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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 SORIHIN, aka SORIHIN SORIHIN, an  
13 individual; and ABDUL FATAH, an  
14 individual,

15 Plaintiff,

16 vs.

17 THOAI VAN NGUYEN, an individual  
18 doing business as SEA QUEEN II,

19 Defendant.

CASE NO. 3:16-cv-05422-JST

**AMENDED ANSWER TO  
COMPLAINT**

[Filed concurrently with Defendant  
Thoai Van Nguyen's Counterclaims]

**Demand For Jury Trial**

20 Defendant THOAI VAN NGUYEN (hereinafter "Defendant" or "Mr.  
21 Nguyen"), hereby answers the Complaint filed herein, and each cause of action  
22 thereof, as follows:  
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**INTRODUCTION**

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1. Defendant lacks sufficient knowledge or information to form a belief as to the truth of allegations about events that occurred prior to Plaintiffs’ boarding the Sea Queen II, and on that basis denies those allegations. Defendant denies the remaining allegations in Paragraph 1.

2. Defendant admits that he is domiciled in San Jose, California.

3. Defendant lacks sufficient information or knowledge to form a belief as to the truth of the allegations contained therein and on that basis denies the allegations in Paragraph 3.

4. Paragraph 4 of the Complaint contains general statements and characterizations about media attention and investigations that do not require a response because they are not allegations against this Defendant. With respect to statements that allege Plaintiffs were treated in the same way as the subjects generally discussed in the media and investigations, Defendant denies those allegations.

**PARTIES**

**Plaintiffs**

5. Defendant lacks sufficient knowledge or information to form a belief as to the truth of allegations about Plaintiff Sorihin’s citizenship, residence, or recruitment and on that basis denies those allegations. Defendant denies the remaining allegations in Paragraph 5.

6. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations about Plaintiff Fatah’s citizenship, residence, or recruitment and on that basis denies those allegations. Defendant denies the remaining allegations in Paragraph 6.

**Defendant**

7. Defendant admits that he is a United States citizen and a resident of San Jose, California. Defendant also admits that he is owner of the commercial fishing vessel Sea Queen II (US Coast Guard Documentation Number 939008) and that he does business as the Sea Queen II, which is registered as a fictitious business name in Santa Clara County, California. Defendant denies the remaining allegations in Paragraph 7.

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**RELEVANT NON-PARTIES**

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3 8. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
4 of the allegations in Paragraph 8 and on that basis, denies those allegations.

5 9. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
6 of the allegations in Paragraph 9 and on that basis, denies those allegations.

7 10. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
8 of the allegations in Paragraph 10 and on that basis, denies those allegations.

9 11. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
10 of the allegations in Paragraph 11 and on that basis, denies those allegations.

**JURISDICTION AND VENUE**

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12 12. Defendant admits that Plaintiffs have alleged jurisdiction based on 18 U.S.C. 1589,  
13 *et seq.* and 28 U.S.C 1350, however Defendant denies the allegations giving rise to such claim of  
14 jurisdiction.

15 13. Defendant admits that Plaintiffs have personal jurisdiction over Defendant. All  
16 remaining allegations are denied.

17 14. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
18 of the allegations in Paragraph 14 and on that basis, denies those allegations.

19 15. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
20 of the allegations in Paragraph 15 and on that basis, denies those allegations.

**PLAINTIFFS' STATEMENT OF FACTS**

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22 16. Paragraph 16 contains no charging allegations against the responding  
23 Defendant, and therefore requires no answer. To the extent Plaintiffs argue Paragraph 16 contains  
24 charging allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
25 information to form a belief as to the truth of those allegations and on that basis, denies the  
26 allegations in Paragraph 16.

27 17. Paragraph 17 contains no charging allegations against the responding Defendant,

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1 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 17 contains charging  
2 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
3 information to form a belief as to the truth of those allegations and, on that basis, denies the  
4 allegations in Paragraph 17.

5 18. Paragraph 18 contains no charging allegations against the responding Defendant,  
6 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 18 contains charging  
7 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
8 information to form a belief as to the truth of those allegations and on that basis, denies the  
9 allegations in Paragraph 18.

10 19. Paragraph 19 contains no charging allegations against the responding Defendant,  
11 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 19 contains charging  
12 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
13 information to form a belief as to the truth of those allegations and on that basis, denies the  
14 allegations in Paragraph 19.

15 20. Paragraph 20 contains no charging allegations against the responding Defendant,  
16 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 20 contains charging  
17 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
18 information to form a belief as to the truth of those allegations and on that basis, denies the  
19 allegations contained in Paragraph 20.

20 21. Paragraph 21 contains no charging allegations against the responding Defendant,  
21 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 21 contains charging  
22 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
23 information to form a belief as to the truth of those allegations and on that basis, denies the  
24 allegations contained in Paragraph 21.

25 22. Paragraph 22 contains no charging allegations against the responding Defendant,  
26 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 22 contains charging  
27 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
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1 information to form a belief as to the truth of those allegations and on that basis, denies the  
2 allegations contained in Paragraph 22.

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1           23. Paragraph 23 contains no charging allegations against the responding Defendant,  
2 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 23 contains charging  
3 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
4 information to form a belief as to the truth of those allegations and on that basis, denies the  
5 allegations contained in Paragraph 23.

6           24. Paragraph 24 contains no charging allegations against the responding Defendant,  
7 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 24 contains charging  
8 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
9 information to form a belief as to the truth of those allegations and on that basis, denies the  
10 allegations contained in Paragraph 24.

11           25. Paragraph 25 contains no charging allegations against the responding Defendant,  
12 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 25 contains charging  
13 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
14 information to form a belief as to the truth of those allegations and on that basis, denies the  
15 allegations contained in Paragraph 25.

16           26. Paragraph 26 contains no charging allegations against the responding Defendant,  
17 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 26 contains charging  
18 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
19 information to form a belief as to the truth of those allegations and on that basis, denies the  
20 allegations contained in Paragraph 26.

21           27. Paragraph 27 contains no charging allegations against the responding Defendant,  
22 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 27 contains charging  
23 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
24 information to form a belief as to the truth of those allegations and on that basis, denies the  
25 allegations contained in Paragraph 27.

26           28. Paragraph 28 contains no charging allegations against the responding Defendant,  
27 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 28 contains charging  
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1 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
2 information to form a belief as to the truth of those allegations and on that basis, denies the  
3 allegations contained in Paragraph 28.

4 29. Paragraph 29 contains no charging allegations against the responding Defendant,  
5 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 29 contains charging  
6 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
7 information to form a belief as to the truth of those allegations and on that basis, denies the  
8 allegations contained in Paragraph 29.

9 30. Paragraph 30 contains no charging allegations against the responding Defendant,  
10 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 30 contains charging  
11 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
12 information to form a belief as to the truth of those allegations and on that basis, denies the  
13 allegations contained in Paragraph 30.

14 31. Paragraph 31 contains no charging allegations against the responding Defendant,  
15 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 31 contains charging  
16 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
17 information to form a belief as to the truth of those allegations and on that basis, denies the  
18 allegations contained in Paragraph 31.

19 32. Paragraph 32 contains no charging allegations against the responding Defendant,  
20 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 32 contains charging  
21 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
22 information to form a belief as to the truth of those allegations and on that basis, denies the  
23 allegations contained in Paragraph 32.

24 33. Paragraph 33 contains no charging allegations against the responding Defendant,  
25 and therefore requires no answer. To the extent Plaintiffs argue Paragraph 33 contains charging  
26 allegations against the responding Defendant, Defendant lacks sufficient knowledge or  
27 information to form a belief as to the truth of those allegations and on that basis, denies the  
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1 allegations contained in Paragraph 33.

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1           34.     Defendant admits that he owns and operates the Sea Queen II as a commercial  
2 fishing vessel.

3           35.     Defendant admits he contacted an individual named Santiago in 2009 for the  
4 purpose of retaining crew to work aboard the Sea Queen II. Defendant lacks sufficient knowledge  
5 or information to form a belief as to the truth of the remaining allegations contained in Paragraph  
6 35 and on that basis, denies the remaining allegations.

7           36.     Defendant lacks sufficient knowledge or information to form a belief as to the truth  
8 of the allegations in Paragraph 36 and on that basis, denies the allegations contained in Paragraph  
9 36.

10          37.     Defendant lacks sufficient knowledge or information to form a belief as to the truth  
11 of the allegations in Paragraph 37 and on that basis, denies the allegations contained in Paragraph  
12 37.

13          38.     Defendant lacks sufficient knowledge or information to form a belief as to the truth  
14 of the allegations in Paragraph 28 and on that basis, denies the allegations contained in Paragraph  
15 38.

16          39.     Defendant lacks sufficient knowledge or information to form a belief as to the truth  
17 of the allegations in Paragraph 39 and on that basis, denies the allegations contained in Paragraph  
18 39.

19          40.     Defendant lacks sufficient knowledge or information to form a belief as to the truth  
20 of the allegations in Paragraph 40 and on that basis, denies the allegations contained in Paragraph  
21 40.

22          41.     Defendant lacks sufficient knowledge or information to form a belief as to the truth  
23 of the allegations in Paragraph 41 and on that basis, denies the allegations contained in Paragraph  
24 41.

25          42.     Defendant lacks sufficient knowledge or information to form a belief as to the truth  
26 of the allegations in Paragraph 42 and on that basis, denies the allegations contained in Paragraph  
27 42.

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2 43. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
3 of the allegations in Paragraph 43 and on that basis, denies the allegations contained in Paragraph  
4 43.

5 44. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
6 of the allegations in Paragraph 44 and on that basis, denies the allegations contained in Paragraph  
7 44.

8 45. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
9 of the allegations in Paragraph 45 and, on that basis, denies the allegations contained in Paragraph  
10 45.

11 46. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
12 of the allegations in Paragraph 46 and on that basis, denies the allegations contained in Paragraph  
13 46.

14 47. Defendant lacks sufficient knowledge or information to form a belief as to the  
15 truth of the allegations in Paragraph 47 and on that basis, denies the allegations contained in  
16 Paragraph 47.

17 48. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
18 of the allegations in Paragraph 48 and on that basis, denies the allegations contained in Paragraph  
19 48.

20 49. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
21 of the allegations in Paragraph 49 and, on that basis, denies the allegations contained in Paragraph  
22 49.

23 50. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
24 of the allegations in Paragraph 50 and, on that basis, denies the allegations contained in Paragraph  
25 50.

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1           51. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
2 of the allegations in Paragraph 51 and, on that basis, denies the allegations contained in Paragraph  
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5           52. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
6 of the allegations in Paragraph 52 and on that basis, denies the allegations contained in Paragraph  
7 52.

8           53. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
9 of the allegations in Paragraph 53 and on that basis, denies the allegations contained in Paragraph  
10 53.

11           54. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
12 of the allegations in Paragraph 54 and on that basis, denies the allegations contained in Paragraph  
13 54.

14           55. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
15 of the allegations in Paragraph 55 and on that basis, denies the allegations contained in Paragraph  
16 55.

17           56. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
18 of the allegations in Paragraph 56 and on that basis, denies the allegations contained in Paragraph  
19 56.

20           57. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
21 of the allegation that Plaintiffs remained on board the Knowledge for approximately eleven days.  
22 Defendant denies the remaining allegations in Paragraph 57.

23           58. Defendant denies the allegations in Paragraph 58.

24           59. Defendant denies the allegations in Paragraph 59.

25           60. Defendant admits Plaintiffs worked onboard the Sea Queen II and that the vessel  
26 fished at various times for swordfish and tuna. Defendant also admits that the Sea Queen II docked  
27 in Honolulu, Hawaii San Francisco, California. All remaining allegations are denied.

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1           61. Defendant denies the allegations contained in Paragraph 61.

2           62. Defendant admits that on advice of the Office of Customs and Border Protection,  
3 he collected Plaintiffs' passports and Seamen's books so that whenever the vessel was inspected  
4 by government agents, all required identity papers could be immediately produced. Except as so  
5 expressly admitted, Defendant denies the allegations contained in Paragraph 62.

6           63. Defendant denies the allegations in Paragraph 63.

7           64. Defendant admits that he told Plaintiffs and other crewmembers to work hard.  
8 Defendant denies the remaining allegations in Paragraph 64.

9           65. Defendant admits that he recognized Plaintiff Fatah was not as experienced as  
10 Plaintiff Sorihin. Defendant denies the remaining allegations in Paragraph 65.

11          66. Defendant denies the allegations in Paragraph 66.

12          67. Defendant denies the allegations in Paragraph 67.

13          68. Defendant denies the allegations in Paragraph 68.

14          69. Defendant denies the allegations in Paragraph 69.

15          70. Defendant admits that fishing operations can be physically demanding work for the  
16 captain and crew, and that they sometimes work long hours and sometimes do not work for days at  
17 a time. Except as so expressly admitted, Defendant denies the allegations in Paragraph 70.

18          71. Defendant was aware that Plaintiff Sorihin claimed injury to his finger while  
19 landing a shark using a method he had been instructed not to use. Except as so expressly admitted,  
20 Defendant denies the allegations contained in Paragraph 71.

21          72. Defendant denies the allegations in Paragraph 72.

22          73. Defendant denies the allegations in Paragraph 73.

23          74. Defendant denies the allegations in Paragraph 74.

24          75. Defendant denies the allegations in Paragraph 75.

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1           76. Defendant admits that the Sea Queen II docked in Honolulu, Hawaii. Defendant  
2 admits that Plaintiffs' work duties while at dock included unloading the fish and cleaning out the  
3 boat. Defendant admits that the area where fishing boats docked in Honolulu was fenced and  
4 monitored by a guard in order to prevent entry onto U.S. soil by foreign crew who worked on U.S.  
5 fishing vessels pursuant to 46 U.S.C. § 8103(i)(3), which permits fishing vessels fishing  
6 exclusively for "highly migratory species" to use non-citizens as crew. All other allegations in  
7 Paragraph 76 are denied.

8           77. Defendant lacks sufficient information or knowledge to form a belief as to the truth  
9 of the allegation contained in Paragraph 77 and on that basis, denies the allegations.

10           78. Defendant admits that – among other payments – he paid Plaintiff Sorihin \$350 and  
11 Plaintiff Fatah \$300, specifically wiring money home to their families in Indonesia at Plaintiffs'  
12 request because they had virtually no expenses aboard the SEA QUEEN II. Defendant denies that  
13 Plaintiffs showed him their employment contract with PT Shilla or any other party. Defendant  
14 lacks sufficient knowledge or information to form a belief as to the truth of the allegations relating  
15 to agreements between Plaintiffs and another party, which agreements Defendant never saw, and  
16 on that basis denies such allegations. Defendant denies the remaining allegations contained in  
17 Paragraph 78.

18           79. Defendant denies that Plaintiffs asked him to pay them additional money based on  
19 an agreement between Plaintiffs and PT Shilla, of which Defendant was unaware. Defendant  
20 denies all other allegations in Paragraph 79.

21           80. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
22 of Plaintiffs' allegations in Paragraph 80 about their agreements with other parties, unknown to  
23 Defendant, and on that basis denies the allegations.

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1           81. Defendant admits that in Honolulu he informed the crew that they would be  
2 heading to San Francisco and fishing for swordfish. Defendant lacks sufficient information or  
3 knowledge to form a belief as to the truth of the allegations about their understanding about the  
4 species that were the subject of their fishing operations and on that basis, denies those allegations.  
5 Defendant denies the remaining allegations contained in Paragraph 81.

6           82. Defendant admits that they fished for Swordfish and that fishing operations in  
7 general can be difficult for captain and crew and that while they sometimes work long hours, the  
8 crew also has days of no work at all while transiting to and from port. Defendant denies all  
9 remaining allegations.

10           83. Defendant admits that the Sea Queen II was docked at Pier 45 in San Francisco  
11 and that Plaintiffs' work duties included unloading the fish and cleaning out the boat. Defendant  
12 also admits that he informed Plaintiffs at various times during their time on the Sea Queen II that  
13 under U.S. law, the U.S. Office of Customs and Border Protection ordered all foreign crew  
14 without visas to be detained on board the Sea Queen II. All remaining allegations in Paragraph 83  
15 are denied.

16           84. Defendant admits that the Sea Queen II engaged in fishing operations and docked  
17 in San Francisco and that Plaintiffs left the Sea Queen II without authorization from the U.S.  
18 government. All other allegations are denied.

19           85. Defendant admits that Plaintiffs did not have landing permits or immigration  
20 authorization to be in the United States and admits that he told Plaintiffs that since they did not  
21 have authorization to be on U.S. soil, the U.S. government ordered that they remain on board the  
22 vessel. Defendant lacks sufficient knowledge or information to form a belief as to the truth of  
23 statements made to Plaintiffs by other parties, or whether – had Plaintiffs been informed as to the  
24 U.S. laws that applied to their work aboard U.S. fishing vessels – they would have agreed to the  
25 terms of their employment with another party, and on that basis denies these allegations and any  
26 remaining allegations in Paragraph 85.

27           86. Defendant lacks sufficient information or knowledge to form a belief as to the truth  
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1 of the allegations in Paragraph 86 and on that basis, denies the allegations.

2 87. Defendant denies the allegations in Paragraph 87.

3 88. Defendant lacks sufficient information or knowledge to form a belief as to the truth  
4 of the allegations in Paragraph 88 and on that basis, denies the allegations.

5 89. Defendant lacks sufficient information or knowledge to form a belief as to the truth  
6 of the allegations in Paragraph 89 and on that basis, denies the allegations.

7 90. Defendant denies the allegations in Paragraph 90.

8 91. Defendant lacks sufficient information or knowledge to form a belief as to the truth  
9 of the allegations in Paragraph 91 and on that basis denies the allegations.

10 92. Defendant lacks sufficient information or knowledge to form a belief as to truth of  
11 Plaintiffs' motivations for leaving the Sea Queen II in violation of U.S. law and the statute  
12 permitting Plaintiffs to work aboard a U.S. fishing vessel, and on that basis, denies the allegations.

13 93. Defendant admits that he and his son Tony left the Sea Queen II while it was  
14 docked in San Francisco. Defendant admits that other crewmembers on board drank heavily while  
15 they were gone. Defendant denies that the other crewmembers were his nephews. Defendant  
16 admits based on his observations at the time that Plaintiffs took their original and copies of their  
17 passports and Seaman's books, along with cash belonging to Defendant, and left the Sea Queen II.  
18 Defendant denies all remaining allegations.

19 94. Defendant denies that plaintiffs were emaciated and sunburned as a result of their  
20 time aboard the Sea Queen II, or that Plaintiff Sorihin's hand was swollen from an injury sustained  
21 aboard the Sea Queen II. Defendant lacks sufficient information or knowledge to form a belief as  
22 to the truth of the remaining allegations and on that basis, denies the allegations.

23 95. Defendant lacks sufficient information or knowledge to form a belief as to the truth  
24 of the allegations in Paragraph 95 and on that basis, denies the allegations.

25 **CAUSES OF ACTIONS**

26 **FIRST CLAIM FOR RELIEF**

27 **Violations of the Trafficking Victims Protection Reauthorization Act ("TVPRA")**

28 **18 U.S.C. 1595**

1           96. Defendant incorporates his responses to Paragraphs 1 through 95 as though fully  
2 restated herein.

3           97. Defendant denies the allegations in Paragraph 97.

4           98. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
5 of the allegations in Paragraph 98 and on that basis denies the allegations. To the extent the  
6 allegations suggest Defendant's conduct was illegal or inconsistent with compliance with laws  
7 pertaining to employment of foreign nationals pursuant to 46 U.S.C. § 8103(i)(3), Defendant  
8 denies those allegations.

9           99. Defendant lacks sufficient knowledge or information to form a belief as to the truth  
10 of Plaintiffs' allegations about their subjective understanding about whether they were permitted  
11 to leave the vessel with or without their passports, or about their fear that they could not obtain  
12 future employment if they left the Sea Queen II without their seaman's books and on that basis,  
13 denies the allegations.

14           100. Defendant denies he "harbored, transported, and obtained the Plaintiffs for labor or  
15 services by means of violations of Title 18, chapter 77," or that he required Plaintiffs to perform  
16 hazardous work up to 20 hours per day without proper protective gear, causing them to suffer  
17 injuries and illness. Defendant denies that Plaintiffs showed him a contract they entered into with  
18 a third party, and denies that he declined to pay Plaintiffs a bonus pursuant to that contract  
19 (although Defendant paid Plaintiffs money at various times, in addition to the wages Defendant  
20 had agreed to pay, and wired money home to Plaintiffs' families at their request). Defendant  
21 denies he told Plaintiffs they "would have to buy their freedom" or that he did anything other than  
22 warn Plaintiffs that under U.S. law, they could not leave the guarded dock area in Honolulu or Pier  
23 45 in San Francisco. Defendant denies any remaining allegations contained in Paragraph 100.

24           101. Defendant denies that he obtained labor and services of Plaintiffs by force, threats  
25 of force, threats of serious harm and/or physical restraint [*sic*]. Defendant admits that while they  
26 were at sea, no one could leave the vessel. Defendant denies that while at sea or when docked,  
27 Plaintiffs could not contact anyone for assistance, particularly since Plaintiffs arrived on the Sea  
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1 Queen II with their own cell phones, which they were seen using throughout their time aboard the  
2 vessel, and while docked Plaintiffs were free to communicate with other individuals who came  
3 into contact with the vessel, including other government agents who regularly boarded the vessel  
4 and whose own vessels (such as the U.S. Coast Guard and the police) were docked within view of  
5 the Sea Queen II. Defendant admits that the Office of Customs and Border Protection prevented  
6 all non-U.S. citizens from leaving the fenced dock area in Honolulu if they did not have  
7 permission from the Office of Customs and Border Protection. Defendant denies all remaining  
8 allegations.

9 102. Defendant denies the allegations in Paragraph 102.

10 103. Defendant denies the allegations in Paragraph 103.

11 104. Defendant denies the allegations in Paragraph 104.

12 105. Defendant denies the allegations in Paragraph 105.

13 106. Defendant admits that the Sea Queen II was equipped and loaded in order to  
14 conduct fishing operations and that he hired Plaintiffs, neither of whom are U.S. citizens, with the  
15 assistance of Hernan Santiago and PT Shilla, to work as part of his crew in furtherance of his  
16 fishing operations. Defendant admits that he took the Sea Queen II to just outside the 12-mile  
17 territorial boundary of U.S. waters outside Honolulu, in order to comply with U.S. laws for  
18 transferring non-citizen crew under 46 U.S.C. § 8103(i)(3), which permits non-U.S. citizens to  
19 work aboard U.S. fishing vessels fishing exclusively for “highly migratory species.” All other  
20 allegations are denied.

21 107. Defendant admits that Plaintiffs worked aboard the Sea Queen II, pursuant to 46  
22 U.S.C. § 8103(i)(3), as it fished for “highly migratory species” in the waters between Hawaii and  
23 the West Coast of the United States. Defendant denies all other allegations in Paragraph 107.

24 108. Defendant admits that Plaintiffs worked aboard the Sea Queen II, pursuant to 46  
25 U.S.C. § 8103(i)(3), as it fished for “highly migratory species” in the waters between Hawaii and  
26 the West Coast of the United States. Defendant denies all other allegations in Paragraph 108.  
27 Defendant denies all other allegations in Paragraph 108.

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1 115. Defendant denies the allegations in Paragraph 115.

2 116. Paragraph 116 is a recitation of various laws and requires no response from  
3 Defendant.

4 117. Defendant denies the allegations in Paragraph 117.

5 118. Defendant denies the allegations in Paragraph 118.

6 119. Defendant denies the allegations in Paragraph 119.

7 120. Defendant admits that he is a citizen and resident of the United States. Defendant  
8 denies all remaining allegations in Paragraph 120.

9 121. Defendant denies the allegations in Paragraph 121.

10 122. Defendant denies the allegations in Paragraph 122.

11 WHEREFORE, Defendant prays for relief as hereinafter set forth.

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE – FAILURE TO MITIGATE**

14 Defendant is informed and believes, and on the basis of that information and belief alleges,  
15 that the Plaintiffs have unreasonably failed to act in such a manner as to mitigate the damages of  
16 which they complain, including but not limited to their failure to mitigate loss of assets and loss of  
17 educational and business opportunities.

18 **SECOND AFFIRMATIVE DEFENSE – FAULT OF OTHERS**

19 Defendant is informed and believes, and on the basis of that information and belief alleges,  
20 that if Plaintiffs sustained damages by reason of the matters alleged in the Complaint, which is  
21 denied, then said damages were, in whole or in part, caused by the fault of third parties for whom  
22 Defendant is in no way responsible, including but not limited the fault of all individuals and  
23 entities other than Defendant referenced in Plaintiff’s Complaint.

24 **THIRD AFFIRMATIVE DEFENSE – LIMITATION OF LIABILITY ACT 46**

25 **U.S.C. 30501-30512**

26 Defendant is informed and believes and thereon alleges that recovery by Plaintiffs for the  
27 injuries and damages complained of by plaintiff, if any there were, is limited to the value of

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1 Defendant's interest in the vessel, the SEA QUEEN II, at the time the voyage alleged by Plaintiffs  
2 terminated. Defendant claims the benefit of limitation of liability provided by 46 U.S.C. §§  
3 30501-30512 inclusive, and all acts amendatory thereof and supplementary thereto, whether  
4 named herein or not, and defendant also hereby claims the benefit of all statutes and acts of the  
5 Congress of the United States, whether named herein or not, granting exoneration from liability, or  
6 providing for limitation of liability, to vessel owners.

7 FOURTH AFFIRMATIVE DEFENSE – WAIVER/RELEASE/CONSENT

8 Defendant is informed and believes, and on the basis of such information and belief  
9 alleges, that Plaintiffs' claims are barred by the doctrines of waiver, release, and/or consent based  
10 in part on Plaintiffs' voluntary and intentional agreement to work as non-U.S. citizen crew  
11 onboard a U.S. ocean-going fishing vessel, fishing for "highly migratory species" for a specified  
12 time period and pursuant to limitations and conditions known to Plaintiffs at the time of their  
13 agreement, which limitations and conditions Plaintiffs now allege constitute violations of the  
14 Trafficking Victims Protection Reauthorization Act.

15 FIFTH AFFIRMATIVE DEFENSE – ESTOPPEL

16 Defendant is informed and believes, and on the basis of such information and belief  
17 alleges, that Plaintiffs are estopped from asserting their claims herein because those claims are  
18 based in part on Plaintiffs' representation to Defendant, and Defendant's reasonable reliance on  
19 those representations, that they voluntarily agreed to work as non-U.S. citizen crew onboard a U.S.  
20 ocean-going fishing vessel, fishing for "highly migratory species" for a specified time period and  
21 pursuant to limitations and conditions known to Plaintiffs at the time of their agreement, which  
22 limitations and conditions Plaintiffs now allege constitute violations of the Trafficking Victims  
23 Protection Reauthorization Act.

24 SIXTH AFFIRMATIVE DEFENSE – ACCORD AND SATISFACTION

25 Defendant is informed and believes, and on the basis of such information and belief  
26 alleges, that some or all of Plaintiffs' damages prayed for are barred by the principles of accord  
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1 and satisfaction based in part on payment of agreed wages to Plaintiffs in the course of their  
2 employment with Defendant for services rendered.

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4 SEVENTH AFFIRMATIVE DEFENSE – NON-PECUNIARY DAMAGES

5 Defendant is informed and believes, and on the basis of such information and belief  
6 alleges, that some or all of Plaintiffs’ claims for non-pecuniary damages are barred, as such  
7 damages are not available for the injuries alleged by Plaintiffs.

8 EIGHTH AFFIRMATIVE DEFENSE – PREEMPTION BY LAW

9 Defendant is informed and believes, and on the basis of such information and belief  
10 alleges, that Plaintiffs’ Complaint and the causes of action stated therein are preempted by Federal  
11 and state law, including but not limited to U.S. immigration laws such as Immigration and  
12 Naturalization Act § 212 (a)(7)(A)(i)(I) and 46 U.S.C. § 8103(i)(3).

13 NINTH AFFIRMATIVE DEFENSE – JUSTIFICATION BY LAW

14 Defendant is informed and believes, and on the basis of such information and belief  
15 alleges, that Defendant’s maintenance of all crew identity documents in one place on the vessel,  
16 conveyance to Plaintiffs of the formal detain orders by the Officers of Customs and Border  
17 Protection (who inspected the vessel, reviewed Plaintiffs’ and others’ belongings and identity  
18 documents) , and any other actions relating to applicable laws were justified as required by law,  
19 including but not limited to U.S. immigration laws such as Immigration and Naturalization Act §  
20 212 (a)(7)(A)(i)(I) and 46 U.S.C. § 8103(i)(3).

21 TENTH AFFIRMATIVE DEFENSE – UNCLEAN HANDS

22 Defendant is informed and believes, and on the basis of such information and belief  
23 alleges, that Plaintiffs’ demands for equitable remedies are barred by the doctrine of unclean hands  
24 based in part on Plaintiffs’ subsequent knowing misrepresentations about the conditions under  
25 which they were working while onboard the SEA QUEEN II, and by Plaintiffs’ knowing violation  
26 of the limitations and conditions (pursuant to 46 U.S.C. § 8103(i)(3)) of their employment into  
27 which they knowingly entered.

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ELEVENTH AFFIRMATIVE DEFENSE – SET-OFF

Defendant is informed and believes, and on the basis of such information and belief alleges, that the damages claimed by Plaintiffs’ shall be reduced by the amount of damages and penalties suffered by Defendants as a result of Plaintiffs’ actions, including but not limited to Plaintiffs’ violation of U.S. immigration laws such as Immigration and Naturalization Act § 212 (a)(7)(A)(i)(I) and 46 U.S.C. § 8103(i)(3).

TWELFTH AFFIRMATIVE DEFENSE – ASSUMPTION OF RISK

Defendant is informed and believes, and on the basis of such information and belief alleges, that Plaintiffs’ Complaint and the causes of action stated therein are barred by the principles of assumption of risk based in part on Plaintiffs’ voluntary agreement to work for compensation of an agreed amount onboard the SEA QUEEN II under the limitations and conditions known by Plaintiffs at the time of their agreement.

THIRTEENTH AFFIRMATIVE DEFENSE – 46 U.S.C. § 13013

Defendant is informed and believes, and on the basis of such information and belief alleges, any damages prayed for based upon various provisions of 46 U.S.C. § 10313 (pertaining to seaman’s wages) are barred by the exemptions for fishing vessels.

FOURTEENTH AFFIRMATIVE DEFENSE - EXEMPTIONS FROM THE FAIR LABOR STANDARDS ACT RELATING TO FISHING

Defendant is informed and believes, and on the basis of such information and belief alleges, any damages prayed for based on Federal statutory wage and hour claims will be limited and governed by 29 CFR 783.51 (“Seamen on a Fishing Vessel”) and 29 CFR part 784 (“Provisions of the Fair Labor Standards Act Applicable to Fishing and Operations on Aquatic Products”), Subparts A (“General”) and B (“Exemptions Provisions Relating to Fishing and Aquatic Products”).

PRAYER FOR RELIEF

WHEREFORE, Defendant prays that Plaintiffs take nothing by reason of the Complaint on file herein, and that said Complaint, and each claim for relief therein, be dismissed with prejudice



1 and at Plaintiffs' cost, and that Defendant have judgment for its costs of suit and such other relief  
2 as the Court may deem proper and just.

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5 Date: 12/28/2016

LEWIS BRISBOIS BISGAARD & SMITH

6 By: /s/ Lynn Krieger

7 Lynn L. Krieger

8 Matthew W. J. Johnston

9 Attorneys for Defendant

10 THOAI VAN NGUYGEN

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**DEMAND FOR JURY TRIAL**

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Defendant hereby demands a trial by jury on all issues so triable.

Date: 12/28/16

LEWIS BRISBOIS BISGAARD & SMITH

By: /S/Lynn L. Krieger  
Lynn L. Krieger  
Matthew W. J. Johnston  
Attorneys for Defendant  
THOAI VAN NGUYGEN