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**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'S COUNTERCLAIM FOR
COMPENSATORY AND PUNITIVE
DAMAGES**

PLEASE TAKE NOTICE that Respondent/Counter Claimant NANCY
FIEDLER, acting in her capacity as the specially appointed Personal Representative
of the Estate of LISA FIEDLER (Deceased) (hereinafter "the DECEDENT"), hereby
makes due proof of her claim, under Rule F(5) of the Supplemental Admiralty Rules
of the Federal Rules of Civil Procedure, against Petitioners TRUTH AQUATICS,
INC. and GLEN RICHARD FRITZLER and DANA JEANNE FRITZLER,

1 Individually and as Trustees of the Fritzler Family Trust DTD 7/27/92, as follows:

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

7 2. At all times material hereto, Respondent/Counter Claimant NANCY
8 FIEDLER (“Respondent/Counter Claimant FIEDLER”) was and still is an adult
9 resident of the State of California and a “parent” of LISA FIEDLER, DECEASED
10 (“DECEDENT”) as that term is used in 46 U.S.C. § 30302. NANCY FIEDLER was
11 born on February 3, 1939. She is the duly appointed Personal Representative of
12 DECEDENT's Estate and is DECEDENT'S mother.

13 3. MARVIN FIEDLER is DECEDENT's father and a “parent” as that term
14 is used in 46 U.S.C. § 30302. He was born on January 29, 1936.

15 4. DECEDENT was born on March 16, 1967. At all times material hereto,
16 she was a “passenger for hire,” as that phrase is used in 33 CFR § 101.105, aboard
17 the dive vessel CONCEPTION (O.V.N. 638133) and a “non-seafarer” within the
18 meaning of *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199, 215 (1996). As hereinafter
19 more fully appears, she died aboard that vessel during the early morning hours of
20 September 2, 2019, when it caught fire and sank in Platts Harbor off Santa Cruz,
21 Island, upon navigable waters within the territorial limits of the State of California,
22 see *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal.4th 557, 564 (1996) (citing
23 Cal. Const., art. III, § 2; Gov. Code, § 170, 171), less than one hundred yards from
24 shore.

25 5. At all times material hereto, Petitioner TRUTH AQUATICS, INC. was
26 and still is a corporation organized and existing under the laws of the State of
27 California that maintained, and still maintains, its principal place of business at 301
28 Cabrillo Boulevard, Santa Barbara, California, 93101.

1 6. At all times material hereto, Petitioner RICHARD FRITZLER was and
2 still is an individual resident of the State of California.

3 7. At all times material hereto, Petitioner DANA JEANNE FRITZLER was
4 and still is an individual resident of the State of California.

5 8. At all times material hereto, Petitioners, and each of them, owned,
6 maintained, equipped, controlled, and operated the dive boat CONCEPTION as a
7 “small passenger vessel” within the meaning of 46 C.F.R. § 175.110(a).

8 9. On Monday, August 31, 2019, LISA FIEDLER departed the Port of
9 Santa Barbara aboard the CONCEPTION, along with six crew members and thirty-
10 two other passengers, for a three-day voyage through the Channel Islands (“accident
11 voyage”) that would take the vessel “between ports in the United States” as that
12 phrase is used in 46 U.S.C. § 30509(a)(1).

13 10. The CONCEPTION, which is depicted below, was built of wood and
14 fiberglass in 1981. She had a registered tonnage of 66 net tons, and as of August 31,
15 2019, was licensed by the United States Coast Guard to conduct overnight, near-
16 coastal voyages upon the territorial waters of California between Port San Louis and
17 Monterey. The CONCEPTION had three decks. The pilot house and crew’s quarters
18 were located on the vessel’s uppermost, or “sun,” deck. The galley and salon were
19 situated in a deck house at the forward end of the main deck, and the passenger
20 accommodations were located beneath the main deck, in a below-deck space deep
21 down in the hull itself that had no portholes, skylights, or windows. The only ways
22 into or out of that below-decks, accommodation space were via a narrow, overhead
23 escape hatch into the galley and a companionway from the salon. The vessel’s engine
24 room, generator space, and fuel tanks were also situated in the hull, below the main
25 deck, aft of the passenger accommodations.

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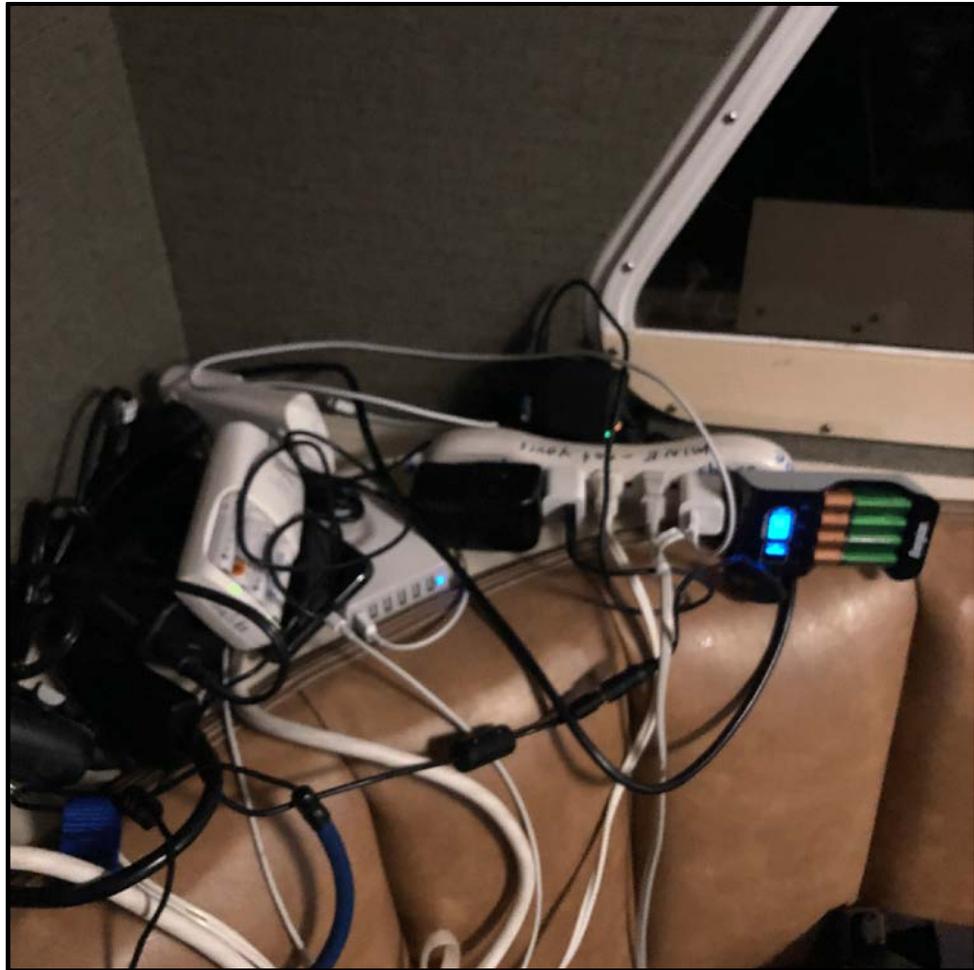
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11. CONCEPTION was equipped with an onboard electrical system that was powered by diesel generators. Petitioners, and each of them, not only permitted but actively encouraged passengers like DECEDENT to use that electrical system to charge digital cameras, video-cameras, smartphones, cell phones, strobe lights, GoPros, laptops, tablets, underwater-scooter power packs, and other battery-powered electronic equipment. Petitioners, and each of them, even equipped CONCEPTION's galley – in the main deck house directly above the passenger accommodations – with a battery-charging station comprising power strips and the octopus charger depicted below.

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12. The CONCEPTION's dive station was situated back on the fantail, behind the galley and salon. Among other things, that station housed multiple high pressure air compressors, one or more nitrox membrane systems, high-pressure piping, one or more banks of high-pressure, oxygen storage bottles, and thirty or more scuba bottles.

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

1 dangerous situation.

2 14. Some time after 0300, in the early morning hours of Wednesday,
3 September 2, 2019, a fire started in or near the galley and quickly spread throughout
4 the vessel, burning the CONCEPTION to the water line, and killing DECEDENT
5 and everyone else in the below-deck, passenger accommodations. The five crew
6 members berthed on the sun deck escaped with their lives and abandoned the vessel.

7 **FIRST CAUSE OF ACTION**

8 (Wrongful Death)

9 15. Respondent/Counter Claimant FIEDLER herewith refers to, and by that
10 reference incorporates as though fully set forth herein, each and every allegation set
11 forth in paragraphs 1 through 14 hereinabove.

12 16. This Cause of Action arises under the General Maritime Law of the
13 United States as handed down in *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375
14 (1970), *Sea-Land Services v. Gaudet*, 414 U.S. 573 (1974), *Norfolk Shipbuilding &*
15 *Drydock Corp. v. Garris*, 532 U.S. 811 (2001), and *Yamaha Motor Corp. v. Calhoun*,
16 516 U.S. 199 (1996), *inter alia*.

17 17. As the owners and operators of the dive vessel CONCEPTION,
18 Petitioners and each of them owed DECEDENT and every other passenger aboard
19 that vessel on the morning of the accident a very high duty of care under *Kermarec v.*
20 *Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959), *Rainey v. Paquet*
21 *Cruises, Inc.* 709 F.2d 169, 170 (2d. Cir. 1983), and *In re Catalina Cruises, Inc.*, 137
22 F.3d 1422, 1425-1426 (9th Cir. 1998), *inter alia*. At all times material hereto,
23 Petitioners, and each of them, acting individually and by and through their
24 managing agents, violated that duty of care and acted in reckless disregard for the
25 safety and health of DECEDENT and her fellow passengers in that, among other
26 things:

27 a. They failed to exercise even scant care to equip the
28 CONCEPTION with an electrical system that was safe, suitable, and reasonably fit

1 for its intended use;

2 b. They failed to exercise even scant care to equip the
3 CONCEPTION with a fire-detection system that was safe, suitable, and reasonable
4 fit for its intended use;

5 c. They failed to exercise even scant care to equip the
6 CONCEPTION with fire-fighting equipment that was safe, suitable, and reasonably
7 fit for its intended purpose;

8 d. They failed to exercise even scant care to equip the
9 CONCEPTION's below-decks passenger accommodations with emergency exits that
10 were safe, suitable, properly designed, and sufficient in size and number, and;

11 e. They ignored a manifest duty and failed to post a roving watch
12 aboard the CONCEPTION on the morning of the accident, in violation of the
13 blackletter provisions of 46 CFR § 185.410 and the requirements of the
14 CONCEPTION'S vessel's Certificate of Inspection.

15 18. As a direct, proximate, and legal result of the hereinabove delicts of
16 Petitioners, and each of them, DECEDENT died, along with thirty-three others, in
17 the CONCEPTION's below-decks passenger accommodations during the fire
18 described in Paragraph 14 hereinabove.

19 19. DECEDENT was only 52 years old on the date of her death.
20 Immediately prior to her death, she was a devoted and loving daughter in excellent
21 physical and mental health and condition. As a direct, proximate, and legal result of
22 DECEDENT's death, Claimant/Respondent NANCY FIEDLER and MARVIN
23 FIEDLER have suffered and will continue to suffer the permanent loss of their
24 daughter's services, support, nurture, and advice all to their **pecuniary damage** in
25 an amount to be proven at the time of trial.

26 20. As a further direct, proximate, and legal result of DECEDENT's death,
27 Claimant/Respondent NANCY FIEDLER and MARVIN FIEDLER have suffered and
28 will continue to suffer the permanent loss of their daughter's love, affection, comfort,

1 care, and society, all to their **non-pecuniary damage** in an amount to be proven at
2 the time of trial.

3 21. In performing the acts and committing the omissions alleged herein,
4 Petitioners, and each of them, acted outrageously, and were guilty of gross
5 negligence, willful, wanton, and reckless indifference for the rights of others, or
6 behavior even more deplorable, justifying an award of punitive or exemplary
7 damages in an amount to be determined at the time of trial herein.

8 WHEREFORE, Respondent/Counter-Claimant NANCY FIEDLER prays
9 judgment against Petitioners as is hereinafter more fully set forth.

10 **SECOND CAUSE OF ACTION**

11 (Survival Damages)

12 22. Respondent/Counter Claimant NANCY FIEDLER herewith refers to
13 and by that reference incorporates, as though fully set forth herein, each and every
14 allegation averred in his First Cause of Action.

15 23. This Cause of Action arises under the General Maritime Law of the
16 United States as handed down in *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375
17 (1970), *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199, 211 (1996), *Davis v. Bender*
18 *Shipbuilding and Repair Co.*, 27 F.3d 426, 430 (9th Cir. 1994), and *Koirala v. Thai*
19 *Airways International, Ltd.*, 126 F.3d 1205, 1212 (9th Cir. 1997) *inter alia*.

20 24. On or about September 2, 2019, when the within cause of action arose in
21 her favor, DECEDENT, who would have been the Claimant in this action had she
22 lived, died by fire and asphyxiation.

23 25. As a direct, proximate, and legal result of the hereinabove alleged
24 delicts of the Petitioners, and each of them, DECEDENT was placed in great fear for
25 her life and physical well-being, and consciously suffered extreme, severe, and
26 relentless mental and emotional anguish and physical pain, and continued to suffer
27 such pain and anguish for a substantial period of time, until she died by fire and
28 asphyxiation, all to her general, nonpecuniary damage in an amount to be proven at

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- f. For costs of suit; and
- g. For such other and further relief as the Court may deem just and proper.

Dated: February 6, 2020 WALKUP, MELODIA, KELLY & SCHOENBERGER

By: /S/ Michael A. Kelly
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