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CALIFORNIA SUPERIOR COURT

IN AND FOR THE COUNTY OF LOS ANGELES

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CHRISTINE ALEXANDRA
DIGNAM, Personal Representative of
the Estate of JUSTIN DIGNAM
(Deceased); JASMINE LORD,
Personal Representative of the Estate
of CHARLES McILVAIN
(Deceased); VICTORIA MOORE,
Personal Representative of the Estates
of RAYMOND SCOTT CHAN
(Deceased) and KENDRA CHAN
(Deceased); YUKA OHASHI
MERRITT, Personal Representative
of the Estate of YUKO HATANO
(Deceased); and VIKRAM SINGH,
Personal Representative of the Estate
of SUNIL SINGH SANDHU
(Deceased);

Plaintiffs,

v.

TRUTH AQUATICS, INC.; GLEN
RICHARD FRITZLER and DANA
JEANNE FRITZLER Individually
and as Trustees of the Fritzler Family
Trust DTD 7/27/92; DANIEL W.
BADER d/b/a/ SEA LANDING
DIVE CENTER; SEAWAY BOAT
CO.; ROBERT STAPP; ROY
HAUSER; RUSSELL IZOR;
VENTURA HARBOR BOATYARD;
and DOES I through 100,

Defendants.

) Case No.

) **PLAINTIFFS CHRISTINE**
) **DIGNAM’S, JASMINE LORD’S,**
) **VICTORIA MOORE’S, YUKA**
) **OHASHI MERRITT’S, AND**
) **VIKRAM SINGH’S COMPLAINT**
) **FOR WRONGFUL DEATH,**
) **SURVIVAL, AND PUNITIVE**
) **DAMAGES**

) **JURY TRIAL DEMANDED**

) Unlimited jurisdiction: damages
) sought exceed \$25,000

COME NOW PLAINTIFFS CHRISTINE DIGNAM, JASMINE LORD,
VICTORIA MOORE, YUKA OHASHI MERRITT, AND VIKRAM SINGH WHO,

1 acting as the Duly Appointed Personal Representatives of the Estates of their
2 respective Decedents, herewith complain against Defendants, and each of them, and
3 for Causes of Action, alleges as follows:

4 **PRELIMINARY ALLEGATIONS**

5 *(Complex Case)*

6
7 1. As is hereinafter more fully set forth, this action grows out of the
8 catastrophic fire that killed thirty-four people aboard the dive vessel *CONCEPTION*
9 (O.V.N. 638133) during the early morning hours of September 2, 2019, and is a
10 “complex case” within the meaning of California Rule of Court 3.400 and Local
11 Rule 3.3(k) in that it is likely to involve:

- 12
- 13 (a) Numerous pretrial motions raising difficult and novel legal issues that
14 will be time-consuming to resolve;
 - 15 (b) Management of a large number of witnesses and a substantial amount
16 of documentary evidence;
 - 17 (c) Management of a large number of separately represented parties;
 - 18 (d) Coordination with (i) a related admiralty action pending in the United
19 States District Court for the Central District of California, (ii) one or
20 more related criminal actions pending in the United States District
21 Court for the Central District of California, and (iii) at least thirty-three
22 related civil actions pending in this Court; and,
 - 23 (e) Substantial post-judgment judicial supervision.

24 *(Subject Matter Jurisdiction)*

25
26
27 2. As is hereinafter more fully set forth, the incident which gave rise to
28 this lawsuit is subject to admiralty tort jurisdiction in that it:

- 1 (a) Occurred upon the navigable waters of the Pacific Ocean, within the
2 territorial waters of the State of California, less than 100 yards from the
3 shores of the Island of Santa Cruz;
4 (b) Had an actual and potential impact on maritime commerce, and;
5 (c) Involved a traditional maritime activity.
6

7 This Court has subject matter jurisdiction over this action under the “savings to
8 suitors” clause set forth in the Federal Judiciary Act of 1789, 28 U.S.C. § 1333(1).

9 *(Parties and Personal Jurisdiction)*

10 **Plaintiffs**

11 3. As is hereinafter more fully set forth, all the Plaintiffs herein assert joint
12 and several rights to relief “in respect of or arising out of the same transaction or
13 occurrence, or series of transactions or occurrences” as those terms and phrases are
14 used in Cal. Code Civ. Pro. § 378(a)(1).
15

16 4. At all times material hereto, Plaintiff CHRISTINE ALEXANDRA
17 DIGNAM (“Plaintiff DIGNAM”) was and still is an adult resident of the State of
18 California. She was the wife of JUSTIN CARROLL DIGNAM, Deceased
19 (“DECEDENT DIGNAM”) and a “spouse” as that term is used in 46 U.S.C. §
20 30302. She is also the duly appointed, Personal Representative of DECEDENT’S
21 Estate and the mother of his two children.
22

23 5. DECEDENT DIGNAM was born in 1960. At all times material hereto,
24 he was a “passenger for hire” aboard the dive vessel *CONCEPTION* as that phrase
25 is used in 33 CFR § 101.105 and a “non-seafarer” within the meaning of *Yamaha*,
26 516 U.S. 199, 215 (1996). As hereinafter more fully appears, he died aboard that
27 vessel during the early morning hours of September 2, 2019, when *CONCEPTION*
28

1 caught fire and sank upon the navigable waters of Platts Harbor off Santa Cruz,
2 Island, less than one-hundred yards from shore, within the territorial limits of the
3 State of California. See *Tidewater Marine Western, Inc. v. Bradshaw* (1996)14
4 Cal.4th 557, 564 (citing Cal. Const., art. III, § 2; Gov. Code, § 170, 171).

5
6 6. TAYLOR ALEXANDRA DIGNAM is DECEDENT DIGNAM’s
7 daughter and a “child” as that term is used in 46 U.S.C. § 30302. She was born in
8 1994.

9 7. CHANDLER JOHN DIGNAM is DECEDENT DIGNAM’s son and
10 a “child” as that term is used in 46 U.S.C. § 30302. He was born in 1996.

11 8. At all times material hereto, Plaintiff JASMINE LORD (“Plaintiff
12 LORD”) was and still is an adult resident of the State of California. She was the
13 wife of CHARLES SPENCER McILVAIN, Deceased (“DECEDENT McILVAIN”)
14 and is a “spouse” as that term is used in 46 U.S.C. § 30302. She is also the duly
15 appointed, Personal Representative of his Estate.
16

17 9. DECEDENT McILVAIN was born in 1975. At all times material
18 hereto, he too was a “passenger for hire” aboard the dive vessel *CONCEPTION*, as
19 that phrase is used in 33 CFR § 101.105, and a “non-seafarer” within the meaning
20 of *Yamaha*, 516 U.S. at 215. As hereinafter more fully appears, he too died aboard
21 that vessel during the early morning hours of September 2, 2019, when
22 *CONCEPTION* caught fire and sank upon the navigable waters of Platts Harbor off
23 Santa Cruz, Island, less than one-hundred yards from shore, within the territorial
24 limits of the State of California. See *Tidewater*, 14 Cal.4th at 564 (citing Cal.
25 Const., art. III, § 2; Gov. Code, § 170, 171).
26
27

28 10. CLARK McILVAIN is DECEDENT McILVAIN’s father and a

1 “parent” as that term is used in 46 U.S.C. § 30302.

2 11. SUZANNE ADAMS is DECEDENT McILVAIN’s mother and a
3 “parent” as that term is used in 46 U.S.C. § 30302.

4 12. At all times material hereto, Plaintiff VICTORIA ELLEN MOORE
5 (“Plaintiff MOORE”) was and still is an adult resident of the State of California.
6 She was the wife of RAYMOND SCOTT CHAN, Deceased (“DECEDENT SCOTT
7 CHAN”) and is a “spouse” as those terms are used in 46 U.S.C. § 30302. She is
8 also the mother of his two children and the duly appointed, Personal Representative
9 of the Estates of DECEDENT CHAN and KENDRA MOORE CHAN, Deceased
10 (“DECEDENT MOORE CHAN”).
11

12 13. DECEDENT CHAN was born in 1960. At all times material hereto,
13 he too was a “passenger for hire” aboard the dive vessel *CONCEPTION*, as that
14 phrase is used in 33 CFR § 101.105, and a “non-seafarer” within the meaning of
15 *Yamaha*, 516 U.S. at 215. As hereinafter more fully appears, he too died aboard that
16 vessel during the early morning hours of September 2, 2019, when *CONCEPTION*
17 caught fire and sank upon the navigable waters of Platts Harbor off Santa Cruz,
18 Island, less than one-hundred yards from shore, within the territorial limits of the
19 State of California. See *Tidewater*, 14 Cal.4th at 564 (citing Cal. Const., art. III, §
20 2; Gov. Code, § 170, 171).
21

22 14. DECEDENT MOORE CHAN was born in 1993. She was the daughter
23 of Plaintiff MOORE and DECEDENT CHAN. At all times material hereto, she too
24 was a “passenger for hire” aboard the dive vessel *CONCEPTION*, as that phrase is
25 used in 33 CFR § 101.105, and a “non-seafarer” within the meaning of *Yamaha*,
26 516 U.S. at 215. As hereinafter more fully appears, she too died aboard that vessel
27
28

1 during the early morning hours of September 2, 2019, when *CONCEPTION* caught
2 fire and sank upon the navigable waters of Platts Harbor off Santa Cruz, Island, less
3 than one-hundred yards from shore, within the territorial limits of the State of
4 California. See *Tidewater*, 14 Cal.4th at 564 (citing Cal. Const., art. III, § 2; Gov.
5 Code, § 170, 171).
6

7 15. KEVIN WILLIAMS CHAN is DECEDENT CHAN’s son and a “child”
8 and DECEDENT MOORE CHAN’s brother and a “sibling” as those terms are used
9 in 46 U.S.C. § 30302.

10 16. At all times material hereto, Plaintiff YUKA OHASHI MERITTT
11 (“OHASHI MERITT”) was and still is an adult resident of the State of California
12 and is the duly appointed Personal Representative of the Estate of YUKO
13 HATANO, Deceased (“DECEDENT HATANO”).
14

15 17. DECEDENT HATANO was born in 1979. At all times material hereto,
16 she too was a “passenger for hire” aboard the dive vessel *CONCEPTION*, as that
17 phrase is used in 33 CFR § 101.105, and a “non-seafarer” within the meaning of
18 *Yamaha*, 516 U.S. at 215. As hereinafter more fully appears, she too died aboard
19 that vessel during the early morning hours of September 2, 2019, when
20 *CONCEPTION* caught fire and sank upon the navigable waters of Platts Harbor off
21 Santa Cruz, Island, less than one-hundred yards from shore, within the territorial
22 limits of the State of California. See *Tidewater*, 14 Cal.4th at 564 (citing Cal.
23 Const., art. III, § 2; Gov. Code, § 170, 171).
24

25 18. MACHIKO HATANO is DECEDENT’s mother and a “parent” as that
26 term is used in 46 U.S.C. § 30302.
27

28 19. At all times material hereto, Plaintiff VIKRAM SINGH (“SINGH”)

1 was and still is an adult resident of the State of California and is the duly appointed,
2 Personal Representative of the Estate of SUNIL SINGH SANDHU, Deceased
3 (“DECEDENT SINGH SANDHU”).

4 20. DECEDENT SINGH SANDHU was born in 1973. At all times
5 material hereto, he too was a “passenger for hire” aboard the dive vessel
6 *CONCEPTION*, as that phrase is used in 33 CFR § 101.105, and a “non-seafarer”
7 within the meaning of *Yamaha*, 516 U.S. at 215. As hereinafter more fully appears,
8 he too died aboard that vessel during the early morning hours of September 2, 2019,
9 when *CONCEPTION* caught fire and sank upon the navigable waters of Platts
10 Harbor off Santa Cruz, Island, less than one-hundred yards from shore, within the
11 territorial limits of the State of California. See *Tidewater*, 14 Cal.4th at 564 (citing
12 Cal. Const., art. III, § 2; Gov. Code, § 170, 171).

15 21. SOJIT SINGH s/o UDHAM SINGH is DECEDENT SINGH
16 SANDHU’s father and a “parent” as that term is used in 46 U.S.C. § 30302.

17 22. JASBIR KAUR d/o BIKREM SINGH is DECEDENT SINGH
18 SANDHU’s mother and a “parent” as that term is used in 46 U.S.C. § 30302.

19 23. SUNITA KAUR SANDHU is DECEDENT SINGH SANDHU’s sister
20 and a “sibling” as that term is used in 46 U.S.C. § 3032.

21
22 **Defendants**

23 24. The true names and capacities, whether individual, corporate, associate,
24 or otherwise, of the Defendants named herein as DOES 1 through 100 inclusive, are
25 presently unknown to Plaintiffs, who therefore sue said Defendants under such
26 fictitious names under Section 474 of the Code of Civil Procedure. Plaintiffs will
27 amend this Complaint to allege their true names and capacities when the same have
28

1 been ascertained. Plaintiffs are informed and believe, and therefore allege, that each
2 of the fictitiously named Defendants is responsible in some manner for the
3 occurrences hereinafter alleged, and that Plaintiffs' damages as hereinafter set forth
4 were proximately caused by said Defendants.

5
6 25. Plaintiffs are informed and believe, and on that basis allege, that at all
7 times material hereto, Defendants and each of them, were the agents, servants,
8 employees, partners, joint venturers, maritime co-adventurers, co-conspirators,
9 franchisees, and/or alter egos of every other Defendant, and in committing the acts
10 and omissions hereinafter alleged were conducting themselves within the purpose
11 and scope of said agency, employment, partnership, joint venture, maritime
12 adventure, conspiracy, franchise, and/or alter ego.

13
14 26. At all times material hereto, Defendant TRUTH AQUATICS, INC.
15 ("TRUTH AQUATICS") was and still is a corporation organized and existing under
16 the laws of the State of California authorized to do business and actually doing in
17 this State as a dive tour company and small passenger vessel operator.

18
19 27. At all times material hereto, Defendants RICHARD GLEN FRITZLER
20 and DANA JEANNE FRITZLER (collectively "THE FRITZLERS") were and still
21 are Trustees of the Fritzler Family Trust DTD 7/27/92 and individual residents of
22 the State of California. At all times herein mentioned, THE FRITZLERS were and
23 still are the owners of Defendants TRUTH AQUATICUS, SEA LANDING DIVE
24 CENTER, and DOES 1 through 5 and each of them.

25
26 28. At all times material hereto, Defendants DANIEL W. BADER
27 ("BADER") d/b/a SEA LANDING DIVE CENTER ("SEA LANDING") and DOES
28 1 through 5 and each of them were and still are residents of California licensed to

1 do business and actually doing business in this State as retail dive stores.

2 29. At all times material hereto, SEAWAY BOAT CO. (SEAWAY) and
3 DOES 6 through 10 and each of them were and still corporations and/or limited
4 liability companies who are organized and existing under the laws of the State of
5 California, who are licensed to do business and are actually doing business in this
6 State as boatyards engaged in the enterprise of designing, building, repairing, and
7 refurbishing yachts, fishing vessels, and small passenger vessels, and who
8 maintained and still maintain their principal places of business in Long Beach,
9 California.

10
11 30. At all times material hereto, ROBERT STAPP (“STAPP”) was and still
12 is an individual resident of the State of California living in the County of Los
13 Angeles and who was and is believed to still be the owner of Defendants SEAWAY
14 and DOE 6.

15
16 31. At all times material hereto, ROY HAUSER (“HAUSER”) was and still
17 is an individual resident of the State of California living in the County of Los
18 Angeles who was one of the original designers of the dive vessel *CONCEPTION*.

19
20 32. At all times material hereto, RUSSELL IZOR (“IZOR”) was and still
21 is an individual resident of the State of California living in the County of Los
22 Angeles who was one of the original designers of the dive vessel *CONCEPTION*.

23
24 33. At all times material hereto, VENTURA HARBOR BOATYARD
25 (“VENTURA”) and DOES 11 through 15 and each of them, were and still
26 corporations and/or limited liability companies who are organized and existing
27 under the laws of the State of California and who were licensed to do business and
28 actually doing business in this State as boatyards engaged in the enterprise of

1 designing, building, repairing, maintaining, and refurbishing yachts, fishing vessels,
2 and small passenger vessels.

3 34. At all times herein mentioned, DOE Defendants 16 through 45, and
4 each of them, were and still are corporations or limited liability companies
5 organized and existing under the laws of one of the United States who were and still
6 are authorized to do business and doing business in this State, and who were and
7 still are engaged in the business of designing, manufacturing, assembling,
8 inspecting, packaging, describing and consigning electronic equipment including
9 but not limited to rechargeable batteries, battery chargers, cameras, cell phones,
10 computers, underwater flashlights, underwater strobe lights, and/or underwater
11 scooters for sale to and use by members of the general public. As part of that
12 business, DOE Defendants 16 through 45 designed, manufactured, assembled,
13 inspected, described, and packaged the electronic equipment referred to in
14 Paragraph 51 hereinafter and sold and consigned said electronic equipment to
15 Defendants SEA LANDING and DOES 46 through 75 for distribution, rental, and
16 retail sale.

17 35. At all times herein mentioned, DOE Defendants 46 through 75, and
18 each of them were and still are corporations, limited liability companies, or DBA's
19 organized and existing under the laws of one of the United States who were and still
20 are authorized to do business and actually doing business in this State, and who
21 were and still are engaged in the business of distributing, renting, retailing, and
22 selling electronic equipment including but not limited to rechargeable batteries,
23 battery chargers, cameras, cell phones, computers, underwater flashlights,
24 underwater strobe lights, and/or underwater scooters for sale to and use by members

1 of the general public. As part of that business, DOE Defendants 46 through 75, and
2 each of them distributed, retailed, rented, and sold the electronic equipment
3 described in Paragraph 51 hereinafter.

4 (Venue)

5
6 36. Venue is proper in this Court under Cal. Code Civ. Pro. § 395(a)
7 because some of the Defendants resided in Los Angeles County at the
8 commencement of the action. Venue is also proper in this Court under Cal. Corp.
9 Code § 2105(a)(3) and *Easton v. Superior Court* (1970) 12 Cal.App.3d 243,
10 246-247 because some of the Defendants are foreign corporations who are licensed
11 to do business in California and actually doing business in this State, but who have
12 failed to designate a principal place of business here and may therefore be sued in
13 any county of the State.
14

15 **OPERATIVE FACTS**

16 (*The Small Passenger Vessel CONCEPTION*)

17 37. At all times material hereto, Defendants TRUTH AQUATICS and THE
18 FRITZLERS, and each of them owned, maintained, manned, equipped, controlled,
19 and operated three “small passenger vessels” within the meaning of 46 C.F.R. §
20 175.110(a) – *CONCEPTION*, *VISION*, and *TRUTH*. Although *VISION* was five feet
21 longer and one foot wider than *CONCEPTION*, they were sisterships in the sense
22 that the layout and general arrangement of their decks, deck houses, and below deck
23 compartments were very similar.
24

25
26 38. *CONCEPTION* was designed, built, and launched in Long Beach,
27 California in 1979 by Defendants STAPP, HAUSER, IZOR, THE FRITZLERS, and
28 DOES 1 through 5, and each of them, and was redesigned, rebuilt, refurbished, and

1 relaunched by Defendants THE FRITZLERS, SEAWAY, VENTURA HARBOR
2 BOATWORKS, and DOES 6 through 15, and each of them, in 2005.

3 39. *CONCEPTION*, which is depicted below, was constructed of wood and
4 fiberglass. She had a registered tonnage of 66 net tons and as of September 2, 2019,
5 was licensed by the United States Coast Guard to carry up to six crew members and
6 one hundred passengers for hire and to conduct overnight, near-coastal voyages
7 upon the territorial, near coastal waters of the Santa Barbara Channel.
8



19
20 40. As designed, built, redesigned, rebuilt, and refurbished, *CONCEPTION*
21 had three decks. The pilot house and crew's quarters were located on the vessel's
22 uppermost, or "sun," deck. The galley and salon were situated in a deck house at the
23 forward end of the main deck, and the passenger accommodations were located
24 beneath the main deck, in a below-deck space deep down in the hull itself that had
25 no portholes, skylights, or windows. As appears more fully in Paragraph 44
26 hereinbelow, there were only two ways into or out of that passenger accommodation
27 space, and each of them led into the same compartment up in the deck house
28

1 between the galley and the salon. The vessel's shower room, engine room,
2 generator space, lazarette, and fuel tanks were also situated in the hull, below the
3 main deck. The dive station was located up on the main deck aft of the deck house.

4 41. The galley and salon sat inside the deck house in a single compartment,
5 with the salon in the compartment's after section and the galley in its forward
6 portion. The salon had longitudinal seating spanning its port and starboard sides.
7 The outboard seating was constructed of plywood and built into the bulkheads. The
8 interior bulkheads themselves were covered with FRP sheathing. The seating
9 included cushioning of flammable composition. The space inboard of the built-in
10 seating was filled with wooden tables and moveable, plastic chairs. There were also
11 built-in coolers, food service platforms, and an ice maker arrayed longitudinally
12 along the salon's centerline. The galley was equipped with electric refrigeration,
13 an electric range, an electric stove top, and polyethylene trash bins. The overhead
14 above the salon and galley was lined with flammable, acoustic tiles. The
15 compartment containing the salon and galley was not equipped with any smoke
16 detectors or alarms.

17 42. The deck house had one main-deck entry/exit at the after end of the
18 salon which led out to the dive station on the open fantail. That entry/exit
19 comprised a set of double doors and was always kept open.

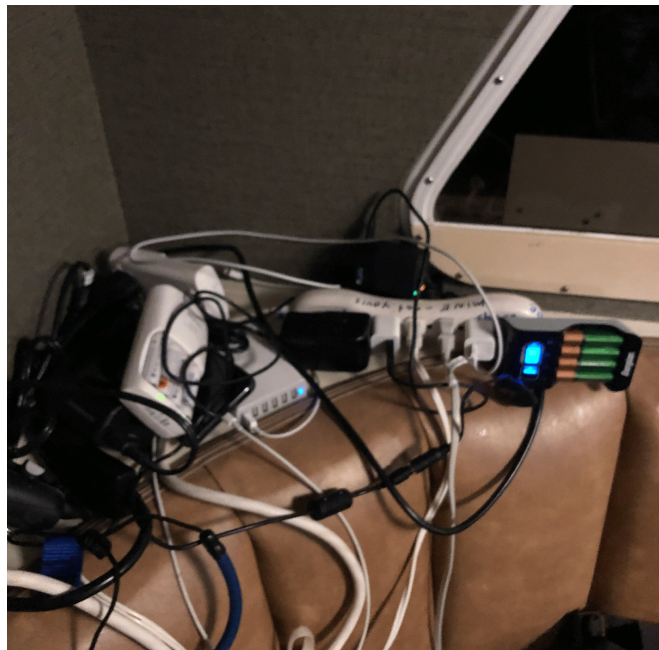
20 43. The deck house also embraced three separately enclosed "heads" or
21 toilets. Two of those heads were accessed via flanking doors on the port and
22 starboard sides of the main deck entry/exit described in Paragraph 42 hereinabove.
23 The third head was located on the starboard side of the deck house and was accessed
24 from an exterior door situated at the bottom of the stairway up to the sun deck.
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1 44. The passenger accommodations were located below the main deck,
2 deep within the hull and included a bunk room and a shower room. The shower
3 room was located in a separate compartment forward of the bunk room and was
4 accessed by a stairway from the galley. The bunk room was located between the
5 shower room bulkhead forward and the engine room bulkhead aft. It accommodated
6 thirty-four people in a tier of single bunks stacked three high and arrayed
7 longitudinally along the centerline of the compartment and two flanking tiers of
8 double-wide bunks arrayed outboard of a pair of longitudinal aisles that joined at the
9 forward end of the bunk room. The bunks were all constructed of wood, the floor
10 or “sole” of the compartment was covered with flammable carpeting, and the
11 overhead was lined with flammable acoustic tile. Although the bunk room was
12 equipped with two smoke detectors, one on the overhead above each aisle, the
13 alarms those smoke detectors triggered were located up in the wheelhouse and did
14 not sound in the below-decks passenger compartment itself. Access to and from the
15 bunk room was provided by a staircase that descended from the galley. The only
16 other way out of the bunk room was a small, 22-inch-by-22-inch emergency hatch
17 located above the topmost, centerline berth at the aftermost end of the bunk room.
18 That emergency hatch led into the salon and was very difficult to access. Its
19 location was neither properly marked nor readily apparent. The bunk room was not
20 equipped with any emergency lighting signaling the way out. Worse, neither of the
21 bunk room’s exits opened onto the weather deck. Instead, each of them led into the
22 same confined, enclosed space inside the deck house.
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27 45. *CONCEPTION*’s dive station was situated back on the fantail, behind
28 the deck house. Among other things, that dive station housed multiple high-pressure

1 air compressors, one or more nitrox membrane systems, high-pressure piping, one
2 or more banks of high-pressure, oxygen storage bottles, and thirty or more scuba
3 bottles.

4 46. As designed, built, redesigned, rebuilt, refurbished, and relaunched,
5 *CONCEPTION* was equipped with an onboard electrical system that was powered
6 by diesel generators. Defendants TRUTH AQUATICS, SEA LANDING, THE
7 FRITZLERS, and DOES 6 through 10, and each of them, nonetheless permitted and
8 indeed actively encouraged passengers like DECEDENT to use that electrical
9 system to charge digital cameras, video-cameras, smartphones, cell phones, strobe
10 lights, GoPros, lap top tablets, underwater-scooter power packs, and other battery-
11 powered electronic equipment. Defendants, and each of them, equipped the port,
12 after end of *CONCEPTION's* salon with a battery-charging station comprising
13 power strips and the octopus charger depicted below.
14
15



(The Events Leading up to the Accident)

1
2 47. On the late afternoon of March 9, 2013, over six years before the fatal
3 fire that is the subject of this action, the *Condor Express*, another “small passenger
4 vessel” within the meaning of 46 C.F.R. § 175.110(a), caught fire while berthed at
5 Defendant SEA LANDING’s wharf in Santa Barbara Harbor, directly in front of
6 Defendant GLEN FRITZLER’s waterfront office, when the battery charging station
7 for that vessel’s portable maritime radio burst into flames inside her wheel house.
8

9 48. During the pre-dawn hours of October 8, 2018, eleven months before
10 the fatal fire that is the subject of this action, Ken Dehler, an off-duty fireman and
11 a passenger aboard *CONCEPTION*’s sistership *VISION*, heard a “hissing” noise and
12 then a loud “bang” inside that vessel’s main deckhouse and discovered sparks,
13 flames, and smoke emanating from two lithium batteries that were nested in a
14 charging station plugged into a power strip sitting among paper back books atop a
15 shelf on the starboard side of the *VISION*’s saloon. After Dehler and another
16 passenger who just happened to be awake smothered the fire with a dry chemical
17 extinguisher from the galley, they unplugged the charger and threw it into a rinse
18 bin located out on the main deck. The two burning batteries had been purchased
19 along with a Goldengulf, underwater flashlight from Amazon.com (Amazon
20 Standard Identification Number: B014QSOIKO). Dehler and the other passenger
21 promptly reported the fire to the *VISION*’s master who reported it in turn to
22 Defendant GLEN FRITZLER and two other TRUTH AQUATICS masters.
23
24

25 49. Early Saturday morning, August 31, 2019, DECEDENTS DIGNAM,
26 McILVAIN, CHAN, MOORE CHAN, HATANO, and SINGH SANDHU departed
27 Santa Barbara Harbor aboard *CONCEPTION*, along with six crew members and
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1 twenty-seven other passengers, for a three-day voyage through the Channel Islands
2 (“accident voyage”). That voyage would take *CONCEPTION* “between ports in the
3 United States” as that phrase is used in 46 U.S.C. § 30509(a)(1).

4 50. On the night of Sunday, September 1, 2019, while *CONCEPTION* was
5 anchored in Platt’s Harbor, just offshore of Santa Cruz Island, some of her
6 passengers made a night dive that concluded some time before 2400. By 0230, on
7 Monday, September 2, 2019, everyone including all six of the vessel’s crew
8 members were in their berths and sound asleep. *CONCEPTION* lay at anchor in
9 Platts Harbor less than one-hundred yards from shore. No roving watch was set;
10 neither the master nor anyone else directed any crew members to patrol the vessel
11 throughout the night, maintain an anchor watch, look out for allisions, monitor the
12 battery-charging station, or sound the alarm in the event of a fire, man-overboard,
13 or other dangerous situation.

14 51. Some time after 0300, *CONCEPTION* crew member Ryan Simms heard
15 a “pop” from somewhere in the salon/galley area. Earlier that evening, Sims had
16 seen sparks when he plugged his cell phone into one of the charging stations in that
17 compartment. Shortly after Sims heard that “pop,” a fire ignited by electrical
18 equipment designed, manufactured, assembled, described, packaged, consigned,
19 distributed, rented, retailed, and sold by Defendants SEA LANDING and DOES 1
20 through 5 and 16 through 75 flared up in the port, after section of the salon and
21 quickly spread throughout the vessel, burning *CONCEPTION* to the water line, and
22 trapping and killing DECEDENTS DIGNAM, McILVAIN, CHAN, MOORE
23 CHAN, HATANO, and SINGH SANDHU, and everyone else who was berthed in
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1 the below-deck bunk room. The five crew members berthed up on the sun deck
2 escaped with their lives and abandoned the vessel.

3 **FIRST CAUSE OF ACTION**

4 (For Wrongful Death on Account of Gross Negligence
5 against Defendants TRUTH AQUATICS and THE FRITZLERS
6 and DOES 1 through 5)

7 52. Plaintiffs herewith refer to, and by that reference incorporate as though
8 fully set forth herein, each and every allegation set forth in paragraphs 1 through 51
9 hereinabove.

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

15 54. As the owners and operators of the dive vessel *CONCEPTION*,
16 Defendants TRUTH AQUATICS and THE FRITZLERS and each of them owed
17 DECEDENTS DIGNAM, McILVAIN, CHAN, MOORE CHAN, HATANO, and
18 SINGH SANDHU a duty of care under *Kermarec v. Compagnie Generale*
19 *Transatlantique*, 358 U.S. 625, 632 (1959), *Rainey v. Paquet Cruises, Inc.* 709 F.2d
20 169, 170 (2d. Cir. 1983), and *In re Catalina Cruises, Inc.*, 137 F.3d 1422, 1425-
21 1426 (9th Cir. 1998), *inter alia*. At all times material hereto, said Defendants and
22 each of them, acting individually and by and through their managing agents, ignored
23 and violated that duty of care and acted in reckless disregard for the safety and
24 health of everyone aboard *CONCEPTION* in that, among other things:

25 a. They failed to exercise even scant care to equip *CONCEPTION* with
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1 an electrical system and equipment that were safe, suitable, and reasonably
2 fit for their intended use;

3 b. They failed to exercise even scant care to equip *CONCEPTION* with
4 a fire-detection system and fire alarms that were safe, suitable, and reasonable
5 fit for their intended use;

6 c. They failed to exercise even scant care to equip *CONCEPTION* with
7 fire-fighting equipment and procedures that were safe, suitable, and
8 reasonably fit for their intended purpose;

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

12 e. They failed to exercise even scant care to instruct and drill
13 *CONCEPTION's* passengers and crew on emergency procedures, and;

14 f. They ignored a manifest duty, conducted themselves with reckless
15 disregard for the safety and health of DECEDENT and his fellow passengers,
16 and failed and refused to maintain a proper anchor watch aboard
17 *CONCEPTION* on the morning of the accident, in violation of the black-letter
18 provisions of 46 CFR § 185.410 and the requirements of *CONCEPTION's*
19 Certificate of Inspection.

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23 55. Defendants TRUTH AQUATICS and THE FRITZLERS and each of
24 them knew or, in the exercise of even scant care should have known, that unless
25 *CONCEPTION* and her passengers and crew were carefully and properly trained,
26 drilled, managed, directed, and equipped, that vessel and her crew could and would
27 likely place the life and limb of every person she carried in peril.
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1 56. As a direct, proximate, and legal result of the hereinabove delicts of
2 Defendants, and each of them, DECEDENTS DIGNAM, McILVAIN, CHAN,
3 MOORE CHAN, HATANO, and SINGH SANDHU died along with twenty-eight
4 others in *CONCEPTION*'s below-decks passenger accommodations during the fire
5 described in Paragraph 51 hereinabove.
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7 57. DECEDENT DIGNAM was only fifty-eight years old on the date of
8 this death. Immediately prior to his death, he was a devoted husband and a loving
9 father in excellent physical and mental health and condition. As a direct, proximate,
10 and legal result of DECEDENT DIGNAM's death, Plaintiff DIGNAM, her children
11 TAYLOR ALEXANDRA DIGNAM and CHANDLER JOHN DIGNAM, and each
12 of them have suffered and will continue to suffer the permanent loss of his services,
13 support, nurture, counsel, and example all to their pecuniary damage in an amount
14 to be proven at the time of trial.
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16 58. As a further direct, proximate, and legal result of DECEDENT
17 DIGNAM's'S death, Plaintiff DIGNAM and her children TAYLOR ALEXANDRA
18 DIGNAM and CHANDLER JOHN DIGNAM, and each of them have suffered and
19 will continue to suffer the permanent loss of said DECEDENT's love, affection,
20 comfort, care, consortium, and society all to their non-pecuniary damage in an
21 amount to be proven at the time of trial.
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23 59. DECEDENT McILVAIN was only 44 years old on the date of his
24 death. Immediately prior to his death he was a devoted husband and a loving son
25 in excellent physical and mental health and condition. As a direct, proximate, and
26 legal result of DECEDENT McILVAIN's death, Plaintiff LORD has suffered and
27 will continue to suffer the permanent loss of her husband's services, support,
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1 nurture, counsel, and example all to her pecuniary damage in an amount to be
2 proven at the time of trial.

3 60. As a further direct, proximate, and legal result of DECEDENT'
4 McILVAIN's death, his parents CLARK McILVAIN and SUZANNE ADAMS, and
5 each of them have suffered and will continue to suffer the permanent loss of their
6 son's services, nurture, counsel, and example all to their pecuniary damage in an
7 amount to be proven at the time of trial.

9 61. As a further direct, proximate, and legal result of DECEDENT's death,
10 Plaintiff LORD, CLARK McILAIN, and SUZANNE ADAMS, and each of them,
11 have suffered and will continue to suffer the permanent loss of said DECEDENT's
12 love, affection, comfort, care, consortium, and society all to their non-pecuniary
13 damage in an amount to be proven at the time of trial.

15 62 DECEDENT CHAN was only fifty-nine years old on the date of his
16 death. Immediately prior to his death he was a devoted husband and a loving father
17 in excellent physical and mental health and condition. As a direct, proximate, and
18 legal result of DECEDENT CHAN's death, Plaintiff MOORE, her son KEVIN
19 MOORE CHAN, and each of them have suffered and will continue to suffer the
20 permanent loss of said DECEDENT's services, support, nurture, counsel, and
21 example all to their pecuniary damage in an amount to be proven at the time of trial.

23 63. As a further direct, proximate, and legal result of DECEDENT CHAN's
24 death, Plaintiff MOORE, her son KEVIN MOORE CHAN, and each of them have
25 suffered and will continue to suffer the permanent loss of said DECEDENT's love,
26 affection, comfort, care, consortium, and society all to their non-pecuniary damage
27 in an amount to be proven at the time of trial.

1 64. DECEDENT MOORE CHAN was only twenty-six years old on the
2 date of her death. Immediately prior to her death she was a loving daughter and
3 sister in excellent physical and mental health and condition. As a direct, proximate,
4 and legal result of DECEDENT's death, Plaintiff MOORE, KEVIN CHAN, and
5 each of them have suffered and will continue to suffer the permanent loss of said
6 DECEDENT's services, nurture, counsel, and example all to their pecuniary damage
7 in an amount to be proven at the time of trial.

9 65. As a further direct, proximate, and legal result of DECEDENT MOORE
10 CHAN's death, Plaintiff MOORE, her son KEVIN MOORE CHAN, and each of
11 them have suffered and will continue to suffer the permanent loss of said
12 DECEDENT love, affection, comfort, care, and society all to their non-pecuniary
13 damage in an amount to be proven at the time of trial.

15 66. DECEDENT was only thirty-nine years old on the date of her death.
16 Immediately prior to her death she was a loving daughter in excellent physical and
17 mental health and condition. As a direct, proximate, and legal result of
18 DECEDENT's death, DECEDENT's mother MACHIKO HATANO has suffered
19 and will continue to suffer the permanent loss of her daughter's services, nurture,
20 and counsel all to her pecuniary damage in an amount to be proven at the time of
21 trial.

23 67. As a further direct, proximate, and legal result of DECEDENT
24 HATANO's death, her mother MACHIKO HATANO has suffered and will continue
25 to suffer the permanent loss of her daughter's love, affection, comfort, care,
26 consortium, and society, all to her non-pecuniary damage in an amount to be proven
27 at the time of trial.

1 69. DECEDENT SINGH SANDHU was only 45 years old on the date of
2 his death. Immediately prior to his death he was a loving son and brother in
3 excellent physical and mental health and condition. As a direct, proximate, and
4 legal result of his death, SOJIT SINGH s/o UDHAM SINGH, JASBIR KAUR d/o
5 BIKREM SINGH, and SUNITA KAUR SANDHU, and each of them have suffered
6 and will continue to suffer the permanent loss of said DECEDENT's services,
7 nurture, counsel, and example all to their pecuniary damage in an amount to be
8 proven at the time of trial.

10 70. As a further direct, proximate, and legal result of DECEDENT' SINGH
11 SANDHU's death, SOJIT SINGH s/o UDHAM SINGH, JASBIR KAUR d/o
12 BIKREM SINGH, and SUNITA KAUR SANDHU, and each of them, have suffered
13 and will continue to suffer the permanent loss of said DECEDENT's love, affection,
14 comfort, care, consortium, and society all to their non-pecuniary damage in an
15 amount to be proven at the time of trial.

17 71. In performing the acts and committing the omissions alleged herein,
18 Defendants TRUTH AQUATICS and THE FRITZLERS, and each of them, acted
19 outrageously, and were guilty of gross negligence, willful, wanton, and reckless
20 indifference for the rights of others, or behavior even more deplorable, justifying an
21 award of punitive or exemplary damages in an amount to be determined at the time
22 of trial herein.

24 WHEREFORE, Plaintiffs pray judgment against Defendants TRUTH
25 AQUATICS and THE FRITZLERS, and each of them, as is hereinafter more fully
26 set forth.

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SECOND CAUSE OF ACTION

(For Wrongful Death Damages on Account of Fraud, Deceit, and Non-Disclosure against Defendants TRUTH AQUATICS, THE FRITZLERS, BADER, SEA LANDING, and DOES 1 through 5)

72. Plaintiffs herewith refer to, and by that reference incorporate as though fully set forth herein, each and every allegation set forth in their First Cause of Action.

73. This Cause of Action arises under *Restatement (2d) of Torts*, § 311 and the General Maritime Law of the United States as handed down in *Moragne, supra, Gaudet, supra, Garris, supra, Yamaha, supra, and Isham v. Padi Worldwide Corp.* (D.Haw. 2008) 2008 U.S. Dist. LEXIS 27325, *inter alia*.

74. After the 2013 and 2018 fires described in Paragraphs 47 and 48 hereinabove aboard the vessels *Condor Express* and *Vision*, Defendants TRUTH AQUATICS, THE FRITZLERS, BADER, SEA LANDING, and DOES 1 through 5 and each of them knew, or in the exercise of even scant care should have known it was manifestly unsafe to recharge battery powered electrical equipment overnight aboard vessels like *CONCEPTION*. At all times material hereto, said Defendants and each of them, acting individually and by and through their respective managing agents, committed gross negligence and acted in reckless disregard for the safety and health of DECEDENTS DIGNAM, McILVAIN, CHAN, MOORE CHAN, HATANO, and SINGH SANDHU in that, among other things:

- a. They not only permitted passengers to bring rechargeable electronic equipment aboard *CONCEPTION* during overnight voyages but leased and sold such equipment to passengers for use aboard *CONCEPTION* during such

1 in their favor, DECEDENTS DIGNAM, McILVAIN, CHAN, MOORE CHAN,
2 HATANO, and SINGH SANDHU, who would have been the Claimants in this
3 action had they lived, died by fire and asphyxiation.

4 78. As a direct, proximate, and legal result of the hereinabove alleged
5 delicts of Defendants and each of them, the Estates of DECEDENTS DIGNAM,
6 McIVAIN, MOORE CHAN, HATANO, and SINGH SANDHU incurred expenses
7 for funeral and cremation, all to their Estates' pecuniary damage in an amount to be
8 determined at the time of trial.

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10 79. As a further direct, proximate, and legal result of the hereinabove
11 alleged delicts of the Defendants and each of them, DECEDENTS DIGNAM,
12 McIVAIN, CHAN, MOORE CHAN, HATANO, and SINGH SANDHU were placed
13 in great fear for their lives and physical well-being and consciously suffered
14 extreme, severe, and relentless mental and emotional anguish, terror, and physical
15 pain, and continued to suffer such terror, pain, and anguish for a substantial period
16 of time until they died by fire and asphyxiation while trapped in *CONCEPTION's*
17 chaotic and over-crowded bunk room, all to their Estates' nonpecuniary damage in
18 an amount to be proven at the time of trial herein.

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21 80. As a further direct, proximate, and legal result of the hereinabove
22 alleged delicts of Defendants and each of them, DECEDENT CHAN consciously
23 suffered extreme, severe, and relentless fear for the life and physical well-being of
24 his daughter and fellow passenger KENDRA MOORE CHAN and continued to
25 suffer such fear for a substantial period of time until he died by fire and
26 asphyxiation, all to his Estate's nonpecuniary damage in an amount to be proven at
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1 the time of trial.

2 81. As a further direct, proximate, and legal result of the hereinabove
3 alleged delicts of the Defendants and each of them, DECEDENT MORE CHAN
4 consciously suffered extreme, severe, and relentless fear for the life and physical
5 well-being of her father and fellow passenger RAYMOND SCOTT CHAN and
6 continued to suffer such fear for a substantial period of time until she died by fire
7 and asphyxiation, all to her Estate's nonpecuniary damage in an amount to be
8 proven at the time of trial.

9
10 82. DECEDENT MORE CHAN was not married, had no children, and had
11 a statistical life expectancy of another fifty-four years at the time of her death. As
12 a further direct and proximate result of the hereinabove alleged delicts of the
13 Defendants and each of them, DECEDENT MORE CHAN has incurred and will
14 continue to incur a loss of future earnings and income, all to her Estate's pecuniary
15 damage in an amount to be determined at the time of trial.

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17 83. DECEDENT HATANO was not married, had no children, and had a
18 statistical life expectancy of another forty-three years at the time of her death. As
19 a further direct and proximate result of the hereinabove alleged delicts of the
20 Defendants and each of them, DECEDENT HATANO has incurred and will
21 continue to incur a loss of future earnings and income, all to her Estate's pecuniary
22 damage in an amount to be determined at the time of trial.

23
24 84. DECEDENT SINGH SANDHU was not married, had no children, and
25 had a statistical life expectancy of another thirty-eight years at the time of his death.
26 As a further direct and proximate result of the hereinabove alleged delicts of the
27

1 Defendants and each of them, DECEDENT SINGH SANDHU has incurred and will
2 continue to incur a loss of future earnings and income, all to her Estate's pecuniary
3 damage in an amount to be determined at the time of trial.

4 WHEREFORE, Plaintiffs pray judgment against Defendants TRUTH
5 AQUATICS, THE FRITZLERS, BADER, SEA LANDING, and DOES 1 through
6 5, and each of them, as is hereinafter more fully set forth.

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8 **FOURTH CAUSE OF ACTION**
9 *(Wrongful Death on Account of Ordinary Negligence*
10 *against All Defendants)*

11 85. Plaintiffs herewith refer to and by that reference incorporate, as though
12 fully set forth herein, each and every allegation averred in their First and Second
13 Causes of Action.

14 86. Defendants SEAWAY, STAPP, HAUSER, IZOR, VENTURA
15 HARBOR, DOES 6 through 15, and each of them designed, assembled, built,
16 constructed, manufactured, launched, sold, maintained, redesigned, refurbished, and
17 relaunched *CONCEPTION* for overnight service as "a small passenger vessel"
18 within the meaning of 46 C.F.R. § 175.110(a) along the Southern California coast.
19 At all times material hereto, said Defendants, and each of them owed DECEDENTS
20 DIGNAM, McILVAIN, CHAN, MOORE CHAN, HATANO, and SINGH
21 SANDHU, and every other passenger who boarded that vessel a duty under *Sieracki*
22 *v. Seas Shipping Co.*, 149 F.2d 98, 100 (3rd Cir. 1945) aff'd 328 U.S. 85 (1946), *The*
23 *T. J. Hooper*, 60 F.2d 737, 740 (2nd Cir. 1932); *Troupe v. Chicago, Duluth &*
24 *Georgian Bay Transit Co.*, 234 F.2d 253, 260 (2^d Cir. 1956), *The S.S. Samovar*, 72
25 F. Supp. 574, 584 (N.D.Cal. 1947), *McDonald v. Cape Cod Trawling Corp.*, 71 F.

1 Supp. 888, 889-890 (D.Mass 1947), and *Restatement (2d.)* § 395, *inter alia*, to
2 exercise reasonable care in designing, assembling, building, constructing,
3 maintaining, repairing, redesigning, and refurbishing said vessel so that she would
4 be reasonably fit and safe for her intended service. Said Defendants and each of
5 them, acting individually and by and through their respective agents, servants,
6 officers, and/or employees violated that duty and acted negligently and carelessly
7 in that, among other things:
8

9 a. They failed to equip *CONCEPTION* with an electrical system that was
10 safe, suitable, and reasonably fit for her intended service;

11 b. They failed to equip *CONCEPTION* and her below-deck passenger
12 spaces with smoke detectors and fire alarms that were safe, suitable, and
13 reasonably fit for her intended service;

14 c. They failed to equip *CONCEPTION* and her below-deck passenger
15 spaces with sprinkler, fire-fighting, and fire-suppressing systems that were
16 safe, suitable, and reasonably fit for her intended service;

17 d. They failed to assemble, build, construct, and refurbish *CONCEPTION*
18 with fire-resistant materials;

19 e. They failed to equip *CONCEPTION* and her below-deck passenger
20 spaces with emergency lighting, and;

21 f. They failed to equip *CONCEPTION* and her below-decks passenger
22 spaces with emergency exits that were safe, suitably marked, and sufficient
23 in number, design, and size for their intended use.
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27 87. At all times material hereto, Defendants SEAWAY, STAPP, HAUSER,
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1 IZOR, VENTURA HARBOR, and DOES 6 through 15, and each of them knew or
2 in the exercise of reasonable care should have known that unless *CONCEPTION*
3 and her systems, compartments, components, apparel, escape hatches, and
4 equipment were carefully and properly designed, assembled, built, constructed,
5 manufactured, maintained, repaired, sold, redesigned, and refurbished that vessel
6 could and would likely place the life and limb of her passengers and crew in peril.
7

8 88. Defendants SEA LANDING and DOES Defendants 1 through 5 and 16
9 through 75, and each of them designed, manufactured, assembled, inspected,
10 packaged, described, consigned, distributed, retailed, rented, and/or sold the
11 electronic equipment described in Paragraph 51 hereinabove. At all times material
12 hereto, said Defendants, and each of them, owed DECEDENTS DIGNAM,
13 McILVAIN, CHAN, MOORE CHAN, HATANO, and SINGH SANDHU and every
14 other passenger aboard *CONCEPTION* a duty under *Sieracki v. Seas Shipping Co.*,
15 149 F.2d 98, 100 (3rd Cir. 1945) aff'd 328 U.S. 85 (1946), *The S.S. Samovar*, 72 F.
16 Supp. 574, 584 (N.D.Cal. 1947), *McDonald v. Cape Cod Trawling Corp.*, 71 F.
17 Supp. 888, 889-890 (D.Mass 1947), and *Restatement, Torts (2d.)* § 395, *inter alia*,
18 to exercise reasonable care in designing, manufacturing, assembling, inspecting,
19 describing, marketing, distributing, retailing, and selling that equipment to ensure
20 that it was not unfit, unsafe, or defective for its intended use. Said Defendants, and
21 each of them, acting by and through their respective agents, servants, officers,
22 and/or employees violated that duty and acted negligently and carelessly by placing
23 that equipment into the stream of commerce even though they and each of them
24 knew, or in the exercise of ordinary care should have known, that said equipment
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1 was unfit, unsafe, and defective.

2 89. At all times material hereto, Defendants SEA LANDING, and DOES
3 1 through 5 and 16 through 75, and each of them, knew or in the exercise of
4 ordinary care should have known that unless the electrical equipment described in
5 Paragraph 51 hereinabove was not carefully designed, manufactured, assembled,
6 inspected, packaged, described, consigned, distributed, retailed, rented, sold, or
7 otherwise placed in the stream of commerce it could and would likely threaten the
8 safety, health, and life of consumers who used it for the purposes for which it was
9 intended.
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11 WHEREFORE, Plaintiffs pray judgment against all the Defendants, and each
12 of them, as is hereinafter more fully set forth.
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14 **FIFTH CAUSE OF ACTION**
15 *(Survival Damages on Account of Ordinary Negligence*
16 *against All Defendants)*

17 90. Plaintiffs herewith refer to and by that reference incorporate, as though
18 fully set forth herein, each and every allegation averred in their Third and Fourth
19 Causes of Action.

20 WHEREFORE, Plaintiffs pray judgment against all the Defendants, and each
21 of them, as is hereinafter more fully set forth.

22 **SIXTH CAUSE OF ACTION**
23 *(Wrongful Death on Account of Strict Products Liability*
24 *against Defendants SEA LANDING and DOES 1 through 5 and 16 through 75)*

25 91. Plaintiffs herewith refer to, and by that reference incorporate as though
26 fully set forth herein, each and every allegation set forth in their Fourth Cause of
27 Action.
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1 92. At all times material hereto, Defendants SEA LANDING and DOES
2 1 through 5 and 16 through 75, and each of them expected and intended the
3 electronic equipment described in Paragraph 51 hereinabove to be used by
4 recreational scuba divers on overnight dive trips like the voyage described in
5 Paragraph 49 hereinabove.
6

7 93. When said electronic equipment left the possession of Defendants SEA
8 LANDING, BADER, and DOES 1 through 5 and 16 through 75, and each of them,
9 it was in a defective condition and was unreasonably dangerous, by virtue of its
10 design, manufacture, and accompanying warnings, when used as intended or
11 misused in a reasonably foreseeable manner. At said times, each Defendant knew
12 said electronic equipment was to be and was in fact purchased and used without
13 inspection for defects by the users of said electronics equipment including, without
14 limitation, the passengers aboard *CONCEPTION*. Said electronic equipment
15 constituted defective products as that term is used in *East River*, 476 U.S. at 865,
16 leaving Defendants SEA LANDING and DOES 1 through 5 and 16 through 75,
17 and each of them, strictly liable in tort.
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20 94. Said electronic equipment was defective in design because it did not
21 perform as safely as an ordinary consumer would have expected it to perform when
22 used or misused in an intended or reasonably foreseeable way.

23 95. Said electronic equipment contained manufacturing defects when it left
24 Defendants' possession, such that the electronics equipment differed from
25 Defendant's designs and/or specifications, or from other typical units of the same
26 product line or lines.
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