

04/27/2017 at 05:49:11 PM

Clerk of the Superior Court
By Vicky Huang, Deputy Clerk

1 JOSEPH A. WALSH II, State Bar No. 143694
joe.walsh@clydeco.us
2 ELLEN E. McGLYNN, State Bar No. 270367
ellen.mcglynn@clydeco.us
3 CLYDE & CO US LLP
4 4675 MacArthur Court, Suite 500
Newport Beach, California 92660
Telephone: (949) 346-5700
5 Facsimile: (949) 346-5719

6 Attorneys for Plaintiffs

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

10 30-2017-00917254-CU-BC-CJC

11 PETER NEVINS, SHAWN MACLACHLAN,
NATHAN HAEGER, JEFFREY DENSON,
12 JAY LEWIS, MATTHEW SMART,
MATTHEW LEARMONTH AND LUKE
13 DOYLE, each as individuals,

Case No. Judge Linda Marks

**COMPLAINT FOR COMPENSATORY
AND PUNITIVE DAMAGES; AND
DEMAND FOR TRIAL BY JURY**

14 Plaintiffs,

15 v.

16 RIP CURL, INC., a California corporation; PT
NEPTUNE ADVENTURES, an unknown
17 corporate entity; FRANCOIS PAYOT, an
individual; DOUG WARBRICK, an
18 individual; ANDRE SICKINGER, an
individual; and UNKNOWN DEFENDANTS
19 1 - 25, inclusive,

1. NEGLIGENCE;
2. NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS;
3. BREACH OF CONTRACT;
4. FRAUD; and
5. UNJUST ENRICHMENT

20 Defendant.

21
22 Plaintiffs, PETER NEVINS, SHAWN MACLACHLAN, NATHAN HAEGER, JEFFREY
23 DENSON, JAY LEWIS, MATTHEW SMART, MATTHEW LEARMONTH and LUKE DOYLE
24 (collectively hereinafter "PLAINTIFFS" or "Passengers"), bring this action against Defendants
25 RIP CURL, INC.; PT NEPTUNE ADVENTURES (a/k/a NEPTUNE ADVENTURES a/k/a RIP
26 CURL INDONESIA); FRANCOIS PAYOT, an individual; DOUG WARBRICK, an individual,
27 ANDRE SICKINGER, an individual; and UNKNOWN DEFENDANTS 1 through 25
28 (collectively "DEFENDANTS") and herein allege upon information and belief as follows:

1 **I. NATURE OF THE ACTION**

2 1. PLAINTIFFS are an active and avid group of surfing enthusiasts who on or about
3 July 18, 2015 were passengers aboard the DEFENDANTS' legendary surfing excursion vessel, the
4 M/V QUEST 1, when it sank in the middle of the night on the high seas approximately 30 miles
5 off the coast of the Mentawai Islands in the Indian Ocean. PLAINTIFFS seek compensation for
6 injuries and losses they each experienced as a result of the DEFENDANTS' breach of contract and
7 tortious conduct which arose out of, and related to, the vessel's sinking.

8 2. PLAINTIFFS seek a compensatory damage award because defendants failed to
9 exercise reasonable care. The hull of the QUEST 1 was not staunch, watertight or reasonably fit
10 for sea. The overall material condition of the vessel and competence of her crew were extremely
11 poor and exposed the PLAINTIFFS to multiple unreasonably dangerous conditions. The
12 continuous rate of unimpeded flooding followed by the complete loss of power thwarted
13 PLAINTIFFS' frantic attempts to save the vessel and thereby save themselves. PLAINTIFFS
14 were stranded aboard the vessel without properly functioning safety equipment including, but not
15 limited to, emergency positioning beacons, satellite communications and other lifesaving
16 equipment. An incompetent Captain and crew, in complete disregard for the PLAINTIFFS' safety,
17 panicked and abandoned ship without the PLAINTIFFS. PLAINTIFFS were forced to abandon
18 the vessel in the dark of night into very rough seas. They initially took to a single life raft,
19 surfboards and other floating debris. In absolute distress and completely stranded, PLAINTIFFS
20 floated for several more terrifying hours in complete darkness, seasick and distraught.

21 3. PLAINTIFFS also seek an award of punitive damages for the reckless, willful,
22 outrageous, callous and unconscionable conduct undertaken by the DEFENDANTS, and each of
23 them, in, *inter alia*,: (1) exposing and subjecting the PLAINTIFFS to an unreasonably unsafe
24 vessel with an unqualified and incompetent crew; (2) putting the PLAINTIFFS in a dangerous
25 situation; (3) abandoning the PLAINTIFFS aboard the sinking vessel casting them away without
26 sufficient or proper emergency life-saving equipment; (4) failing to notify or even attempting to
27 notify qualified search and rescue authorities or entities (such as the local or regional coast guard)
28 when it became known that the PLAINTIFFS were in distress, stranded at sea, and at risk of being

1 forever lost; (5) failing to assemble, instruct, or provide any reasonable rescue effort with other
2 vessels in the vicinity of the PLAINTIFFS last known location; (6) failing to provide reasonable
3 aid or any assistance whatsoever to the PLAINTIFFS, when they were known to be in distress and
4 shock – suffering from mental and physical injuries – and ignoring and eventually rejecting
5 PLAINTIFFS' repeated requests for help to return to their homes; and (7) leaving them stranded
6 yet again upon their arrival home withholding reimbursement of their damages, losses, medical
7 bills and lost property. PLAINTIFFS seek an award of punitive damages to ensure that the
8 DEFENDANTS, and each of them, change their operations and alter their conduct so that they
9 prevent future incidents and mistreatment of the public.

10 4. PLAINTIFFS expressly reserve the right to amend this complaint to, *inter alia*, add
11 additional parties and assert claims against such additional parties and the present DEFENDANTS
12 herein.

13 **II. JURISDICTION AND VENUE**

14 5. This Court has subject matter and personal jurisdiction pursuant to Cal. Const. Art.
15 VI, §4 and Cal Civ. Pro. §§ 410.10, 410.70; *Burnham v. Sup. Ct.* (1990) 495 US 604, 612;
16 *Internat. Shoe Co. v. State of Wash., Office of Unemp. Comp. & Placement* (1945) 326 US 310,
17 316; *Burger King Corp. v. Rudzewicz* (1985) 471 US 462, 475; *Ranza v. Nike, Inc.* (9th Cir. 2015)
18 793 F3d 1059, 1073.

19 6. At all relevant times, DEFENDANTS, are subject to jurisdiction in the state of
20 California because each of them, regularly engage in and/or solicit business, engage in other
21 persistent courses of conduct, or otherwise derive substantial benefit, goodwill, or revenue from
22 goods used or consumed and/or services sold or rendered within the reach of the state of
23 California.

24 7. DEFENDANTS, and each of them, are subject to jurisdiction in the state of
25 California because PLAINTIFFS' claims arise out of the DEFENDANTS' solicitations,
26 promotions and transactions of business within the reach of the state of California.

27 8. DEFENDANTS, and each of them, are subject to jurisdiction in the state of
28 California because PLAINTIFFS' claims arise out of the DEFENDANTS' tortious conduct within

1 the reach of the state of California which also caused injury and harm to citizens within the State
2 of California.

3 9. DEFENDANTS, and each of them, are subject to jurisdiction in the state of
4 California because PLAINTIFFS' claims arise out of the DEFENDANTS' breach of contracts
5 which were negotiated, entered into, performed by PLAINTIFFS and breached by
6 DEFENDANTS within the reach of the State of California.

7 10. Venue is proper pursuant to Cal. Civ. Proc. § 395(a); see *Brown v. Sup.Ct.* (1984)
8 37 C3d 477, 483.

9 **III. PARTIES**

10 **A. Plaintiffs**

11 11. Plaintiff PETER NEVINS is an individual who resides in Orange County,
12 California, and is a real party in interest with capacity to act as Plaintiff.

13 12. Plaintiff SHAWN MACLACHLAN is an individual who resides in Orange County,
14 California, and is a real party in interest with capacity to act as Plaintiff.

15 13. Plaintiff NATHAN HAEGER is an individual who resides in Orange County,
16 California, and is a real party in interest with capacity to act as Plaintiff.

17 14. Plaintiff JEFFREY DENSON is an individual who resides in Orange County,
18 California, and is a real party in interest with capacity to act as Plaintiff.

19 15. Plaintiff JAY LEWIS is an individual who resides in Orange County, California,
20 and is a real party in interest with capacity to act as Plaintiff.

21 16. Plaintiff MATTHEW SMART is an individual who resides in Australia, and is a
22 real party in interest with capacity to act as Plaintiff.

23 17. Plaintiff MATTHEW LEARMONTH is an individual who resides in Australia, and
24 is a real party in interest with capacity to act as Plaintiff.

25 18. Plaintiff LUKE DOYLE is an individual who resides in Australia, and is a real
26 party in interest with capacity to act as Plaintiff.

27 ///

28 ///

1 **B. Defendants**

2 19. At all times material herein, DEFENDANT RIP CURL, INC. ("RIP CURL") is a
3 California corporation with its principal place of business at 3030 Airway Avenue, Costa Mesa,
4 California 92626, and engaged in business within this county and within the jurisdiction of this
5 Court.

6 20. At all times material herein, DEFENDANT PT NEPTUNE ADVENTURES is a
7 foreign corporation or entity presently located at Jl. Sunset Road 69, Rip Curl Office Building,
8 3Dr Floor, Kuta-Badung 80361, Bali Indonesia, the same address as the Indonesian branch office
9 of DEFENDANT RIP CURL and holds itself out to be "under western management."

10 21. At all times material herein, and based upon information and belief, Defendant
11 FRANCOIS PAYOT, an individual with an unknown place of residence, is a principal, owner,
12 operator, manager, officer, director, market making shareholder, managing agent and/or controller
13 of DEFENDANT RIP CURL, DEFENDANT PT NEPTUNE (a/k/a NEPTUNE ADVENTURES
14 a/k/a RIP CURL INDONESIA) ("PT NEPTUNE"), and the vessel QUEST 1, and engaged in
15 business within the jurisdiction of this Court.

16 22. At all times material herein, and based upon information and belief, DEFENDANT
17 DOUG WARBRICK, an individual with an unknown place of residence, is a principal, owner,
18 operator, manager, officer, director, market making shareholder, managing agent and/or controller
19 of DEFENDANTS RIP CURL, DEFENDANT PT NEPTUNE, and the vessel QUEST 1, and
20 engaged in business within the jurisdiction of this Court.

21 23. At all times material herein, and based upon information and belief, DEFENDANT
22 ANDRE SICKINGER ("SICKINGER"), an individual who resides in California, and at all
23 relevant times herein, had a place of business and/or was doing business within the jurisdiction of
24 this Court including but not limited to, the ownership, operation, management, managing agent,
25 charter agent, charter broker, tour operator and agent or attorney-in fact for passenger solicitation,
26 promotion and ticketing of the QUEST 1 for the benefit of or on behalf of the other
27 DEFENDANTS, and each of them.

28 ///

1 24. PLAINTIFFS are ignorant of the true names and capacities of DEFENDANTS
2 sued herein as Does 1 – 25, inclusive, and therefore sue these DEFENDANTS by these fictitious
3 names. PLAINTIFFS will amend this complaint to allege their true names and capacities when
4 ascertained.

5 25. PLAINTIFFS are informed and believe and thereon allege that each of the
6 fictitiously named DEFENDANTS, Does 1 – 25 inclusive, is also financially liable or legally
7 responsible in some manner for the occurrences and damages herein alleged, and that
8 PLAINTIFFS' injuries and losses as herein alleged were proximately caused by the wrongful
9 conduct of these fictitiously named DEFENDANTS or by one or more of the DEFENDANTS for
10 whom the fictitiously named DEFENDANTS are contractually or financially responsible.

11 **IV. GENERAL ALLEGATIONS**

12 26. The M/V QUEST 1 was the legendary "Live the Search" surf "search" charter boat
13 used by the DEFENDANTS for taking RIP CURL'S surfing professionals and avid surfing
14 enthusiasts on exotic adventures. It was 21 meters long with a capacity for five (5) crew members,
15 including the Captain, and eight (8) passengers. (See Figure 1)



Figure 1

25 27. Based on information and belief, the registered owner of the QUEST 1 was
26 DEFENDANT PT NEPTUNE, although the beneficial owners are believed to be DEFENDANTS
27 RIP CURL, FRANCOIS PAYOT, and DOUG WARBRICK.

28 ///

1 28. PLAINTIFFS are informed and believe and therefore allege that at all times
2 relevant herein, DEFENDANT PT NEPTUNE was, and is, a mere ruse, shell and sham without
3 sufficient capital, assets, stock, or stockholders; and that DEFENDANT PT NEPTUNE was
4 conceived, intended and used by the other DEFENDANTS named herein as a substitute and/or a
5 means to advertise and solicit, generate revenue and conduct business, including business from
6 within California, while avoiding liability and circumventing regulatory compliance including,
7 *inter alia*, with respect to the safe crewing, maintenance, equipping and operation of the vessel,
8 QUEST 1.

9 29. DEFENDANT RIP CURL, a company founded and owned by DEFENDANTS
10 FRANCOIS PAYOT and DOUG WARBRICK regularly sponsored and promoted the vessel and
11 its surf adventures in furtherance of the DEFENDANT RIP CURL'S surfing apparel line and as an
12 integral part of DEFENDANT RIP CURL'S "Live the Search" worldwide advertisement
13 campaign.

14 30. PLAINTIFFS are informed and believe and therefore allege that DEFENDANTS
15 RIP CURL, FRANCOIS PAYOT, and DOUG WARBRICK, have at all relevant times mentioned
16 herein exercised the requisite dominion and control over DEFENDANT PT NEPTUNE.
17 PLAINTIFFS further allege that DEFENDANTS RIP CURL, FRANCOIS PAYOT, and DOUG
18 WARBRICK, were the first and only members or shareholders of PT NEPTUNE and are all so
19 involved, intertwined and intermingled that PT NEPTUNE'S business and financial affairs were
20 the alter ego of RIP CURL, FRANCOIS PAYOT, and DOUG WARBRICK.

21 31. At all times mentioned herein, PLAINTIFFS are informed and believe and
22 therefore allege that there exists a unity of interest between DEFENDANTS RIP CURL,
23 FRANCOIS PAYOT, DOUG WARBRICK and DEFENDANT PT NEPTUNE such that any
24 individuality and separateness between them has ceased, and that DEFENDANT PT NEPTUNE is
25 an alter ego of the other DEFENDANTS.

26 32. PLAINTIFFS are informed and believe and therefore allege that DEFENDANT PT
27 NEPTUNE is and at all times mentioned herein, was so inadequately capitalized compared to
28 business done by DEFENDANTS RIP CURL, FRANCOIS PAYOT, and DOUG WARBRICK

1 that it was housed within DEFENDANT RIP CURL'S Indonesian office, and any risks or losses
2 realized by PT NEPTUNE were so illusory or trivial that they were absorbed by DEFENDANTS
3 RIP CURL, FRANCOIS PAYOT, and DOUG WARBRICK.

4 33. PLAINTIFFS are informed and believe and therefore allege that DEFENDANT PT
5 NEPTUNE is and at all times mentioned herein was the alter ego of DEFENDANTS RIP CURL,
6 FRANCOIS PAYOT, and DOUG WARBRICK and there exists a unity of ownership between the
7 DEFENDANTS such that any separateness ceased to exist in that the DEFENDANTS used assets
8 of PT NEPTUNE for their business and personal use and caused assets of PT NEPTUNE to be
9 transferred to them without adequate consideration, and withdrew funds from PT NEPTUNE
10 accounts for business and personal use.

11 34. PLAINTIFFS are informed and believe and therefore allege that at all material
12 times herein, DEFENDANTS RIP CURL, FRANCOIS PAYOT, and DOUG WARBRICK, as
13 well as other persons or entities whose identities are not yet known, controlled PT NEPTUNE and
14 engaged in improper conduct in their exercise of control over PT NEPTUNE in such a manner that
15 they did not honor the corporate veil of PT NEPTUNE and disregarded the separate corporate
16 entity of PT NEPTUNE, and its alter egos, instrumentalities, parents, and subsidiaries, such that it
17 is only fair and equitable that said corporate veil be pierced so that said persons and entities
18 including but not limited to, RIP CURL, FRANCOIS PAYOT, and DOUG WARBRICK, are
19 liable, vicariously, and jointly and severally for PT NEPTUNE'S debts and liabilities.

20 35. At all times mentioned herein, PLAINTIFFS are informed and believe and
21 therefore allege that DEFENDANTS RIP CURL, PT NEPTUNE, FRANCOIS PAYOT, DOUG
22 WARBRICK, and SICKINGER, as well as other persons or entities whose identities are not yet
23 known but named herein as Does 1 – 25 inclusive, were owners, co-owners, principals, agents,
24 managing agents, representatives, employees, employers, partners, and/or alter egos of each other
25 co-DEFENDANT, and/or otherwise acted on behalf of each remaining DEFENDANT; and in
26 doing so, each DEFENDANT acted within the course and scope of their authority as an owner, co-
27 owner, principal, agent, managing agents, representative, employee, employer, partner, and/or
28 alter ego of its co-DEFENDANTS with the full privity of knowledge, permission and consent of

1 each and every remaining DEFENDANT, each co-DEFENDANT having accepted and ratified the
2 acts of the others thereby making each responsible and liable, vicariously, jointly and severally,
3 for of each of the others' obligations, conduct, acts, and omissions with respect to the matters
4 alleged in this complaint.

5 **V. STATEMENT OF FACTS**

6 36. In the spring of 2015, QUEST 1's booking agent, DEFENDANT SICKINGER, was
7 introduced to PLAINTIFF JAY LEWIS ("LEWIS").

8 37. Shortly after they met, SICKINGER approached LEWIS about a surfing trip, and
9 promoted RIP CURL'S "Live the Search" surf vessel, QUEST 1. SICKINGER proposed to
10 arrange for LEWIS and LEWIS' friends to be booked on a two week trip aboard the QUEST 1.

11 38. LEWIS and his friend, PLAINTIFF SHAWN MACLACHLAN
12 ("MACLACHLAN"), assembled a group of six other avid surfers for the trip. SICKINGER
13 requested a deposit from each PLAINTIFF and eventually requested final payment to deliver to
14 QUEST 1's owners' account(s). In all, PLAINTIFFS paid approximately \$30,400 for this trip.

15 39. Based on information and belief, PLAINTIFFS allege that SICKINGER arranged
16 the final expedition details with RIP CURL and/or PT NEPTUNE'S representatives in Indonesia,
17 including a woman named Shirly Yulvianti ("Yulvianti"), who worked for RIP CURL and/or PT
18 NEPTUNE. Yulvianti communicated directly with each of the PLAINTIFFS and confirmed final
19 expedition details.

20 40. On July 18, 2015, LEWIS, MACLACHLAN, PLAINTIFFS PETER NEVINS
21 ("NEVINS"), NATE HAEGER ("HAEGER"), and JEFF DENSON ("DENSON") traveled from
22 California to Padang, Indonesia. Yulvianti met them at the airport.

23 41. The next morning, Yulvianti collected PLAINTIFFS MATT LEARMONTH
24 ("LEARMONTH"), MATT SMART ("SMART"), and LUKE DOYLE ("DOYLE"), each arriving
25 from Australia. She then stopped at the hotel to gather the others and drove them all to QUEST 1.

26 42. As they approached QUEST 1, PLAINTIFFS recognized RIP CURL'S corporate
27 logo and "Live the Search" slogan prominently displayed along the vessel's sides.

28 ///

1 43. When they arrived to board the vessel, the PLAINTIFFS were greeted and
2 welcomed aboard by the QUEST 1 crew, all noticeably outfitted in RIP CURL branded attire.

3 44. On July 19, 2015, the QUEST 1, with her eight Passengers and crew of five, set sail
4 for the waters off of the Mentawai Islands and the surfing adventure of a life time.

5 45. By mid-day July 20, the Passengers arrived at a surf break known as, "Lance's
6 Right." On July 21, 2015, the Captain sailed QUEST 1 to "Lance's Left" for the Passengers to
7 surf.

8 46. On July 22, at approximately 2:30 AM, excessive heat in the cabin woke up
9 MACLACHLAN. As he went to the salon, he observed the crew scurrying around in the darkness
10 and heard them speaking to each other in agitated voices.

11 47. As MACLACHLAN approached the aft deck he saw approximately three (3) feet
12 of seawater washing about in the Engine Room.

13 48. Apparently none of the bilge pumps aboard QUEST 1 were working.

14 49. At no time did any alarm sound to alert the crew or Passengers that the vessel was
15 flooding and that critical safety equipment had failed. MACLACHLAN immediately woke up his
16 fellow Passengers to warn them of the emergency at hand. The Passengers quickly discovered that
17 the QUEST 1 had no other means by which to dewater the engine room or slow/stop the ingress of
18 seawater. The vessel was devoid of any emergency damage control and/or shoring equipment;
19 and it was later discovered that the QUEST 1 lacked an operable Emergency Position Indicating
20 Radio Beacon (also known as an, "EPIRB") and other required satellite communication
21 equipment.

22 50. The Captain barricaded himself in the wheelhouse and was observed repeatedly
23 yelling English obscenities into the radio. The Captain did not communicate QUEST 1's location
24 to request assistance and did not lead his crew and passengers through the emergency. The crew
25 thereby completely abandoned all repair efforts.

26 51. The Passengers began to bail water from the engine room, which was water-logged,
27 dark, hot, and cramped. The pungent, heavily concentrated diesel mix irritated the Passengers' skin
28 and lungs, while the heat in the engine room limited the length of time one could bail water.

1 52. PLAINTIFF DOYLE attempted to rig a battery to a bilge pump, but every effort
2 resulted in a short circuit. The Engine Room continued to take on water, and the transom began to
3 fill past the exhausted passengers' thighs.

4 53. At approximately 2:50 AM, MACLACHLAN returned to his cabin. He found one
5 bar of cell reception on his mobile phone and called Ms. Anderson, his long term partner located
6 in the U.S. He told her about the leak aboard the QUEST 1 and advised her that they would
7 probably have to abandon ship. Ms. Anderson telephoned SICKINGER and notified him of the
8 emergency.

9 54. By approximately 3:30 AM, QUEST 1 had lost all power. With the crew still
10 unresponsive, and Captain inconsolable, NEVINS instructed the idle crew and Passengers to find
11 clothing, essential personal effects, and to prepare to abandon ship. As the Passengers entered
12 their cabins to gather personal effects, they were met with seawater and fuel now pouring into the
13 berthing spaces.

14 55. At approximately 3:50 AM, the Captain inexplicably broke away and launched the
15 Jet Ski from QUEST 1, abandoning his Passengers, crew, and sinking ship.

16 56. Chaos ensued. The masseuse panicked and jumped onto the Jet Ski with the
17 Captain. The remaining crew was incapable of launching the life rafts and fled to launch the
18 motorized tender boat. The tender quickly became overloaded as the crew transferred on and cast
19 themselves off from the QUEST 1.

20 57. NEVINS and LEARMONTH worked frantically to release the first life raft, but it
21 failed to inflate. NEVINS and LEARMONTH successfully launched a second life raft and
22 instructed the remaining Passengers to scramble onboard. DENSON however entered the water as
23 15 knot winds and 6 foot swells quickly pushed him away from the vessel and raft.

24 58. While Passengers boarded the life raft, the masseuse fell from the Jet Ski and
25 landed in the ocean. She could not swim. DENSON swam over to her but she panicked and
26 pulled DENSON under the water as she flailed at the surface. As the Captain attempted to pick
27 her up, he ran over DENSON with the Jet Ski. Exhausted and disoriented, DENSON scrounged
28 for a floating object. Once he was able, DENSON swam back to the sinking QUEST 1.

1 59. NEVINS and LEARMONTH, the last two persons onboard, scattered floatable
2 items from QUEST 1 to create a debris field in hopes that any rescuers might see QUEST 1's last
3 known position. They then abandoned the ship onto surfboards and paddled over to join the one
4 floating life raft. The Passengers then maneuvered the life raft over to the QUEST 1 and rescued
5 DENSON.

6 60. For the next several hours, Passengers floated in the life raft in complete darkness
7 and rough seas. Several Passengers suffered chemical reactions from the diesel fuel and others
8 experienced severe motion sickness with bouts of vomiting throughout the night.

9 61. At dawn, the Passengers and crew witnessed the QUEST 1 fully disappear into the
10 ocean. Shortly, thereafter, the first life raft released, self-inflated and floated to the surface.

11 62. By 7:30 AM, the Passengers observed that there were neither rescue vessels in
12 sight nor any search aircraft overhead. Despite their knowledge of the vessel's emergency, the
13 DEFENDANTS had apparently taken no action whatsoever to notify the Indonesian coast guard or
14 any other local or regional rescue resources.

15 63. MACLACHLAN and two crew members departed the main group and headed out
16 in the direction they collectively believed was towards land. An hour after leaving the scene,
17 MACLACHLAN approached what appeared to be a shoreline canal entrance and spotted the M/V
18 FOXY LADY.

19 64. MACLACHLAN successfully hailed and boarded the FOXY LADY which then set
20 off in search of the remaining QUEST 1 survivors.

21 65. MACLACHLAN guided the FOXY LADY back to the Passengers based on an
22 estimated reverse course. Within another hour or so they spotted the life rafts bobbing in the
23 ocean. All of the Passengers and remaining crew transferred to FOXY LADY.

24 66. The FOXY LADY thereafter eventually made radio contact and rendezvoused with
25 Martin Daly's INDIES TRADER III which thereafter took the Passengers aboard and headed for
26 Padang.

27 ///

28 ///

1 67. Upon arrival at Padang, the Passengers disembarked the INDIES TRADER III and
2 sought out Yulvianti. She advised PLAINTIFFS that she needed them to fill out certain
3 paperwork in order to send it to the insurance company and process their claims.

4 68. The PLAINTIFFS questioned the paperwork, but Yulvianti explained that the
5 forms were needed in order to initiate and process their claims for their "lost belongings."
6 Yulvianti assured the PLAINTIFFS that she would submit the paperwork to start the claims
7 process and put the PLAINTIFFS in touch with the owners. The PLAINTIFFS never again saw or
8 heard from Yulvianti.

9 69. PLAINTIFFS attempted to contact the DEFENDANTS for assistance in
10 accommodations and return travel. Their calls went unanswered and emails ignored. Since their
11 return to their respective homes, PLAINTIFFS made several unsuccessful attempts to engage the
12 DEFENDANTS to resolve their claims for lost property, to discuss refunds for unpaid portions of
13 the trip, and for reimbursement for extra expenses incurred following the incident.

14 **VI. CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 (NEGLIGENCE – *Against all Defendants*)

17 70. PLAINTIFFS refer to and incorporate by reference all facts and allegations as set
18 fully set forth in paragraphs 1 – 69 above.

19 71. At all relevant times, DEFENDANTS RIP CURL, PT NEPTUNE, FRANCOIS
20 PAYOT, DOUG WARBRICK, ANDRE SICKINGER, and UNKNOWN DEFENDANTS 1-25,
21 inclusive, owned, operated, managed, controlled, and chartered QUEST 1 for surf trips.

22 72. At a minimum, DEFENDANTS owed PLAINTIFFS a non-delegable reasonable
23 duty of care which included, *inter alia*, safe passage aboard a properly maintained and equipped,
24 staunch and water-tight vessel complemented with a well-trained, qualified and competent captain
25 and crew.

26 73. In addition to their own independent duties of reasonable care, the DEFENDANTS,
27 and each of them, are vicariously liable for acts and omissions of the Captain and crew of the
28 QUEST 1.

1 74. DEFENDANTS breached their duties of care to the PLAINTIFFS in that they
2 failed to, *inter alia*, (a) properly crew the vessel with a well-trained, qualified and competent
3 captain and crew; (b) sound the vessel and its tanks or otherwise investigate and ensure the
4 watertight integrity of the hull after having parted its anchor; (c) properly maintain and use the
5 Engine Room's watertight doors; (d) maintain and ensure that the vessel's bilge pumps were fully
6 operational; (e) have onboard and maintain an emergency or back up bilge pumps; (f) have
7 onboard and maintain proper alarm systems to warn the crew well in advance of any emergency
8 that the bilge pumps had failed or were inoperable; (g) have onboard emergency damage control
9 equipment such as shoring and plugs used to stop or slow leaks; (h) have operable emergency
10 communications equipment such as an EPIRB onboard; (i) have properly maintain and serviced
11 life rafts; (j) render aid and assistance (by notifying the coast guard or competent rescue resources)
12 once DEFENDANTS knew that the vessel, Passengers, and crew were in distress; and (k) render
13 aid and assistance to the PLAINTIFFS who were then stranded in Indonesia due to the acts and
14 omissions of the DEFENDANTS in the first instance.

15 75. DEFENDANTS' failure to exercise reasonable care as outlined above directly and
16 proximately caused, *inter alia*, (a) exposure to dangerous chemicals and lethal conditions aboard
17 the QUEST 1; (b) seawater to enter and flood the engine room; (c) seawater to cascade and flood
18 into other compartments resulting in the loss of buoyancy and eventual sinking of the vessel; (d)
19 panic and abandonment by the Captain and crew stranding the Passengers aboard the vessel with
20 only one properly functioning life raft; (e) the Passengers to abandon ship without the assistance
21 or aid of a competent Captain and crew; (f) the near drowning of PLAINTIFF DENSON; (g) the
22 stranding of the Passengers at sea in very rough conditions and complete darkness in an over-
23 loaded and under-provisioned life raft; and (h) exposing PLAINTIFFS to the very real risk of
24 being forever lost at sea.

25 76. As a direct and proximate result of DEFENDANTS' negligence, PLAINTIFFS, and
26 each of them, were harmed and suffered damages in the form personal injuries, personal property
27 losses, and business and/or employment losses.

28 ///

1 **SECOND CAUSE OF ACTION**

2 (NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS – *Against all Defendants*)

3 77. PLAINTIFFS refer to and incorporate by reference all facts and allegations as fully
4 set forth in paragraphs 1 – 76 above.

5 78. DEFENDANTS owed PLAINTIFFS a non-delegable reasonable duty of care
6 which included, but is not limited to: (a) safe passage aboard a properly maintained and equipped
7 vessel; (b) a staunch and water-tight vessel; (c) a well-trained, qualified, and competent captain
8 and crew.

9 79. DEFENDANTS breached their duties of care to the PLAINTIFFS in that they
10 knowingly failed to: (a) crew the vessel with a well-trained, properly qualified and competent
11 captain and crew; (b) sound the vessel and its tanks or otherwise investigate to ensure the
12 watertight integrity of the hull after having parted its anchor; (c) properly maintain and use the
13 Engine Room's watertight doors; (d) maintain and ensure that the vessel's bilge pumps were fully
14 operational; (e) have onboard and maintain an emergency or back up bilge pumps; (f) have
15 onboard and maintain proper alarm systems to warn the crew well in advance of any emergency
16 that the bilge pumps had failed or were inoperable; (g) have onboard emergency damage control
17 equipment such as shoring and plugs used to stop or slow leaks; (h) have operable emergency
18 communications equipment such as an EPIRB onboard; (i) have properly maintain and serviced
19 life rafts; (j) render aid and assistance (by notifying the coast guard or competent rescue resources)
20 once DEFENDANTS knew that the vessel, Passengers, and crew were in distress; and (k) render
21 aid and assistance to the PLAINTIFFS who were then stranded in Indonesia due to the acts and
22 omissions of the DEFENDANTS in the first instance.

23 80. DEFENDANTS' failure to exercise reasonable care, as thoroughly outlined above,
24 directly and proximately caused severe and emotional distress to each of the PLAINTIFFS.
25 DEFENDANTS despicable conduct subjected the PLAINTIFFS to cruel and unjust hardships in
26 conscious disregard of their lives as each witnessed and experienced (a) outright dangerous
27 conditions aboard the vessel; (b) panic and dereliction of duty by the Captain in barricading
28 himself in the wheelhouse, and by the crew for their collective failure to bail or assist in trying to

1 save the vessel and eventually stranding the Passengers aboard the sinking vessel with only one
2 properly functioning life raft; (c) the cowardice of the Captain and crew abandoning ship in the
3 middle of the night without regard to Passengers well-being or safety; (d) the temporary loss of
4 PLAINTIFF DENSON due to the actions of the masseuse in holding him under water, and the
5 Captain's unreasonably dangerous maneuver to rescue the masseuse; (e) floating in the ocean for
6 hours through six (6) foot tall swells, fifteen (15) knot winds, in the pitch dark without any
7 knowledge of where they were or whether any aid or assistance had been enlisted; (f) thoughts,
8 fears, anxieties and observational certainties that while some Passengers would likely die from
9 dehydration due to vomiting, others would perish from abandonment at sea; (g) DEFENDANTS
10 failure to mount a rescue effort once they were advised that the QUEST 1 was in peril that left the
11 PLAINTIFFS to languish in the ocean; (h) deceit and misrepresentation by DEFENDANTS about
12 the claims reimbursement process as a means to induce the PLAINTIFFS to sign tardy documents;
13 (i) refusing to assist PLAINTIFFS to return home once they reached dry land; and (j) ignoring and
14 refusing to reimburse the PLAINTIFFS for their losses as promised.

15 81. At a minimum, DEFENDANTS acts and omissions were outrageous and
16 demonstrated a complete and reckless disregard for the PLAINTIFFS' safety which gave rise to a
17 high probability that the PLAINTIFFS would also suffer emotional distress from such conduct.

18 82. DEFENDANTS' willful and fraudulent conduct (as alleged in PLAINTIFFS'
19 Fourth Cause of Action, *intra*, which is incorporated herein), intentional misrepresentations,
20 deceit, and concealments of material facts were intentionally executed to cause PLAINTIFFS
21 ongoing suffering and additional emotional damage.

22 83. As a result of DEFENDANTS' negligence, PLAINTIFFS have suffered and/or
23 continue to suffer varying degrees of shock, nervousness, nightmares, traumatic flashbacks, and
24 other emotional harms. At least one PLAINTIFF has been formally diagnosed and treated for
25 post-traumatic stress disorder.

26 ///

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 (BREACH OF CONTRACT – *Against all Defendants*)

3 84. PLAINTIFFS refer to and incorporate by reference all facts and allegations as set
4 fully set forth in paragraphs 1 – 83 above.

5 85. On or about April 2015, PLAINTIFFS and DEFENDANTS entered into a contract
6 whereby the PLAINTIFFS were to be passengers on the QUEST 1 for a two week long surf trip
7 near the Mentawai Islands in the Indonesian Ocean.

8 86. PLAINTIFFS each paid and performed all of their obligations required under the
9 contract.

10 87. In July of 2015 DEFENDANTS breached the contract by failing to provide, *inter*
11 *alia*, for the reasonably safe passage aboard a properly maintained and equipped, staunch and
12 watertight vessel complemented with a well-trained, qualified and competent captain and crew.

13 88. DEFENDANTS also breached the contract by failing to provide for a two week
14 long surf trip near the Mentawai Islands in the Indonesian Ocean.

15 89. As a direct and proximate result of DEFENDANTS' breach of contract,
16 PLAINTIFFS were harmed in the form of personal injuries, personal property losses, and business
17 and/or employment losses.

18 **FOURTH CAUSE OF ACTION**

19 (FRAUD – *Against Defendants*)

20 90. PLAINTIFFS refer to and incorporate by reference all facts and allegations as set
21 fully set forth in paragraphs 1 – 90 above.

22 91. DEFENDANT ANDRE SICKINGER, acting as agent for DEFENDANTS RIP
23 CURL, PT NEPTUNE, FRANCOIS PAYOT, and DOUG WARBRICK, assured PLAINTIFFS
24 that he had known the QUEST 1's principals and owners for years and said he (SICKINGER) had
25 worked on the vessel many times.

26 92. DEFENDANTS RIP CURL, PT NEPTUNE, FRANCOIS PAYOT, and DOUG
27 WARBRICK publicly promoted and elevated DEFENDANT SICKINGER'S profile as their agent
28 with authority to act in booking the trip and for collecting and processing PLAINTIFFS' money.

1 93. SICKINGER requested a deposit and final payment from each PLAINTIFF in
2 order for him to deliver the funds to the QUEST 1's owners' account(s).

3 94. SICKINGER represented to the PLAINTIFFS that the trip was paid for and the
4 PLAINTIFFS were advised to book air travel to Padang, Indonesia.

5 95. On information and belief PLAINTIFFS allege SICKINGER'S representations
6 were false. He had no intention to transfer funds for the trip to the QUEST 1's beneficial owners.
7 He instead intended to, and in fact did, keep all of the monies collected from the PLAINTIFFS for
8 his own personal use.

9 96. DEFENDANTS further induced PLAINTIFFS to act when they arranged to meet
10 and retrieve the Passengers in order to take them to the vessel, allowed them to board the QUEST
11 1, allowed the QUEST 1 to get underway, and commenced the ill-fated voyage while
12 simultaneously disregarding SICKINGER'S alleged failure to transfer PLAINTIFFS' funds.

13 97. DEFENDANTS further fraudulently induced PLAINTIFFS to act when Yulvianti
14 advised PLAINTIFFS that she needed them to fill out certain paperwork in order to send it to the
15 insurance company to process PLAINTIFFS' claims when the paperwork was in fact not intended
16 to be used as a claims form, but possibly as a waiver form. Even upon questioning, Yulvianti
17 instructed PLAINTIFFS to fill out the form in order to initiate and process claims for their "lost
18 belongings." In what is now believed to be blatant dishonesty, she assured PLAINTIFFS that she
19 would submit the paperwork to start the claims process and put the PLAINTIFFS in touch with the
20 owners.

21 98. DEFENDANTS knowingly and recklessly made false representations to
22 PLAINTIFFS without regard for the truth of the representations and without regard to the danger
23 in which each placed the PLAINTIFFS.

24 99. Each and every PLAINTIFF intended to and reasonably relied to their detriment on
25 SICKINGER'S representations as well as DEFENDANTS representations onboard.

26 100. PLAINTIFFS' reliance on DEFENDANTS representations and conduct was a
27 substantial factor in causing PLAINTIFFS' aforementioned harm.

28 ///

1 **FIFTH CAUSE OF ACTION**

2 (UNJUST ENRICHMENT – *Against all Defendants*)

3 101. PLAINTIFFS refer to and incorporate by reference all facts and allegations as fully
4 set forth in paragraphs 1 – 101 above.

5 102. DEFENDANTS' agent, SICKINGER, fraudulently induced PLAINTIFFS into
6 tendering to him approximately \$30,400 as consideration for a surfing excursion and trip on the
7 QUEST 1.

8 103. Due to the DEFENDANTS' breaches and negligent behavior the two weeks long
9 surf trip for which the PLAINTIFFS paid DEFENDANTS was not fulfilled.

10 104. The money PLAINTIFFS paid DEFENDANTS was therefore not used for
11 PLAINTIFFS' benefit as prescribed.

12 105. Furthermore, prior to the surf trip DEFENDANT SICKINGER expressly assured
13 the PASSENGERS that they would be insured while aboard the QUEST 1.

14 106. Upon information and belief, PLAINTIFFS believe that DEFENDANTS received
15 insurance proceeds for the sinking of the QUEST 1 and may even have access to additional
16 insurance proceeds or coverage that was intended, at least in part, to be used for the benefit of
17 PLAINTIFFS to compensate for their losses.

18 107. Upon information and believe, PLAINTIFFS allege that DEFENDANTS received
19 compensation for the sinking of the QUEST 1 that was intended to be used for the benefit of the
20 PLAINTIFFS.

21 108. Upon information and belief, PLAINTIFFS allege that DEFENDANTS instead
22 used said monies to purchase a separate vessel, M/V ADDICTION, which they have since put into
23 service.

24 109. To date, DEFENDANTS have not offered PLAINTIFFS any compensation and the
25 PLAINTIFFS have received no compensation from DEFENDANTS. The failure to provide
26 compensation to PLAINTIFFS has unjustly enriched the DEFENDANTS.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VII. REQUEST FOR RELIEF

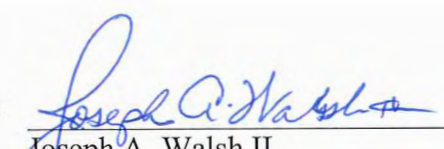
Wherefore, PLAINTIFFS pray for judgment against DEFENDANTS as follows:

1. For general, compensatory, and special damages in sums according to proof at the time of trial;
2. For pre-judgment and post-judgment interest on said sums as provided by law from the date of such injury and damage;
3. For all costs of the suit herein;
4. For attorneys' fees as may be allowed under the law;
5. For punitive damages; and
6. For such other and further relief as the Court deems just and proper.

Dated: April 27, 2017

CLYDE & CO US LLP

By: _____


Joseph A. Walsh II
Ellen E. McGlynn
Attorneys for Plaintiffs