **NINETEENTH DEFENSE**

9 38. Claimant SUSANA SOLANO ROSAS presently lacks sufficient
10 knowledge or information to formulate all affirmative defenses that may ultimately
11 prove to be applicable herein and reserves the right to later assert additional
12 affirmative defenses in the event that additional facts become known to her that
13 would justify the assertion of additional defenses.

14 **PRAYER**

15 WHEREFORE, Claimant SUSANA SOLANO ROSAS, individually as a wrongful
16 death beneficiary and in her capacity as the duly appointed Personal
17 Representative of the Estates of EvanMichel Solano Quitasol (Deceased), Angela
18 Rose Solano Quitasol (Deceased), and Nicole Solano Quitasol (Deceased), prays
19 that:

20 1. Limitation Plaintiffs be denied Exoneration from and/or Limitation of
21 Liability herein;

22 2. The Complaint for Exoneration From or Limitation of Liability be
23 dismissed and judgment rendered in favor of Claimant SUSANA SOLANO ROSAS;

24 3. Claimant SUSANA SOLANO ROSAS be awarded her costs of suit
25 incurred in defense of this action; and

26 4. The Court grant such other and further relief as it deems just and
27 proper.

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**CLAIMANT SUSANA SOLANO ROSAS'
CLAIM AGAINST LIMITATION PLAINTIFFS**

Claimant SUSANA SOLANO ROSAS, acting in her capacity as the duly appointed personal representative of the Estates of EvanMichel Solano Quitasol (Deceased), Angela Rose Solano Quitasol (Deceased), and Nicole Storm Solano Quitasol (Deceased) (hereinafter “the Decedents”) and as a wrongful death beneficiary of the Decedents, hereby makes due proof of her claim, under Rule F(5) of the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure, against Limitation 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, as follows:

INTRODUCTORY ALLEGATIONS

1. The incident that gave rise to this claim occurred upon the navigable waters of the United States within the territorial waters of the State of California, had an actual and potential impact on marine commerce, involved a traditional maritime activity, and is subject to admiralty tort jurisdiction, as hereinafter more fully appears.

2. At all times material hereto, Claimant SUSANA SOLANO ROSAS was and is an adult resident of the State of California and is the biological mother of the Decedents. The Decedents were the adult daughters of Claimant SUSANA SOLANO ROSAS. Claimant SUSANA SOLANO ROSAS is also the duly appointed personal representative of the Decedents’ respective estates.

3. Decedent EvanMichel Solano Quitasol was born July 31, 1982. Decedent Angela Rose Solano Quitasol was born July 26, 1991. Decedent Nicole Storm Solano Quitasol was born January 4, 1998. At all times material hereto, each decedent was a “passenger for hire,” as that phrase is used in 33 CFR §101.105, aboard the dive vessel CONCEPTION (O.V.N. 638133). The Decedents were “non-seafarers” within the meaning of *Yamaha Motor Corp. v. Calhoun*, 516 U.S.

1 199, 215 (1996). As hereinafter more fully appears, the Decedents perished aboard
2 that vessel during the early morning hours of September 2, 2019, when it caught
3 fire and sank in Platts Harbor off Santa Cruz Island, upon navigable waters within
4 the territorial limits of the State of California. See *Tidewater Marine Western, Inc.*
5 *v. Bradshaw*, 14 Cal.4th 557, 564 (1996) (citing Cal. Const., art. III, § 2; Gov. Code,
6 § 170, 171). The vessel CONCEPTION sank less than 100 yards from shore.

7 4. The Decedents were not married and had no children at the time
8 of their deaths. As a surviving parent of the Decedents, Claimant SUSANA SOLANO
9 ROSAS is entitled to file this claim for the wrongful death of the Decedents
10 pursuant to California Code of Civil Procedure section 377.60 and Probate Code
11 section 6402.

12 5. At all times material hereto, Limitation Plaintiff TRUTH AQUATICS,
13 INC., was and still is a corporation organized and existing under the laws of the
14 State of California that maintained, and still maintains, its principal place of
15 business at 301 Cabrillo Boulevard, Santa Barbara, California, 93101.

16 6. At all times material hereto, Limitation Plaintiff RICHARD FRITZLER
17 was and still is an individual resident of the State of California.

18 7. At all times material hereto, Limitation Plaintiff DANA JEANNE
19 FRITZLER was and still is an individual resident of the State of California.

20 8. At all times material hereto, Limitation Plaintiffs, and each of them,
21 owned, maintained, equipped, controlled, and operated the dive boat
22 CONCEPTION as a “small passenger vessel” within the meaning of 46 C.F.R. §
23 175.110(a).

24 9. On Saturday, August 31, 2019, Evan Michel Solano Quitasol, Angela
25 Rose Solano Quitasol, and Nicole Storm Solano Quitasol departed the Port of Santa
26 Barbara aboard the CONCEPTION, along with six crew members and thirty other
27 passengers, for a three-day voyage through the Channel Islands (“accident

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1 voyage”) that would take the vessel “between ports in the United States” as that
2 phrase is used in 46 U.S.C. § 30509(a)(1).

3 10. The CONCEPTION was built of wood and fiberglass in 1981. She had
4 a registered tonnage of 66 net tons, and as of August 31, 2019, was licensed by the
5 United States Coast Guard to conduct overnight, near-coastal voyages upon the
6 territorial waters of California between Port San Luis and Monterrey. The
7 CONCEPTION had three decks. The pilot house and crew quarters were located
8 on the vessel’s uppermost deck, or “sundeck.” The galley and salon were situated
9 in a deck house at the forward end of the main deck, and the passenger
10 accommodations were located beneath the main deck, in a below-deck space
11 deep down in the hull itself that had no portholes, skylights, or windows. The only
12 ways into or out of that below-deck accommodation space was via a narrow
13 stairway or through a small escape hatch; both exited into the galley. The vessel’s
14 engine room, generator space, and fuel tanks were also situated in the hull, below
15 the main deck, aft of the passenger accommodations.

16 11. The CONCEPTION was equipped with an onboard electrical system
17 that was powered by diesel generators. Limitation Plaintiffs, and each of them, not
18 only permitted but actively encouraged passengers like the Decedents to use that
19 electrical system to charge digital cameras, video-cameras, smart phones, cell
20 phones, strobe lights, GoPros, lap top tablets, underwater-scooter power packs,
21 and other battery-powered electronic equipment. Limitation Plaintiffs, and each
22 of them, even equipped the CONCEPTION’s galley—in the main deck house directly
23 above the passenger accommodations—with a battery-charging station comprising
24 power strips and an octopus charger.

25 12. The CONCEPTION’s dive station was situated back on the fantail,
26 behind the galley and salon. Among other things, that station housed multiple
27 high-pressure air compressors, one or more nitrous membrane systems,

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1 high-pressure piping, one or more banks of high-pressure, oxygen storage bottles,
2 and thirty or more scuba bottles.

3 13. Some of the CONCEPTION's passengers made a night dive on
4 Sunday, September 1, 2019, that concluded some time before 2400. By 0230, on
5 Monday, September 2, 2019, everyone, including all six of the vessel's crew
6 members, were in their berths and sound asleep. The vessel lay at anchor, in
7 Platts Harbor off Santa Cruz Island. No roving watch was set; neither the master
8 nor anyone else including Limitation Plaintiffs directed any crew members to
9 patrol the vessel through the night, to monitor the battery-charging station, or to
10 sound an alarm in the event of a fire, man-overboard, or other dangerous situation.

11 14. Some time after 0300, in the early morning hours of Monday,
12 September 2, 2019, a fire started in or near the galley and quickly spread
13 throughout the vessel, burning the CONCEPTION to the water line, and killing the
14 Decedents and everyone else in the below-deck passenger accommodation area
15 or bunkhouse. Five of the six crew members berthed on the sundeck escaped
16 with their lives and abandoned the vessel.

17 15. Upon information and belief, the fire was caused, at least in part, by
18 the lithium battery-powered equipment that the Limitation Plaintiffs permitted and
19 encouraged to be charged and stored in the CONCEPTION's galley. The galley was
20 directly above the passenger accommodations where the Decedents and the
21 vessel's other passengers were sleeping.

22 16. Claimant SUSANA SOLANO ROSAS is informed and believes that
23 Limitation Plaintiffs had prior notice of the potential fire dangers associated with
24 the lithium ion batteries installed in cameras, phones, and computers used in the
25 charging station. Nearly one year before the Decedents and 31 other people were
26 killed during the September 2, 2019, fire aboard the CONCEPTION, Limitation
27 Plaintiffs experienced a lithium battery-caused fire aboard the CONCEPTION's
28 sister ship, the Vision. During that prior voyage, divers on the Vision charged

1 numerous lithium ion batteries installed in cameras, phones, computers, and even
2 underwater scooters at an array of power outlets in the salon area. At some point,
3 one of those batteries began to smoulder as it was charging. An alarmed crew
4 member quickly tossed it into the water, preventing the fire from spreading.
5 Despite prior knowledge of the dangers associated with improper storage and
6 monitoring of electrical devices, Limitation Plaintiffs did nothing to reduce the
7 potential fire hazards by taking steps to monitor or limit the unsupervised charging
8 of lithium ion batteries and the extensive use of power strips and extension cords
9 upon its vessels, including the CONCEPTION.

10 17. The Limitation Plaintiffs failed to report the earlier fire for further
11 investigation, failed to perform safety risk assessments after this fire, and failed to
12 warn the CONCEPTION's crew and passengers about the risk of fire caused by
13 lithium batteries.

14 18. Despite having actual knowledge of the dangers posed by lithium
15 batteries, the Limitation Plaintiffs ignored these dangers and continued to
16 encourage the CONCEPTION's crew and passengers to charge and store batteries
17 in the galley's charging station.

18 19. Despite having actual knowledge of the dangers posed by lithium
19 batteries, the Limitation Plaintiffs failed to implement proper policies and
20 procedures to ensure that devices with lithium batteries were properly handled
21 while aboard the vessel.

22 20. At all times relevant hereto, the Limitation Plaintiffs failed to have
23 watchmen patrolling throughout the vessel during the night.

24 21. Due to the lack of a night watch, the fire went undetected until it was
25 too late.

26 22. In the aftermath of the horrific fire, the CONCEPTION's owner,
27 Limitation Plaintiff GLEN FRITZLER, lied when he stated a watchman was on
28 rotation at the time of the fire but was in a different area of the vessel.

1 32. This Cause of Action arises under the General Maritime Law of the
2 United States as handed down in *Moragne v. States Marine Lines, Inc.*, 398 U.S.375
3 (1970), *Sea-Land Services v. Gaudet*, 414 U.S. 573 (1974), *Norfolk Shipbuilding &*
4 *Drydock Corp. v. Garris*, 532 U.S. 811 (2001), and *Yamaha Motor Corp. v. Calhoun*,
5 516 U.S. 199 (1996).

6 33. As the owners and operators of the dive vessel CONCEPTION,
7 Limitation Plaintiffs and each of them owed the Decedents, and every other
8 passenger aboard that vessel on the morning of the accident, a duty of care under
9 *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959), *Rainey*
10 *v. Paquet Cruises, Inc.* 709 F.2d 169, 170 (2d. Cir. 1983), and *In re Catalina Cruises,*
11 *Inc.*, 137 F.3d 1422, 1425-1426 (9th Cir. 1998), *inter alia*. At all times material hereto,
12 Limitation Plaintiffs, and each of them, acting individually and by and through their
13 managing agents, had a duty to act reasonably, to ensure their vessel was
14 seaworthy, to develop and implement proper safety policies, procedures, and
15 training, to properly oversee their fleet, and to obey and otherwise ensure
16 compliance with all waterway and boating rules and standards while operating the
17 vessel.

18 34. The Limitation Plaintiffs' breach of those duties resulted in the deaths
19 of the Decedents.

20 35. The Limitation Plaintiffs, as well as their respective agents, servants,
21 workers, and employees, were negligent, careless, grossly negligent, and reckless,
22 both generally and in the following particular respects, all of which were within
23 their privity and/or knowledge:

24 a. Failing to implement policies, procedures and training to ensure the
25 safety of people onboard the vessel;

26 b. Failing to maintain the vessel in a reasonable manner;

27 c. Failing to properly train its captain;

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1 d. Failing to ensure that the captain was properly trained to operate the
2 vessel;

3 e. Failing to ensure that the captain was properly trained to maintain
4 required watch policies and procedures at all times on the vessel;

5 f. Failing to have a dead man's switch or similar device to ensure a
6 roving watchman was on duty at all times;

7 g. Failing to have a policy requiring the use of a dead man's switch or
8 similar device to ensure a roving watchman was on duty at all times;

9 h. Failing to implement standard operating procedures;

10 i. Operating the vessel in a careless and negligent manner in the face
11 of hazards that were within Limitation Plaintiffs' privity and/or knowledge;

12 j. Failing to properly oversee the fleet to ensure that the vessel was
13 being operated in accordance with company policies and procedures, principles
14 of good seamanship, and in accordance with all applicable laws and regulations;

15 k. Failing to exercise reasonable care under all of the circumstances;

16 l. Failing to equip the vessel with a properly-functioning electrical
17 system;

18 m. Failing to equip the vessel with an electrical system that was safe,
19 suitable, and reasonably fit for its intended use;

20 n. Failing to equip the vessel with a properly-functioning fire detection
21 system;

22 o. Failing to equip the vessel with a fire detection system that was safe,
23 suitable, and reasonably fit for its intended use;

24 p. Failing to equip the vessel with a properly-functioning fire alarm
25 system;

26 q. Failing to equip the vessel with a fire alarm system that was safe,
27 suitable, and reasonably fit for its intended use;

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1 r. Failing to equip the vessel with a properly-functioning fire
2 suppression system;

3 s. Failing to equip the vessel with a fire suppression system that was
4 safe, suitable, and reasonably fit for its intended use;

5 t. Failing to equip the vessel with firefighting equipment throughout
6 the vessel;

7 u. Failing to train its captain on the hazards associated with the
8 improper handling and storage of devices with lithium ion batteries;

9 v. Failing to ensure that those on the vessel followed safety standards
10 for the handling and storage of devices with lithium ion batteries;

11 w. Allowing the improper handling and storage of devices with lithium
12 ion batteries on the vessel;

13 x. Allowing the improper handling and storage of devices with lithium
14 ion batteries on the vessel and failing to warn those on the vessel about the risks;

15 y. Being aware of the risk of fires caused by lithium ion batteries and
16 failing to take appropriate and necessary steps to remedy that risk;

17 z. Failing to report a prior fire that was caused by lithium ion batteries
18 on the vessel's sister ship, the Vision, for investigation and failing to report the fire
19 to passengers and crew members on the vessel,

20 aa. Continuing to allow the improper handling and storage of devices
21 with lithium ion batteries on the vessel despite having knowledge of the risk of
22 fires caused by lithium ion batteries;

23 bb. Continuing to allow the improper handling and storage of devices
24 with lithium ion batteries on the vessel despite having knowledge of the risk of
25 fires caused by lithium ion batteries and failing to warn those on the vessel about
26 the risks;

27 cc. Failing to require passengers and crew to charge lithium ion devices
28 in secured fireproof containers;

1 dd. Failing to have a policy in effect which required passengers and crew
2 to charge lithium ion devices in secured fireproof containers;

3 ee. Failing to avoid or minimize foreseeable dangers to the passengers
4 and crew resulting from potential fire;

5 ff. Failing to provide adequate safety equipment;

6 gg. Failing to provide adequate safety rules;

7 hh. Failing to provide the fleet with effective safety policies and
8 procedures;

9 ii. Failing to have properly operating safety equipment on board;

10 jj. Failing to develop and implement sufficient safety procedures for
11 emergency situations;

12 kk. Failing to provide passengers and crew members below deck with
13 sufficient means of ingress and egress,

14 ll. Failing to ensure the means of escape for passengers and crew was
15 sufficient for rapid evacuation in an emergency for the number of persons served;

16 mm. Failing to provide passengers and crew members below deck with
17 emergency exits that were safe, suitable, properly designed, and sufficient in size
18 and number;

19 nn. Failing to comply with all requirements of Subchapter T, Small
20 Passenger vessels, including, but not limited to, 46 CFR § § 177.500 and 185.410, et
21 seq.,

22 oo. Failing to comply with other industry standards and guidelines,
23 including, but not limited to, NFPA 302 Section 4.1.1.2, et seq.;

24 pp. Failing to provide adequate maintenance and cure;

25 qq. Failing to provide adequate warnings of a known hazard;

26 rr. Failing to address the known dangers associated with the vessel;

27 ss. Failing to comply with industry standards, customs and practices;

28 tt. Operating the vessel with a dangerous condition;

- 1 uu. Failing to recognize danger and take corrective action;
- 2 vv. Failing to provide adequate means of emergency evacuation;
- 3 ww. Failing to adequately repair and/or maintain the vessel;
- 4 xx. Failing to timely eliminate known hazards;
- 5 yy. Failing to timely rectify known deficiencies;
- 6 zz. Failing to inspect the vessel;
- 7 aaa. Failing to incorporate the safety recommendations of the NTSB; and
- 8 bbb. Failing to comply with local, state, and/or federal law.

9 35. As a direct and proximate cause of the negligence of the Limitation
10 Plaintiffs, the Decedents were caused to suffer horrific personal injuries, a
11 prolonged period of pain and suffering, and eventual death.

12 36. Decedent EvanMichel Solano Quitasol was only 37 years old at the
13 time of her death. Decedent Angela Rose Solano Quitasol was only 28 years old
14 at the time of her death. Decedent Nicole Storm Solano Quitasol was only 31 years
15 old at the time of her death. As a direct, proximate, and legal result of the deaths
16 of the Decedents, Claimant SUSANA SOLANO ROSAS has and will continue to
17 suffer the permanent loss of her daughters' love, affection, comfort, care,
18 consortium, and society, all to her non-pecuniary damage in an amount to be
19 proven at the time of trial. Additionally, she has suffered and will continue to suffer
20 the permanent loss of her daughters' services, nurture, guidance, training, and
21 advice, all to her pecuniary damage in an amount to be proven at the time of trial.

22 37. In performing the acts and committing the omissions alleged herein,
23 the Limitation Plaintiffs, and each of them, acted outrageously and were guilty of
24 gross negligence; willful, wanton, and reckless indifference to the rights of others;
25 or behavior even more deplorable, justifying an award of punitive or exemplary
26 damages in an amount to be determined at the time of trial herein.

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COUNT II - SURVIVAL DAMAGES

38. Claimant SUSANA SOLANO ROSAS herewith refers to and by that reference incorporates, as though fully set forth herein, each and every allegation averred in Count I for wrongful death in paragraphs 1 through 37 hereinabove.

39. Count II for survival damages arises under the General Maritime Law of the United States as handed down in *Moragne v. States Marine Lines, Inc.*, 398 U.S.375 (1970), *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199, 211 (1996), *Davis v. Bender Shipbuilding and Repair Co.*, 27 F.3d 426, 430 (9th Cir. 1994), and *Koiralav. Thai Airways International, Ltd.*, 126 F.3d 1205, 1212 (9th Cir. 1997), *inter alia*.

40. On or about September 2, 2019, when the within cause of action arose in their favor, the Decedents, who would have been the claimants in this action had they lived, died by fire and asphyxiation.

41. As a direct, proximate, and legal result of the hereinabove alleged derelictions of duty by the Limitation Plaintiffs, and each of them, the Decedents were placed in great fear for their lives and physical well-being, and consciously suffered extreme, severe, and relentless mental and emotional anguish and physical pain, and continued to suffer such pain and anguish until they died by fire and asphyxiation.

PRAYER FOR RELIEF

WHEREFORE, Claimant prays for judgment against TRUTHAQUATICS, INC., and GLEN RICHARD FRITZLER AND DANA JEANNE FRITZLER, INDIVIDUALLY AND AS TRUSTEES OF THE FRITZLER FAMILY TRUST DTD 7 /27 /92, as follows:

1. Damages for medical, funeral, and burial expenses;
2. Damages for expenses of administration necessitated by reason of injuries causing the death of the Decedents;

3. Damages for pecuniary support that the Decedents would have provided to their beneficiaries during their lifetimes;

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