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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 Complaint of Truth	)	CASE NO. 2:19-cv-07693-PA-
Aquatics, Inc. and Glen Richard Fritzler and	)	MRW
Dana Jeanne Fritzler, individually and as)	
Trustees of the Fritzler Family Trust DTD	)	TRUTH AQUATICS, INC.,
7/27/92 as owners and/or owners <i>pro hac vice</i>	)	AND GLEN RICHARD
of the dive vessel CONCEPTION, Official	)	FRITZLER AND DANA
Number 638133, for Exoneration from or	)	JEANNE FRITZLER,
Limitation of Liability	)	INDIVIDUALLY AND AS
	)	TRUSTEES OF THE
	)	FRITZLER FAMILY TRUST
	)	DTD 7/27/92'S ANSWER TO
	)	CLAIMANT/RESPONDENT
	)	ARIEL TAKVAM'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 Ariel Takvam's Claim, admit, deny and allege as follows¹:

1. Paragraph No. 1 of the Claim contains allegations and conclusions of law to which an answer is not required. To the extent an answer to those

¹ Claimant/Respondent Ariel Takvam is referred to herein as "Claimant Takvam," or simply as "Claimant."

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1 allegations is required, Petitioners admit and allege that they are and were the
 2 owners and/or owners *pro hac vice* of the CONCEPTION within the meaning of
 3 46 U.S.C. Section 30501, *et seq.* Petitioners respond that they are without
 4 knowledge or information sufficient to form a belief as to the truth of the
 5 remaining allegations contained in Paragraph No. 1, and on that basis deny such
 6 allegations.

7 2. In response to Paragraph No. 2 of the Claim, Petitioners respond that
 8 the Paragraph contains allegations and conclusions of law to which an answer is
 9 not required. To the extent an answer to those allegations is required, Petitioners
 10 respond that they are without knowledge or information sufficient to form a belief
 11 as to the truth of the allegations contained in said paragraph, and on that basis deny
 12 each and every one of them.

13 3. Petitioners admit the allegations contained in Paragraph No. 3 of the
 14 Claim.

15 4. Assuming the allegations in Paragraph No. 4 of the Claim refer to
 16 Plaintiff Glen Richard Fritzler, Petitioners admit them.

17 5. Petitioners admit the allegations contained in Paragraph No. 5 of the
 18 Claim.

19 6. In response to Paragraph No. 6 of the Claim, Petitioners admit and
 20 allege that they were the owners and/or owners *pro hac vice* of the CONCEPTION
 21 within the meaning of 46 U.S.C. Section 30501 *et seq.*, and admit that the
 22 CONCEPTION was used for diving trips. Petitioners further admit that the
 23 CONCEPTION's Official Number was 638133. The remainder of Paragraph No.
 24 6 of the Claim contains allegations and conclusions of law to which an answer is
 25 not required. To the extent the remaining allegations in Paragraph No. 6 contain
 26 allegations of fact or law to which an answer is required, Petitioners are without
 27 knowledge or information sufficient to form a belief as to the truth of the
 28 remaining allegations of fact or law contained in said paragraph, and on that basis

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1 deny each and every remaining allegation of fact or law contained therein.

2 7. In response to Paragraph No. 7 of the Claim, Petitioners respond that
3 the Paragraph contains allegations and conclusions of law to which an answer is
4 not required. To the extent an answer to those allegations is required, Petitioners
5 admit and allege the fire on the CONCEPTION is reported to have occurred when
6 the vessel was upon the navigable waters off the coast of California and Santa Cruz
7 Island. Except as expressly admitted or alleged herein, Petitioners are without
8 knowledge or information sufficient to form a belief as to the truth of the
9 remaining allegations contained in Paragraph No. 7, and on that basis deny each
10 and every remaining allegation contained therein.

11 8. In response to Paragraph No. 8 of the Claim, Petitioners admit and
12 allege the vessel CONCEPTION departed the Port of Santa Barbara on August 31,
13 2019 with thirty-three passengers (“Passengers”) and six crewmembers
14 (“Crewmembers”) on board for a three-day voyage off the Coast of California.
15 Except as expressly admitted or alleged herein, the remaining allegations and
16 conclusions of law do not require an answer from Petitioners. To the extent the
17 remaining allegations in Paragraph No. 8 contain allegations of fact or law to
18 which an answer is required, Petitioners are without knowledge or information
19 sufficient to form a belief as to the truth of the remaining allegations of fact or law
20 contained in said Paragraph, and on that basis deny each and every remaining
21 allegation of fact or law contained therein.

22 9. Answering Paragraph No. 9, Petitioners admit that the
23 CONCEPTION’s hull was constructed of wood and fiberglass, and that the vessel
24 had a registered net tonnage of 66 net tons. Petitioners further admit that on
25 August 31, 2019 at the inception of the subject voyage the CONCEPTION carried
26 a current Certificate of Inspection issued by the United States Coast Guard that
27 licensed her to carry passengers on day and multi-day voyages on the Pacific
28 Ocean, not on an international voyage, between the San Luis Obispo/Monterey

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County line: 35-47.5 degrees North Latitude, and 31-45 degrees North Latitude, not more than 100 miles from the Mainland shore. The second sentence of Paragraph 9 contains allegations and conclusions of law to which an answer is not required. To the extent an answer to those allegations is required, Petitioners deny them. Except as expressly admitted or alleged herein, Petitioners deny each and every remaining allegation in Paragraph No. 9 of the Claim.

10. Answering Paragraph 10, Plaintiffs admit and allege that the CONCEPTION had three decks, that the pilot house and primary crew's quarters were located on the vessel's uppermost or sun deck, that the galley and salon were situated on the main deck, and that the main sleeping quarters were located in the lower deck below the main deck, which did not have portholes, skylights or windows, and which had two means of ingress and egress via the stairway at the forward end of the sleeping quarters and the escape hatch at the aft end of the sleeping quarters. Plaintiffs admit and allege the vessel's engine room, diesel generator space, and fuel tanks were located below the main deck, aft of the main sleeping quarters. Except as expressly admitted or alleged herein, Petitioners deny each and every remaining allegations of Paragraph No. 10 of the Claim.

11. In response to Paragraph No. 11 of the Claim, Petitioners admit and allege the CONCEPTION was equipped with an onboard electrical system that was powered by diesel generators. Petitioners further admit that they allowed passengers to use the CONCEPTION's electrical system to charge equipment, including electronics. Except as expressly admitted or alleged herein, Petitioners deny each and every remaining allegation of Paragraph No. 11 of the Claim.

12. In response to Paragraph No. 12 of the Claim, Petitioners admit that the vessel's dive station was situated on the main deck, aft of the galley and salon. Petitioners respond that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph No. 12, and on that basis deny such allegations.

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1 13. Paragraph No. 13 of the Claim contains allegations and conclusions of
2 law to which an answer is not required. To the extent an answer to those
3 allegations is required, Petitioners admit that on September 2, 2019 there was a fire
4 on the vessel. Except as expressly admitted herein, Petitioners are without
5 knowledge or information sufficient to form a belief as to the truth of the
6 remaining allegations contained in said paragraph, and on that basis deny each and
7 every remaining allegation contained therein.

8 14. Paragraph No. 14 of the Claim contains allegations and conclusions of
9 law to which an answer is not required. To the extent an answer to those
10 allegations is required, Petitioners admit and allege that on September 2, 2019
11 there was a fire on the vessel and that the vessel is a total loss due to the fire with
12 zero residual value. Petitioners further admit that 5 crewmembers survived. Except
13 as expressly admitted or alleged, Petitioners are without knowledge or information
14 sufficient to form a belief as to the truth of the remaining allegations in Paragraph
15 No. 14 and on that basis deny them.

16 15. In response to Paragraph No. 15 of the Claim, Petitioners admit and
17 allege they allowed passengers to use the CONCEPTION's electrical system to
18 charge lithium battery-powered electronics. Petitioners deny they encouraged the
19 charging and storage of lithium battery-powered electronics in the
20 CONCEPTION's galley. Except as expressly admitted or alleged, Petitioners are
21 without knowledge or information sufficient to form a belief as to the truth of the
22 remaining allegations contained in Paragraph No. 15, and on that basis deny such
23 allegations.

24 16. In response to Paragraph No. 16 of the Claim, Petitioners respond that
25 the Paragraph contains allegations and conclusions of law to which an answer is
26 not required. To the extent an answer to those allegations is required, Petitioners
27 are without knowledge or information sufficient to form a belief as to the truth of
28 the allegations contained in said paragraph, and on that basis deny such allegations.

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1 17. Petitioners deny each and every allegation contained in Paragraph No.
2 17 of the Claim.

3 18. In response to Paragraph No. 18 of the Claim, Petitioners deny that
4 they “caused and/or contributed” to the fire or the “damages” alleged. Petitioners
5 are without knowledge or information sufficient to form a belief as to the truth of
6 the remaining allegations contained in said paragraph, and therefore deny them.

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

11 20. Responding to Paragraph No. 20 of the Claim, Petitioners deny each
12 and every allegation contained therein, including its subparts.

13 21. Petitioners deny the allegations in Paragraph No. 21 of the Claim.

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

16 23. Petitioners deny each and every allegation in Paragraph No. 23 of the
17 Claim.

18 24. Petitioners deny each and every allegation in Paragraph No. 24 of the
19 Claim.

20 25. Paragraph No. 25 of the Claim re-alleges and incorporates by
21 reference the allegations set forth in Paragraphs Nos. 1-24 of the Claim and, as
22 such, Petitioners incorporate by reference their responses set forth in Paragraphs 1
23 through 24 above, as though fully set forth herein.

24 26. In response to Paragraph No. 26 of the Claim, Petitioners respond that
25 the Paragraph contains allegations and conclusions of law to which an answer is
26 not required. To the extent an answer to those allegations is required, Petitioners
27 are without knowledge or information sufficient to form a belief as to the truth of
28 the allegations contained in said paragraph, and on that basis deny such allegations.

1
2 27. Petitioners deny each and every allegation in Paragraph No. 27 of the
3 Claim.

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

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

8 **PRAYER FOR RELIEF**

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

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

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

16 **SECOND AFFIRMATIVE DEFENSE**

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

19 **THIRD AFFIRMATIVE DEFENSE**

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

27 **FOURTH AFFIRMATIVE DEFENSE**

28 If any injuries and/or damages were sustained by Claimant/Respondent,

1 which is expressly denied, they were caused solely and/or proximately by the
 2 natural progression of Decedent's pre-existing medical conditions over which
 3 Petitioners had no control and for which Petitioners are not liable.

4 **FIFTH AFFIRMATIVE DEFENSE**

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

9 **SIXTH AFFIRMATIVE DEFENSE**

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

14 **SEVENTH AFFIRMATIVE DEFENSE**

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

17 **EIGHTH AFFIRMATIVE DEFENSE**

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

20 **NINTH AFFIRMATIVE DEFENSE**

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

25 **TENTH AFFIRMATIVE DEFENSE**

26 Petitioners allege that Decedent knew or should have known of the risks and
 27 hazards inherent in being a passenger on the subject vessel, as well as the
 28 magnitude of said risks and hazards and thereafter knowingly and willingly

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

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

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 Petitioners are informed and believe and thereon allege that in the event
11 Claimant/Respondent should establish any liability on the part of Petitioners,
12 which liability is expressly denied, Petitioners may not be obligated to pay sums
13 representing a proportion or percentage of fault not their own, but that of Decedent,
14 Claimant/Respondent, other parties to this action and/or third persons not parties to
15 this action. Petitioners are entitled to an adjudication and determination of the
16 respective proportions or percentages of fault, if any, on the part of Petitioners,
17 Claimant/Respondent, other parties to this action (including those through whom
18 they claim), and third persons not parties to this action pursuant to the doctrine of
19 comparative negligence and the Fair Responsibility Act of 1986, codified in Civil
20 Code Section 1431-1431.5.

21 **TWELFTH AFFIRMATIVE DEFENSE**

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

25 **THIRTEENTH AFFIRMATIVE DEFENSE**

26 Claimant/Respondent's Counterclaim and each cause of action therein are
27 barred by the defense of primary assumption of the risk.

28 This Affirmative Defense was stricken in the Court's Order, dated January

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27, 2020 (Docket No. 45). To the extent that the Court’s ruling in that Order constitutes “the law of the case,” and, as such, the Order striking this affirmative defense applies to the case overall, to this Answer, and to the Claim to which it responds, Petitioners hereby reserve their appellate rights with respect to that ruling on this defense.

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

1 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 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

18 **SEVENTEENTH AFFIRMATIVE DEFENSE**

19 Petitioners cannot be held liable for punitive damages because Petitioners
20 did not engage in oppressive, fraudulent or malicious conduct toward Plaintiff.
21 Cal. Civ. Code §3294.

22 This Affirmative Defense was stricken in the Court's Order, dated January
23 27, 2020 (Docket No. 45). To the extent that the Court's ruling in that Order
24 constitutes "the law of the case," and, as such, the Order striking this affirmative
25 defense applies to the case overall, to this Answer, and to the Claim to which it
26 responds, Petitioners hereby reserve their appellate rights with respect to that
27 ruling on this defense.

28 ///

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EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

Petitioners allege that, on information and belief, Claimant Ariel Takvam, and/or others claiming through decedent, lack standing to pursue the claim or claims for relief alleged in the Counterclaim.

TWENTIETH AFFIRMATIVE DEFENSE

Petitioners allege that, on information and belief, Claimant Ariel Takvam, and/or others claiming through decedent, are barred from recovering both loss of support damages and lost future earnings damages as prayed for in the Counterclaim.

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

Petitioners allege, on information and belief, the claims, relief and/or damages claimed by Claimant Ariel Takvam, and/or others claiming through decedent, are subject to and/or limited by the provisions of the Death on the High Seas Act 46 U.S.C. 30301, *et seq.*, and/or the uniformity principles set forth in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), and/or General Maritime Law.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Petitioners allege, on information and belief, that they are entitled to the benefit of each and every term of the agreement(s), contract(s), and/or disclosure(s)

that exist(s) by and between the parties to these proceedings, or those by, under or through whom they claim, including any waivers, releases or limitation of liability, or exonerating language contained therein.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

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

Dated: February 4, 2020 GORDON REES SCULLY MANSUKHANI, LLP

By: /s/Russell P. Brown

Russell P. Brown

James F. Kuhne, Jr.

Attorney for Plaintiffs

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