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**ENDORSED
FILED**
San Francisco County Superior Court

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Deputy Clerk

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

13 **CGC -07-469379**

14 **JOHN TARANTINO; STEVEN F.
15 FITZ, dba FITZ-BUSKIRK, INC.;**
16 **and others similarly situated,**

17 **Plaintiffs,**

18 **v.**

19 **HANJIN SHIPPING CO., LTD.;**
20 **REGAL STONE, LTD.;**
21 **SYNERGY MARITIME;**
22 **JOHN J. COTA; and**
23 **DOES 1-100,**

24 **Defendants.**

25 **CASE NO. _____**

26 **CLASS ACTION
27 COMPLAINT FOR DAMAGES
28 BASED UPON:**

1. **VIOLATION OF THE
LEMPERT-KEENE-
SEASTRAND OIL SPILL
PREVENTION AND
RESPONSE ACT
[Gov't Code §§ 8670, et seq.];**
2. **STRICT LIABILITY - ULTRA
HAZARDOUS ACTIVITY;**
3. **NEGLIGENCE;**
4. **PUBLIC NUISANCE
[Civ. Code §§ 3479 et seq];**
5. **PRIVATE NUISANCE
[Civ. Code §§ 3479 et seq]; and**
6. **ENVIRONMENTAL
MONITORING.**

29 **CASE MANAGEMENT CONFERENCE SET**

30 **APR 18 2008 - 9⁰⁰AM**

31 **DEPARTMENT 212**

JURY TRIAL DEMANDED

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VI. CAUSES OF ACTION 25

FIRST CAUSE OF ACTION
(Strict Liability - Lempert-Keene-Seastrand Oil Spill
Prevention Act, Gov't Code §§ 8670 *et seq.*) 25

SECOND CAUSE OF ACTION
(Strict Liability - Ultra Hazardous Activity) 27

THIRD CAUSE OF ACTION
(Negligence) 28

FOURTH CAUSE OF ACTION
(Negligent Entrustment) 29

FIFTH CAUSE OF ACTION
(Public Nuisance - Civ. Code §§ 3479 *et seq.*) 30

SIXTH CAUSE OF ACTION
(Private Nuisance - Civ. Code §§ 3479 *et seq.*) 31

SEVENTH CAUSE OF ACTION
(Declaratory Relief And Request for Monitoring of
Contamination) 31

PRAYER FOR RELIEF 33

JURY DEMAND 34

1 **I. INTRODUCTION**

2 1. This action is the byproduct of reckless indifference, inattention, and
3 mismanagement among those responsible for the control of a 68 thousand ton
4 container ship called the COSCO BUSAN (hereinafter “the Ship”), which
5 smashed into the Delta Tower of the Bay Bridge at 8:37 a.m. on November 7,
6 2007. The collision tore a horizontal gash in the side of the Ship 100 feet long,
7 12 feet wide, and 3 feet deep, shown in the photo below which appeared in the
8 San Francisco Chronicle. Approximately 58,000 gallons of highly toxic fuel oil
9 poured into the San Francisco Bay, befouling for years one of the most beautiful
10 and productive bodies of water in the world (hereinafter “the Spill”).



27 2. The polluting of the San Francisco Bay and its marine life was a
28 direct and foreseeable consequence of a combination of wrongful acts and

1 omissions by those who owned, operated, maintained, managed, chartered, leased
2 and/or exercised control over the Ship; hereinafter identified as Defendants
3 HANJIN SHIPPING CO., LTD. (hereinafter “HANJIN”); REGAL STONE, LTD.
4 (hereinafter “REGAL”); SYNERGY MARITIME (hereinafter “SYNERGY”);
5 and JOHN COTA (hereinafter “COTA”).

6 3. On the day of the accident, Defendant COTA was the pilot
7 navigating the Ship through the San Francisco Bay. COTA was navigating with
8 the assistance of Captain Mao Cai Sun, and a crew comprised of agents,
9 employees, servants and/or joint venturers of the Defendants HANJIN, REGAL,
10 and/or SYNERGY.

11 4. Defendant COTA, who had a history of accidents, piloted the
12 enormous Ship out of the Bay and through the towers of the Bay Bridge despite:
13 (1) the presence dense fog; (2) concerns regarding the accuracy of navigational
14 equipment; and (3) no functional ability to communicate with the Ship’s Captain
15 and crew. Predictably, the 131-foot wide Ship veered off course and broadsided
16 the Delta Tower.

17 5. The reaction of the Ship’s crew, Captain Mao and Defendant COTA
18 to the bridge collision and Spill displayed a conscious indifference for the
19 environmental consequences. Instead of urgently assessing the true extent of
20 highly toxic bunker fuel which had spewed from the ruptured side of the Ship into
21 the Bay, the Ship’s crew reported, without any reliable basis, that only 140
22 gallons had spilled. The United States Coast Guard relied on the grossly
23 inadequate assessment for the purpose of mounting a response, and did not learn
24 that the true amount was 400 times greater for another eight hours.
25 Incomprehensibly, Captain Mao also waited approximately one hour before
26 contacting private spill-containment operators, allowing the bunker fuel to spread
27 from the gash unabated.

1 6. The magnitude of this calamity has triggered consequences of
2 immediate and long-term proportion to the environmental health of the Bay and
3 its marine life. Plaintiffs herein have suffered profound economic losses to their
4 livelihood as a direct, legal and foreseeable result of public health concerns over
5 the short and long-term safety of crab and other seafood for human consumption
6 and the damage caused to the productivity of the Bay.

7 **II. PARTIES**

8 **A. The Plaintiffs**

9 7. **JOHN TARANTINO:** Plaintiff JOHN TARANTINO (hereinafter
10 “TARANTINO”) is, and at all relevant times herein was, an individual residing in
11 the City of Corte Madera, County of Marin, California. TARANTINO has earned
12 a living as a commercial fisherman in the San Francisco Bay Area for many years.
13 For much of that time, TARANTINO served as the owner and skipper of the
14 fishing vessel “The Crown Royal,” berthed at the Wharf in San Francisco, where
15 he is actively engaged in fishing for crab, as well as various vertebrate fish.
16 TARANTINO receives more than 25% of his earnings from the fishing of these
17 species during the applicable seasons for each. Plaintiff TARANTINO has
18 suffered economic injury, harm and/or damages to his livelihood as a commercial
19 fisherman as a direct, legal and foreseeable consequence of the wrongful acts
20 and/or omissions of Defendants, and each of them, more particularly set forth
21 herein.

22 8. **STEVEN F. FITZ:** Plaintiff STEVEN F. FITZ (hereinafter “FITZ”) is,
23 and at all relevant times herein was, an individual residing in El Granada,
24 County of San Mateo, California. FITZ has earned a living as a commercial
25 fisherman for over 35 years, the last 27 of which he has spent in the San
26 Francisco Bay Area. Since 1989 Fitz has served as the owner and skipper of the
27 fishing vessel “Mr. Morgan” depicted in the photo below, berthed in Pilar Point
28 Harbor in Half Moon Bay where he is actively engaged in fishing for crab, as well

1 as “flat fish,” including species more commonly known as Petrale, English sole,
2 Skate, and Sand Dabs, under the name Fitz-Buskirk, Inc. FITZ receives more
3 than 25% of his earnings from the fishing of these species during the applicable
4 seasons for each. Plaintiff FITZ, dba Fitz-Buskirk, Inc., has suffered economic
5 injury, harm and/or damages to his livelihood as a commercial fisherman as a
6 direct, legal and foreseeable consequence of the wrongful acts and/or omissions
7 of Defendants, and each of them, more particularly set forth herein.



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22 **B. The Defendants**

23 9. **HANJIN:** Plaintiffs are informed and believe, and thereupon allege,
24 that HANJIN is the owner, operator, lessee, and/or charterer by demise of the
25 Ship. HANJIN is, and at all times herein mentioned was, a corporation,
26 association, partnership, joint venture, and/or sole proprietorship organized and
27 existing under the laws of Republic of Korea and/or headquartered at Hanjin
28 Shipping Building, 25-11, Yoido-Dong, Youngdeungpo-Gu, Seoul Korea.

1 HANJIN is part of the Hanjin Group, a South Korean conglomerate, which
2 includes, in addition to HANJIN, Hanjin Logistics and Korean Air (KAL).
3 Holding a majority interest in the Senator Lines, Hanjin-Senator is the seventh
4 largest container transportation and shipping company in the world, and is
5 Korea's largest carrier, operating some 60 liner and tramper services transporting
6 on 200 containerships, bulk carriers and LNG carriers, more than 100 tons of
7 cargo all over the world, including California and/or the San Francisco Bay Area.

8 10. **REGAL:** Plaintiffs are informed and believe, and thereupon allege,
9 that REGAL is the owner, operator, lessee, and/or charterer by demise of the
10 Ship. REGAL is, and at all times herein mentioned was, a corporation,
11 association, partnership, joint venture, and/or sole proprietorship organized and
12 existing under the laws of the Peoples Republic of China and/or is based in Hong
13 Kong, and transacts business throughout the world, including California and/or
14 the San Francisco Bay Area.

15 11. **SYNERGY:** Plaintiffs are informed and believe, and thereupon
16 allege, that SYNERGY is the owner, operator, lessee, and/or charterer by demise
17 of the Ship. SYNERGY is, and at all times herein mentioned was, a corporation,
18 association, partnership, joint venture, and/or sole proprietorship organized and
19 existing under the laws of the Republic of Cyprus and/or is headquartered in
20 Cyprus, and transacts business throughout the world, including California and/or
21 the San Francisco Bay Area.

22 12. **COTA:** Plaintiffs are informed and believe, and thereupon allege,
23 that COTA was piloting the Ship at the time of the collision and discharge of
24 58,000 gallons of bunker fuel into the San Francisco Bay. COTA is a fifty-nine
25 year old individual residing in Petaluma, California. COTA has been a local pilot
26 for more than 25 years.

27 13. In the past 14 years COTA has had several "incidents" requiring an
28 investigation by the State Board of Pilot Commissioners. On several occasions,

1 the Commissioners have “counseled” COTA regarding his piloting activities on
2 the Bay. For example, in July 2006 COTA was reprimanded after it was
3 determined that he had allowed the bulk freighter Pioneer to move out of the
4 channel and run aground when it was approaching a dock at Antioch four months
5 earlier. The report on the incident stated: “Capt. COTA had not realized that the
6 vessel was going off track and did nothing to prevent it.” COTA was also
7 involved in an incident in the San Francisco Bay in 2003 involving a Navy
8 aircraft carrier, for which he received a “letter of concern.”

9 **C. The DOE Defendants**

10 14. The true names and capacities, whether individual, corporate,
11 associate or otherwise of the Defendants DOES 1 through 100 are unknown to
12 Plaintiffs who therefore sue said Defendants by such fictitious names pursuant to
13 Code of Civ. Proc. § 474. Plaintiffs further allege that each said fictitious
14 Defendant is in some manner responsible for the acts and occurrences hereinafter
15 set forth. Plaintiffs will amend this Complaint to show the true names and
16 capacities of these DOES Defendants when the same are ascertained, as well as
17 the manner in which each fictitious Defendant is responsible.

18 **D. Agency, Employment And Joint Venture**

19 15. At all relevant times, each of the Defendants was an agent,
20 employee, servant, partner, alter ego, and/or joint venturer of each of its/his/her
21 co-Defendants in the operation, management and control of the Ship and was at
22 all times proceeding, during, and following the Spill, acting within the course and
23 scope of said agency, employment, service, partnership, conspiracy, alter ego
24 status, and/or joint venture

25 **III. JURISDICTION AND VENUE**

26 16. This Court has jurisdiction over this action pursuant to Code of Civil
27 Procedure Section 410.10. Plaintiffs seeks damages and injunctive relief on
28

1 behalf of themselves and all others similarly situated under the statutory and
2 common laws of the State of California.

3 17. Venue is proper in this Court because the principal acts, occurrences,
4 and injuries alleged herein giving rise to this action occurred within the County,
5 the Defendants transact business within the County, and/or Plaintiff
6 TARANTINO is a resident of the County.

7 18. This Court has jurisdiction over the Defendants because they transact
8 business in California, and the principal acts, occurrences, and injuries alleged
9 herein giving rise to this action occurred in California.

10 19. Plaintiffs' class action complaint only asserts causes of action under
11 the statutory and common law of the State of California.

12 **IV. CLASS ACTION ALLEGATIONS**

13 20. Plaintiff brings this action on his own behalf and as representative of
14 a class consisting of:

15 **“all commercial fishing operations, including crab, herring, flat**
16 **fish, salmon and other fish, which commercially fish in and**
17 **around the San Francisco Bay and surrounding ocean areas.”**

18 21. The class is so broad and numerous that joinder of all members is
19 impracticable. Although its exact number is unknown, it is estimated that there
20 are more than 1000 class members.

21 22. Plaintiffs are members of the class, and their claims are typical of the
22 claims of all members.

23 23. Plaintiffs will fairly and adequately protect the interests of all of the
24 class, and the interests of each are coincident and not antagonistic with those of
25 the remainder of the class.

26 24. Plaintiffs are represented by counsel experienced with class and
27 complex litigation and in the prosecution of violations of law arising out of large
28 spread environmental pollution.

1 25. There are common questions of law and fact common to the class in
2 relation to their claims against Defendants, including, but not limited to:

- 3 (a) Whether the Defendants are strictly liable for the economic
4 damages caused to Plaintiffs and the class which are the direct
5 and legal result of the discharge of 58,000 gallons of bunker
6 fuel from the Ship under the Lempert-Keene-Seastrand Oil
7 Spill Prevention and Response Act, Gov't Code §§ 8670, *et*
8 *seq.*;
- 9 (b) Whether the transport of 58,000 gallons of highly toxic bunker
10 fuel through the San Francisco Bay constitutes an ultra-
11 hazardous activity, and thus whether Defendants are strictly
12 liable for any harm flowing from such activity;
- 13 (c) Whether Defendants were negligent, reckless, willful, wanton
14 or malicious in their conduct which resulted in the discharge
15 of 58,000 gallons of bunker fuel into and upon the San
16 Francisco Bay;
- 17 (d) Whether Defendants have created a public and/or private
18 nuisance by causing or contributing to the discharge of 58,000
19 gallons of highly toxic bunker fuel into and upon the San
20 Francisco Bay and surrounding ocean areas;
- 21 (e) Whether such violations of law are the direct and proximate
22 cause of the economic injuries suffered by the Plaintiffs and
23 the class;
- 24 (f) Whether the wrongful acts and/or omissions of Defendants
25 warrant creation of a monetary fund for future monitoring,
26 testing, evaluation and assessment of the safety and/or fitness
27 of seafood caught for human consumption from the San
28 Francisco Bay and surrounding ocean areas; and

1 (g) Whether injunctive or other equitable relief for the benefit of
2 the class is appropriate.

3 26. These and other common questions of law and fact predominate over
4 questions affecting only individual members.

5 27. A class action is superior to other methods of adjudication for a fair
6 and efficient administration of this controversy. Prosecution of these claims
7 within the procedural device of a class action will reduce the possibility of
8 repetitious litigation and conflicting results, while producing redress for claims
9 too small to support the expense of individual, complex litigation.

10 28. Individual adjudications of class member claims, which would as a
11 practical matter be dispositive of the interests of other members not parties to the
12 action, might substantially impair or impede the ability of the absent members to
13 protect their interests, particularly in regard to claims against defendants for
14 punitive damages.

15 29. Individual adjudications of class member claims would also create
16 the possibility of conflicting results, particularly on issues related to the
17 apportionment of fault and responsibility amongst the Defendants, and thus be
18 detrimental to the interests of the Defendants.

19 **V. FACTS**

20 **A. Timeline Of The Collision And Spill**

21 30. On or about October 23, 2007, the Ship initiated its voyage from
22 Shanghai, China to Busan, South Korea; and thereafter to Long Beach,
23 California, arriving in Long Beach on November 3, 2007. The Ship
24 subsequently sailed from Long Beach to Oakland, California, arriving in Oakland
25 the afternoon of November 6, 2007.

26 31. On the morning of November 7, 2007, the Ship left Oakland to
27 return to Buson, South Korea, carrying 2,500 20-foot containers for the China
28

1 Ocean Shipping Company (COSCO), one of the world’s biggest shipping
2 agencies headquartered in Shanghai, China.

3 32. As COTA, Captain Mao, and the Ship’s crew attempted to navigate
4 the Ship out of Oakland Harbor through the San Francisco Bay and into the open-
5 ocean, the Ship collided with the Delta Tower of the Bay Bridge, tearing a large
6 gash in its fuel tanks and discharging approximately 58,000 gallons of toxic
7 bunker fuel into and upon the Bay. This was the *first ever collision between a*
8 *vessel and a Bay Bridge tower* in the bridge’s seventy-year history.

9 33. The sequence of events culminating in the collision and Spill played
10 out over a fifteen-hour period on November 7, 2007 as set forth below (all times
11 are approximate):

12 (a) 6:00 a.m. – COTA boarded the Ship at berth 55, Oakland
13 Inner Harbor. COTA at first decided the fog was too thick and
14 waited for it to lift.

15 (b) 7:30 a.m. – COTA notified the Coast Guard Vessel Traffic
16 Service that the fog had sufficiently lifted and he intended to
17 sail. COTA told Vessel Traffic Service he intended to use the
18 Delta-Echo span of the Bay Bridge. The Ship was assisted by
19 the tug Revolution.

20 (c) 7:30 to 8:20 a.m. – The Ship's radar allegedly failed as the
21 Ship was passing Yerba Buena Island in the fog. Defendant
22 COTA was then allegedly forced to rely on an “electronic
23 chart” and its interpretation by Captain Mao as to the center of
24 the 2,210-foot Delta-Echo span through which the 131-foot
25 Ship was to pass. During the interchange between Defendant
26 COTA and the Ship’s Captain, an incorrect heading was
27 allegedly supplied directing the Ship *at Delta Tower*, instead
28 of the center of the Delta-Echo span.

- 1 (d) 8:20 - 8:27 a.m. – The Coast Guard Vessel Traffic Service
2 advised Defendant COTA that the Ship was off course. In an
3 effort by Defendant COTA and/or the Ship’s Captain and crew
4 to quickly readjust course, the Ship smashed into the fender of
5 Delta tower tearing a horizontal gash near the front of the Ship
6 measuring 100 feet long, 12 feet wide and 3 feet deep.
- 7 (e) 8:30 a.m. – Defendant COTA reported to Vessel Traffic
8 Service that the Ship had hit Delta Tower. The collision had
9 ruptured two of the Ship’s fuel tanks, and the bunker fuel
10 contained therein poured out into the Bay. Neither Captain
11 Sun nor Defendant COTA requested the services of private
12 spill-containment operators for another hour.
- 13 (f) 8:52 a.m. – Personnel on a pilot boat sent from Pier 9 in San
14 Francisco noticed that "a substantial flow of oil" was coming
15 from the Ship.
- 16 (g) 9:03 a.m. – The Coast Guard dispatched its first vessel to the
17 scene.
- 18 (h) 9:30 a.m. – Captain Mao finally contacted a private spill-
19 containment operator for assistance cleaning up the discharged
20 bunker fuel.
- 21 (i) 9:46 a.m. – The Marine Spill Response Corp. (“MSRC”),
22 private spill-containment operator, dispatches its first vessel to
23 the scene.
- 24 (j) 11:00 a.m. – Five MSRC skimming boats designed to contain
25 and mop oil arrived on the scene.
- 26 (k) 12:15 p.m. – The Coast Guard reports the oil spill at 140
27 gallons based on information provided by the Defendants. The
28

1 Ship is moved to anchorage south of the Bay Bridge, trailing
2 an oil slick.

3 (l) 4 p.m. – Oil booms were set up at Aquatic Park and
4 Fisherman's Wharf in San Francisco.

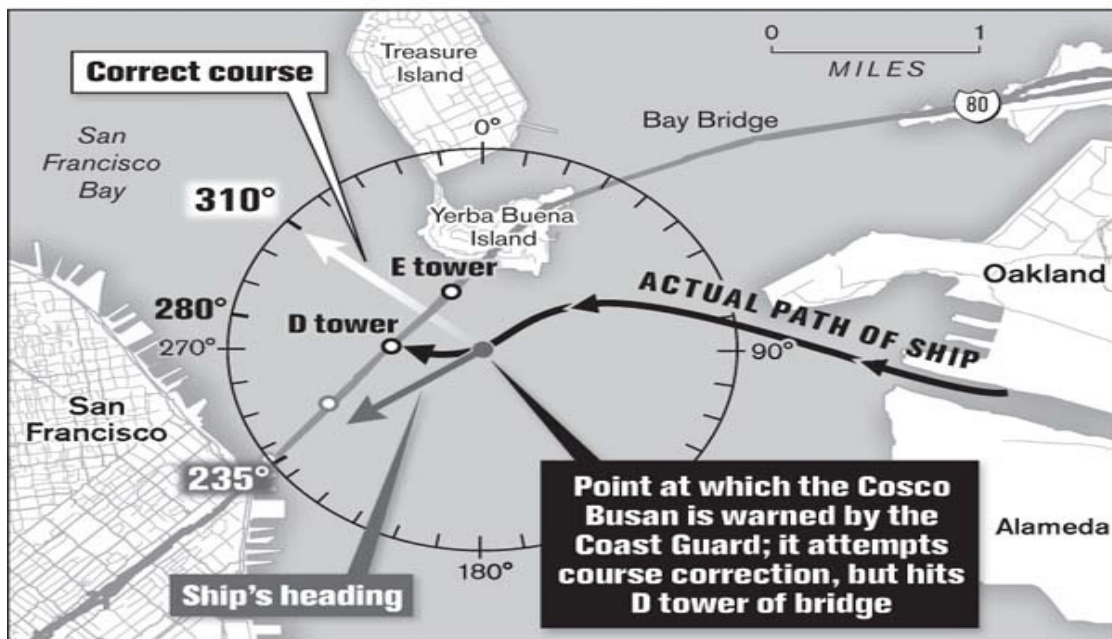
5 (m) 4:49 p.m. – Contrary to earlier assessments provided by the
6 Defendants, the Coast Guard realizes the spill was
7 approximately 58,000 gallons.

8 (n) 8:58 p.m. – The Coast Guard notifies the public of the true
9 extent of spill.

10 34. The graphic below, which appeared in the San Francisco Chronicle,
11 shows in stark contrast the correct course, as opposed to the actual course of the
12 Ship on the morning of November 7th.

14 Off course

15 This diagram shows the heading of the Cosco Busan at 235 degrees
16 when the ship was contacted by the Coast Guard Vessel Traffic Service.
17 The correct course from the Oakland Bar Channel to the channel
18 between the D and E towers of the Bay Bridge is 310 degrees.
19 The pilot turned the ship right to 280 degrees when he hit the D tower.



18 Sources: Chronicle reporting; ESRI, TeleAtlas

19 The Chronicle

1 **B. Construction, Ownership, Management, Operation, And Control**
2 **Of the Ship**

3 **1. Construction Of the Ship**

4 35. The Ship, built in 2001 by Hyundai Heavy Industries Ltd. Co. is a
5 cargo ship, shown below in a picture which appeared in the San Francisco
6 Chronicle. Unlike modern tanker ships and other recently built cargo ships, the
7 Ship's fuel tanks are arrayed along the sides of the ship behind a single hull,
8 commonly called "winged" tanks. In 2006, the International Maritime
9 Organization, a United Nations agency, banned winged fuel tanks along the hull
10 in ships being built or significantly modified beginning in 2010. The agency
11 determined that these container ships should not carry fuel directly behind a
12 single layer hull, like that of the Ship. Instead, the new ships should have their
13 fuel tanks located deeper inside the ship and behind two walls to make their
14 puncture and subsequent discharge less likely.



1 2. **Ownership, Leasing, Management, Operation, Charter,**
2 **And Control Of the Ship**

3 36. On December 19, 2001, Defendant HANJIN publicly announced that
4 it had acquired the Ship in a 12-year charter from the German company Conti
5 Rederei, and launched the ship under the name Hanjin Cairo.

6 37. The Ship was subsequently re-christened the COSCO Busan.

7 38. Shortly after the Spill, HANJIN issued a press release alleging:
8 “Synergy Marine fully operates the ship as well as manages the entire crew
9 including the captain . . . ”

10 39. On the day of Spill, Darrell Wilson, an employee of MTI Network,
11 who claimed to be speaking on behalf of REGAL publicly alleged that the Ship
12 was managed by Fleet Management Ltd. of Hong Kong and its crew and technical
13 support was provided by Synergy Management Services of Hong Kong. Mr.
14 Wilson said REGAL “is stepping up to the plate. It’s their ship. They own it. It’s
15 fully insured.”

16 40. On November 10, 2007, REGAL issued a news advisory via PR
17 Newswire, in which they acknowledged REGAL’s designation as the
18 “responsible party for the spill clean-up and response.”

19 C. **Bunker Fuel - The Contaminant Involved**

20 41. Bunker fuel is also known as “heavy oil”, “#6 oil”, “resid”, “Bunker
21 C”, “blended fuel oil”, “furnace oil” and other often locally used names. Bunker
22 fuel is technically any type of fuel oil used aboard ships. It gets its name from the
23 containers (known as Bunker Tanks) on ships and in ports in which it is stored.
24 The heavy fuel oil mainly consists of residual refinery streams from the
25 distillation or “cracking units” in the refineries.

26 1. **Toxicity Of Bunker Fuel**

27 42. Bunker fuel is an extremely toxic substance. The heavy fuel oil
28 making up the bulk of bunker fuel is classified as carcinogenic, harmful and

1 dangerous for the environment according to the European Union Dangerous
2 Substances Directive.

3 43. Bunker fuel contains polycyclic aromatic compounds (“PCA”) which
4 have been shown to cause anemia, disorders of the liver, bone marrow and
5 lymphoid tissues in rats during dermal application. Other organs and tissues that
6 may be damaged from bunker fuel exposure are: blood, kidneys, liver, central
7 nervous system and the lens or cornea of the eye. Additionally, it has been
8 demonstrated that certain PCA components from the heavy fuel oil are found in
9 the urine of persons who have been exposed to the heavy fuel oil on the skin.

10 2. Consequences of Bunker Fuel Spills

11 44. Because of its high toxicity, bunker fuel contamination can have an
12 overwhelmingly detrimental effect on human and marine life with which it comes
13 into contact.

14 45. During spills, bunker fuel can release Hydrogen Sulfide which is a
15 highly flammable gas which can be fatal to humans if it is inhaled at certain
16 concentrations. The exhaust fumes have been reported to be an occupational
17 hazard due to NIOSH-reported potential carcinogenic properties. Bunker fuel can
18 cause irritation to the eyes, skin irritation and damage to the respiratory system.
19 Authorities advise people to avoid liquid mist and vapor contact because it can
20 enter the lungs, causing prolonged damage and even death. This mist can also be
21 absorbed through the skin, and should be avoided at any cost. In non-vaporized
22 liquid form, bunker fuel is less easily absorbed in the skin but loses none of its
23 toxic and carcinogenic properties.

24 46. Spilled bunker fuel can also have a devastating effect on marine life.
25 Bunker fuel is significantly more toxic to marine life than the crude oil that was
26 spilled in the Exxon Valdez case. It is heavier than crude oil, and adheres to the
27 bodies of marine life with which it comes into contact, with equal or greater force
28 than crude oil.

1 47. Jonna Mazet, drawing on results of her laboratory experiments and
2 other research at the University of California, Davis, Veterinary School of
3 Medicine, stated regarding bunker fuel and crude oil: “If you compare the two,
4 bunker oil is more toxic.” In particular, exposure to bunker fuel poses a
5 significantly greater risk of damage to the reproductive systems of exposed
6 marine life. Research also suggests that the toxic components of bunker fuel can
7 be taken up the aquatic food chain, as prey pass contaminants to predators.

8 48. The most obvious and immediate marine life victims of a bunker fuel
9 spill are marine mammals and birds which come into contact with the fuel while it
10 is floating on the water. Once in contact with spilled bunker fuel, their bodies can
11 become coated with a thick layer of the toxic fuel. Over time, the fuel becomes
12 stickier, or “weathers,” causing it to adhere to exposed animals with greater
13 strength. Because spilled bunker fuel can appear to some species of fish like
14 floating food, they can be attracted to it which can result in their contact with it.
15 This can further endanger sea birds, which are attracted to schools of fish and
16 may dive through thick oil slicks to get to them.

17 49. In addition to the long-term damage which the toxicity of bunker
18 fuel can cause in birds and marine mammals are the short-term, often fatal effects
19 of bunker fuel coating. The coating can significantly reduce or destroy the
20 insulation and waterproofing properties of feathers and fur, leading to
21 hypothermia. Coated birds can also become easier prey because of their
22 diminished ability to fly caused by the coating. Moreover, when animals and
23 birds ingest the oil by accident, which often happens while attempting to clean
24 themselves, they often develop ulcers or bleeding in their stomachs. Further
25 exacerbating the situation for such animals is the reduced availability of food
26 sources which usually accompanies a spill.

27 50. Less obvious are the deleterious effects on under water marine life
28 which occur as the oil condenses, mixes with, and drops through the water layer

1 to the ocean floor. Documented effects have included: a decrease in the
2 thickness of the fish eggs; damage to fish eggs, larvae and young fish; damage to
3 estuaries, coral reefs, seagrass and mangrove habitats which are the breeding
4 areas of many fish and crustaceans, interference with their breeding; and tainting
5 of fish, crustaceans, molluscs and algae. Because of the heavy density of bunker
6 fuel, a far greater amount generally sinks than lighter crude oil. This not only
7 causes more of it to collect on the sea floor, but also allows for those parts which
8 are water soluble to dissolve and disperse as opposed to evaporate into the
9 atmosphere, as generally happens when lighter crude oil spills and forms longer-
10 lasting slicks. As described in more detail below, crab, because of their feeding
11 and reproductive habits are particularly susceptible to these dangers.

12 51. An informative example of the impact which a large discharge of oil
13 has on marine environments is the Exxon Valdez spill of 1989 off the coast of
14 Alaska. Thousands of animals died immediately; the best estimates include:
15 250,000-500,000 seabirds; 2,800-5,000 sea otters; approximately 12 river otters;
16 300 harbor seals; 250 bald eagles; and 22 orcas; as well as the destruction of
17 billions of salmon and herring eggs. Due to a thorough cleanup, little visual
18 evidence of the event remains, but the effects of the spill continue to be felt today.
19 In the long-term, reductions in population have been seen in various ocean
20 animals, including stunted growth in pink salmon populations. Almost 19 years
21 after the spill, a team of scientists at the University of North Carolina have found
22 that the Exxon Valdez spill effects are lasting far longer than expected. The team
23 estimates some shoreline habitats may take up to 30 years to recover.

24 52. Though smaller than the Exxon Valdez spill, because of the greater
25 toxicity and density of bunker fuel than crude oil, the Spill may have an even
26 greater long-term impact on San Francisco Bay marine life.

1 **D. Extent Of Damages To Plaintiffs And The Class**

2 **1. The San Francisco Bay Area Dungeness Crab Fishery**

3 **a. Development Of The Fishery**

4 53. The Dungeness crab, along with its smaller relatives the rock crabs,
5 have always been plentiful along the pacific coast. However, it wasn't until the
6 early twentieth century that an anonymous enterprising fisherman, in the small
7 fishing village of Dungeness, Washington at the tip of the Olympic Peninsula,
8 decided to catch and sell the big meaty crabs.

9 54. In a matter of a few years, the prolific Dungeness crab became one of
10 the premier commercial fisheries on the west coast. Shortly after the turn of the
11 century, Sicilian fishermen began plying the waters outside San Francisco's
12 golden gate bridge in search of the Dungeness crab. The men would fish the tides
13 during the day then return in time to sell their crabs at the Meiggs wharf
14 wholesale market. Fishmongers from the teeming Chinatown markets, Onatara's
15 in the Fillmore and the popular Crystal palace in the mission, renown for its four
16 giant fish markets, all gathered at Meiggs wharf around midnight to vie for the
17 days catch. The area known as Meiggs wharf was set aside by state legislature in
18 1925 for the sole use of the fishermen in the city, it then became known as
19 Fisherman's Wharf as it is called today.

20 55. The newly founded crab fishery was a welcome boon to once poor
21 fishermen, even the great depression and the infamous San Francisco crab war of
22 the 1930's when crab sold for 5 cents, each was ameliorated by the seemingly
23 endless demand of crabs. As time passed, some fishermen began to sell their
24 catch directly to the public from their boats or they set up small stalls on the
25 sidewalk. The Dungeness crab became the gold of the 1920's, 30's and 40's.

26 56. By 1940 with the implementation of the modern day crab pot and
27 larger, diesel powered boats the crab catch rose dramatically. *There seemed to be*
28 *and endless profusion of crabs, fortunes were made and Fisherman's Wharf,*

1 ***San Francisco was propelled to national prominence as the capital of the***
 2 ***Dungeness crab.*** The Dungeness crab created an unforgettable scene which
 3 attracted visitors from around the world.

4 57. The Port of San Francisco became the center of Northern California's
 5 fishing industry and home to most of the Bay Area's leading commercial seafood
 6 companies. The Fisherman's Wharf Processing Center, located at Pier 45,
 7 supplies the highest quality seafood to local, regional and world markets and
 8 serves as a model for modern fish processing facilities throughout the United
 9 States.

10 58. Looking at the 2006 California Department of Fish and Game statistics
 11 for crab landings alone at the San Francisco Port and others affected by the Spill
 12 make clear the productivity of the Bay Area's fisheries.

<i>PORT</i>	<i>SPECIES</i>	<i>POUNDS</i>	<i>VALUE</i>
San Francisco	Dungeness Crab	2,249,814	\$4,385,813
Princeton-Half Moon Bay	Dungeness Crab	1,477,999	\$3,063,763
Berkeley	Dungeness Crab	8,769	\$21,525
Sausalito	Dungeness Crab	9,975	\$26,046
Emeryville	Dungeness Crab	5,686	\$14,299
Alameda	Dungeness Crab	12,262	\$23,897
Oakland	Dungeness Crab	8,713	\$15,809
TOTAL		3,773,218	\$7,551,152

22 **b. San Francisco Dungeness Crab Season**

23 59. Much of catching and selling of Dungeness crab each year in the San
 24 Francisco Bay Area occurs in the first two weeks of the season. Dungeness crab
 25 season is usually from mid-November to mid-June. This year, the Dungeness
 26 crab season officially opened November 15th in San Francisco Bay. There is
 27 always a host of activity on the opening day of the season. Visitors come from all
 28 over the globe for some of the best crab on the West Coast, the best crab

1 restaurants in the US, and some of the world's best crab markets and crab
2 festivals. The crab season is a source of income for many parts of San Francisco.

3 60. The streets of Chinatown, for instance, are swarming with grocery
4 stalls that sell live fish during crab season along with some of the most freshly-
5 caught crab. San Francisco also plays host to the country's best crab festivals.
6 The San Francisco Crab Festival and Fisherman's Wharf Crab Festival are both
7 well-established celebrations. The North Beach Crab Crawl gives the city's crab
8 an Italian flavor. The Union Square Crab Fest is well-known for attracting A-list
9 celebrities and offering world-class seafood restaurants.

10 61. About 150 boats set out from San Francisco, Half Moon Bay and
11 Bodega Bay minutes after owners agree on a price with the processors. In the
12 tradition of their ancestors, crabbers equipped with 100-300 crab traps or pots are
13 set out. Each 90-pound trap will be baited with squid and/or mackerel, dropped
14 to the ocean floor and marked by buoys. When the first catches of the season are
15 brought in, you see thousands of pounds of crabs waiting to be unloaded.

16 62. For Bay Area crab fishermen the first 15 days of the season, from
17 November 15th to December 1st are by far the most important economically. In
18 this short period, the fishermen not only pull in fully 80% of their total annual
19 catch, they also receive a significant premium in price. Crab on Thanksgiving is
20 a San Francisco Bay tradition, and people in the area are willing to pay more for
21 crabs at this time, especially after not having them since June. What's more, the
22 crab fisheries north of Mendocino don't open until December 1st which puts
23 further pressure on supply and increasing the price.

24 c. **Immediate Effects Of The Oil Spill On The**
25 **Dungeness Crab Fishery**

26 63. Following the Spill, crabbers stayed off the water amid health
27 concerns. Crab buyers at Fisherman's Wharf refused to buy crab based on crab
28 market concerns over the public health risk of crabs contaminated with bunker
fuel from the Spill. Max Boland, director of sales at Alber Seafoods, a wholesaler

1 on the wharf, said, “It just takes one crab and you'll have a problem. It's a lawsuit
2 waiting to happen.” Assemblyman Mark Leno, D-San Francisco said, “It's
3 extremely disappointing and I think potentially reckless . . . I don't want to be an
4 alarmist, but we don't know for certain that this is safe.”

5 64. Public concern over the safety of local crab was exacerbated by
6 wording of the Executive Order signed by Governor Arnold Schwarzenegger
7 soon after the Spill which prohibits the operation of holding tanks that pump in
8 water within the closed fishing area, which includes all of San Francisco Bay.
9 Nearly all local crab boats use live-well holding tanks. Thus, the order
10 effectively prohibits crab fishermen from offloading their catch to the wholesalers
11 in San Francisco, regardless of where the crabs were caught. The impact of this
12 calamity is graphically depicted in the photograph below which reveals a
13 graveyard of crab pots abandoned by fishermen in a parking lot adjacent to Pillar
14 Point Harbor.



1 **d. Long-term Effects On The Dungeness Crab Fishery**

2 65. The San Francisco Bay, however, is not only important to crab and
3 other fishermen as place to catch and sell fish. It is also fundamentally important
4 for fishermen's future livelihoods, supplying the fish which fishermen depend on
5 in the future. The Spill severely threatens the Bay's functionality in this regard,
6 and thus the future livelihoods of Bay areas fishermen who depend upon it.

7 66. Of all the estuaries on the Pacific Coast - of North and South
8 America - none is as important biologically as San Francisco Bay. It is the
9 gateway between the Sierras, provides spawning habitat for Pacific herring, and is
10 *the largest nursery area for Dungeness crab* in a broad area of the coast.

11 67. Dungeness crabs mate from spring through fall. Fertilization of the
12 egg does not occur at the time of the mating. The female crab stores the sperm
13 until her eggs are fully developed. The eggs are fertilized when the female
14 extrudes them under her abdomen where they are carried until hatching. A large
15 female crab can carry 2.5 million eggs.

16 68. After hatching, young crab are planktonic, or free swimming, in the
17 water column for about four months, when they pass through five larval stages,
18 known as "zoea." These shrimp-like larvae are primarily transported by currents
19 throughout the entire bay. In the next and last larval stage, termed the
20 "megalops," the larva becomes more recognizable as a young crab, with claws
21 and legs, but still with a shrimp-like abdomen. It takes about 2 years for a crab to
22 reach maturity after a megalopae settles to the bottom and moults to a juvenile
23 crab. Females become mature at a shell-width of about 90mm, while males reach
24 maturity at a shell-width of about 150mm. Males reach legal size (165mm, or 6.5
25 inches, in shell-width) after a little over 2 years. After maturing, females grow
26 slower because most of their accumulated energy is being devoted to egg-
27 production rather than body growth. California state law only allows the
28 commercial and sport catching of male Dungeness crabs.

1 69. The Spill threatens to become a poison pill for the species, as the
2 bunker fuel which is not cleaned from the surface or pulled out to sea becomes
3 neutrally buoyant or breaks down and sinks to the bottom of the Bay and into the
4 Dungeness crab nursery.

5 70. Many predict that crab, as well as shrimp, clams, oysters and other
6 molluscs, which come into contact with the bunker fuel will die quickly from
7 acute toxicity and/or tainting of the flesh. Not only does this threaten the adult
8 male crabs which would have been otherwise available for fishermen to catch. It
9 also severely threatens future generation of crabs.

10 71. At the most immediate level, it can be expected that many of the
11 more vulnerable immature crabs which have not yet developed a hard outer shell
12 will be quickly killed, eliminating crabs that otherwise would have been available
13 for harvest in the coming one to two years. It can also be predicted that mature,
14 egg-carrying females will also be among those killed, eliminating with them the
15 often millions of eggs (and thus future crabs) which they carry.

16 72. Less directly, with each death of a mature female crab, the breeding
17 stock for future generations is severely diminished. Dungeness crab males will
18 often breed with several females in a season. Accordingly, by law, only males
19 may be caught by commercial and port fishermen, thereby protecting the
20 productivity of the fishery. A massive die off of the female Dungeness crab in the
21 Bay could destroy this balance. Furthermore, as discussed above, bunker fuel has
22 been demonstrated to cause reproductive harm in marine life exposed to it,
23 additionally threatening the future of the Bay's Dungeness crab fishery.

24 73. Finally, the long-term risks of the Spill to the Bay's Dungeness crab
25 population is exacerbated by their eating habits. Crabs are described as
26 "opportunistic omnivores," meaning that they eat almost anything they can catch,
27 and will attempt to feed on oil, oiled prey, and oiled sediments. Thus, even
28 though heavy oils are not normally considered to be biologically available to most

1 marine organisms, the benthic scavenging of crabs put them at greater and
2 continuing risk from the effects of the Spill.

3 **2. The San Francisco Bay Area Flat Fish Fishery**

4 74. The Spill is also expected to have a huge impact on flat fish,
5 including species more commonly known as Petrale, English sole, Skate, and
6 Sand Dabs, all of which are bottom-feeding fish. Much of the high density
7 bunker fuel is expected to sink, smothering and killing the bottom feeders and
8 their food. Furthermore, as it sinks, the water soluble elements of the fuel, which
9 generally would evaporate from a slick caused by the spill of a lighter density oil,
10 will likely dissolve. This would further exacerbate the Spill's impact on water-
11 column organisms, such as flat fish: bunker fuel is often high in aromatics, which
12 is the primary source of both acute and chronic toxicity to aquatic organisms, and
13 many of these aromatics are water soluble.

14 **3. Other Fisheries Of The San Francisco Bay**

15 75. The Spill is also likely to have severe short and long-term effects on
16 other fisheries of the San Francisco Bay. The San Francisco Bay fishery is the
17 largest for herring south of British Columbia and is presently the United States'
18 only "urban commercial fishery." During the herring season, herring boats can be
19 seen near the shores of Sausalito, along the walkways of the Embarcadero and
20 near the Emeryville mudflats.

21 76. San Francisco Bay herring spawn around the quarter moon, when
22 there is the least swing in height between the low and high tides. The females
23 swim in with approximately 45,000 eggs in their bellies until they are able to
24 release them on the now sticky surface. Because of the sheen of the bunker fuel
25 that is now spread throughout the surface of the ocean, a vast majority of the eggs
26 will be killed off before they are even given a chance to hatch.

27 77. Furthermore, herring are particularly sensitive to environmental
28 factors, which play a much greater role in determining the size of their schools
than the success of the fishing fleets.

1 78. More than 4,000 tons of herring are pulled out of the Bay each year
2 with a market value to fishermen of about \$2.7 million annually. Herring caught
3 off the California coast can net as much as \$10 million in annual gross profits for
4 the fishing industry.

5 79. As a result of the Spill, the livelihoods of fishermen who depend on
6 this fishery are also at risk.

7 **VI. CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **(Strict Liability - Lempert-Keene-Seastrand Oil Spill Prevention Act,
10 Gov't Code §§ 8670 *et seq.*)**

11 80. Plaintiffs hereby incorporate by reference all paragraphs above as if
12 fully set forth in detail herein.

13 81. Defendants REGAL, HANJIN, SYNERGY, and/or Does 1-50, at the
14 time of the Ship's collision with the Bay Bridge and discharge of 58,000 gallons
15 bunker fuel into the San Francisco Bay, were the owners, operators, lessees,
16 and/or charters by demise of the Ship.

17 82. Defendants REGAL, HANJIN, SYNERGY, and/or Does 1-50, are
18 "responsible parties," under Gov't Code § 8670.3(w), and therefore "absolutely
19 liable without regard to fault for any damages incurred by any injured party which
20 arises out of, or are caused by, the discharge or leaking of oil into or onto marine
21 waters." Gov't Code § 8670.56.5.

22 83. The San Francisco Bay and surrounding ocean areas are "marine
23 waters." *Id.*, § 8670.3(i).

24 84. The bunker fuel discharged by the Ship into the San Francisco Bay is
25 "oil," as used in § 8670.56.5. Gov't Code § 8670.3(n).

26 85. The contamination legally caused by the discharge of bunker fuel by
27 the Ship into or upon the San Francisco Bay injured, destroyed, and/or caused to
28 be lost, natural resources on which Plaintiffs and the class depend for their
livelihood, including but not limited to, the local populations of Dungeness crab,

1 flat fish, herring, and salmon. Plaintiffs and the class dependence on these
2 natural resources constitute at least 25% of their earnings during the respectively
3 applicable seasons for such resources.

4 86. The injury, destruction and loss of these natural resources has caused
5 Plaintiffs and the class to lose profits, and will cause future losses of profits by
6 Plaintiffs and the class and/or impairment of their earning capacities.

7 87. The injury, destruction and loss of these natural resources has also
8 caused, and will cause, Plaintiffs and the class losses of net profits.

9 88. The discharge of bunker fuel by the Ship into the San Francisco Bay
10 has also caused Plaintiffs and the class economic losses in the form of the costs
11 and expenses of actions taken by Plaintiffs and the class to test, evaluate, access
12 and/or monitor the extent of the contamination of the San Francisco Bay and
13 surrounding marine area in order to determine the extent of any contamination to
14 marine life, including but not limited to, Dungeness crabs, flat fish, herring, and
15 salmon, and/or the safety and fitness for human consumption of such marine life.

16 89. The likely long-lasting effects of the contamination of the discharge
17 of bunker fuel into the San Francisco Bay by the Ship on the marine life on which
18 Plaintiffs' and the class' livelihoods depend, especially but not limited to, the
19 Dungeness crab, flat fish, herring, and salmon populations, requires that Plaintiffs
20 and the class continue future monitoring and testing activities in order to ensure
21 that such marine life is not contaminated and is safe and fit for human
22 consumption.

23 90. In doing the acts herein alleged, Defendants, and each of them, acted
24 willfully, wantonly, with oppression, fraud, and/or malice, and with a conscious
25 disregard of the rights and safety of others, such that Plaintiff requests that the
26 trier of fact, in the exercise of its sound discretion, award Plaintiff additional
27 damages for the sake of example and sufficient to punish said Defendants for
28 their despicable conduct, in an amount reasonably related to Plaintiff's actual
damages and Defendants' wealth, yet sufficiently large enough to be an example

1 to others and to deter Defendants and others from engaging in similar conduct in
2 the future.

3 WHEREFORE, Plaintiffs pray for relief as set forth below.

4 **SECOND CAUSE OF ACTION**

5 **(Strict Liability - Ultra Hazardous Activity)**

6 91. Plaintiffs hereby incorporate by reference all paragraphs above as if
7 fully set forth in detail herein.

8 92. Defendants REGAL, HANJIN, SYNERGY, COTA and/or Does 1-
9 50, in transporting approximately 1 million gallons of highly toxic bunker fuel
10 through the San Francisco Bay, were engaged in an abnormally dangerous and
11 ultra-hazardous activity.

12 93. Defendants' conduct served as a direct and legal cause of the
13 discharge and dispersion of 58,000 gallons of bunker fuel from the Ship into the
14 San Francisco Bay and surrounding ocean areas, which is the kind of harm to be
15 anticipated as a result of the risk created by the ultra hazardous activity.

16 94. As a direct and/or legal result of the wrongful acts and/or omissions
17 of the Defendants, and each of them, Plaintiffs have suffered and/or will suffer
18 significant past and future economic loss, including but not limited to, injuries
19 flowing from:

20 (a) Plaintiffs inability to harvest and sell Dungeness crabs during the most
21 productive and lucrative period of the 2007-08 Dungeness crab season;

22 (b) the reduced physical size and quantity of future populations of
23 Dungeness in the San Francisco Bay area as a result of destruction of, and
24 injury to, San Francisco Bay Dungeness crab estuary;

25 (c) the damage done to populations of other commercial fish species,
26 including but not limited to flat fish, herring, and salmon, affected by
27 contamination of San Francisco Bay caused by the discharged bunker fuel;

28

1 (d) the damage done to short, middle, and long-term reputation of San
2 Francisco Bay fishery resulting from the public perception of
3 contamination to the fishery and related safety of fish caught there; and
4 (e) the cost already incurred, and to be incurred in the future, in order to
5 monitor the effects of the contamination of the San Francisco Bay and
6 surrounding ocean areas on marine species, including, but not limited to,
7 Dungeness crab, flat fish, herring, salmon, in order to ensure their safety
8 and fitness for human consumption.

9 95. As a direct and legal cause of the Defendants wrongful acts and/or
10 omissions herein above set forth, Plaintiffs and/or the class have suffered and will
11 suffer economic harm, injury, and/or losses as herein above set forth.

12 96. The acts and omissions of Defendants, and each of them, were done
13 with malice, fraud, and/or oppression as herein above set forth.

14 WHEREFORE, Plaintiffs pray for relief as set forth below.

15 **THIRD CAUSE OF ACTION**

16 **(Negligence)**

17 97. Plaintiffs hereby incorporate by reference all paragraphs above as if
18 fully set forth in detail herein.

19 98. Plaintiffs are informed and believe, and thereupon allege that at all
20 times prior to the collision, the Spill, and the immediate aftermath Defendants
21 HANJIN, REGAL, SYNERGY, COTA, and/or DOES 1-50 negligently,
22 carelessly and/or unlawfully owned, operated, controlled, managed, leased,
23 loaned, borrowed, bailed, chartered, and/or maintained the Ship so as to cause the
24 collision, the Spill and subsequent events herein above described, and legally
25 caused the economic harm, injury, and/or damage to Plaintiffs and/or the class
26 which are herein above set forth.

27 99. The acts and omissions of the Defendants described herein were also
28 in violation of various California state laws including but not limited to: (a) the
Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Gov't Code §§

1 8670, *et seq.*; (b) the Porter-Cologne Water Quality Control Act, Cal. Water Code
2 §§ 13000, *et seq.* Defendants' violations of these statutes directly and
3 proximately caused, and will cause, injury to Plaintiff and the class of a type
4 which the statutes are intended to prevent. Plaintiff and the class are of the class
5 of persons for whose protection these statutes were enacted.

6 100. As a direct and legal cause of the Defendants' wrongful acts and/or
7 omissions, Plaintiffs, the class and the environment have suffered and will suffer
8 as set forth hereunder.

9 WHEREFORE, Plaintiffs pray for relief as set forth below.

10 **FOURTH CAUSE OF ACTION**

11 **(Negligent Entrustment)**

12 101. At all times herein mentioned, Defendants HANJIN, REGAL,
13 SYNERGY, COTA, and/or DOES 1-50 negligently, wantonly, carelessly and/or
14 reckless hired, retained, supervised, trained, and/or entrusted the Ship to one
15 another, for the purpose of transporting cargo aboard a container ship filled with
16 bunker fuel through the San Francisco Bay. Thereafter, the Defendants, and each
17 of them, controlled, navigated, and/o managed the Ship with the knowledge,
18 consent, permission, and/or within the scope of authority conferred by Defendants,
19 and each of them.

20 102. Plaintiffs are informed and believe that Defendants, and each of
21 them, were at all times mentioned incompetent and unfit to safely own, operate,
22 manage, maintain, lease, charter, or otherwise control the Ship for transport of
23 cargo within the San Francisco Bay.

24 103. As a direct and legal cause of the Defendants wrongful acts and/or
25 omissions herein above set forth, Plaintiffs and/or the class have suffered and will
26 suffer economic harm, injury, and/or losses as herein above set forth.

27 104. The acts and omissions of Defendants, and each of them, were done
28 with malice, fraud, and/or oppression as herein above set forth.

1 WHEREFORE, Plaintiffs pray for relief as set forth below.

2 **FIFTH CAUSE OF ACTION**

3 **(Public Nuisance - Civ. Code §§ 3479 *et seq.*)**

4 105. Plaintiffs hereby incorporate by reference all paragraphs above as if
5 fully set forth in detail herein.

6 106. Defendants, and each of them, have created a condition that affects a
7 substantial number of individuals similarly situated to the Plaintiffs; and a
8 condition which would reasonably annoy and disturb an ordinary person.

9 107. The seriousness and/or gravity of the harm out weighs the social
10 utility of Defendants' conduct.

11 108. Plaintiffs and/or the class suffered harm and injury to their economic
12 livelihood, which they did not consent to and which is different from the type of
13 harm which is suffered by the general public.

14 109. The above acts and omissions also created a public nuisance vis-a-
15 vis the Plaintiffs and the class, interfering with the property rights of Plaintiffs
16 and the class, and rights incidental to those property rights.

17 110. The acts and omissions of the Defendants described herein were also
18 in violation of various California state laws including but not limited to: (a) the
19 Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Gov't Code §§
20 8670, *et seq.*; (b) the Porter-Cologne Water Quality Control Act, Cal. Water Code
21 §§ 13000, *et seq.* Defendants' violations of these statutes directly and
22 proximately caused, and will cause, injury to Plaintiff and the class of a type
23 which the statutes are intended to prevent. Plaintiff and the class are of the class
24 of persons for whose protection these statutes were enacted.

25 111. As a direct and legal cause of the Defendants wrongful acts and/or
26 omissions herein above set forth, Plaintiffs and/or the class have suffered and will
27 suffer economic harm, injury, and/or losses as herein above set forth.

28 112. The acts and omissions of Defendants, and each of them, were done
with malice, fraud, and/or oppression as herein above set forth.

1 WHEREFORE, Plaintiffs pray for relief as set forth below.

2 **SIXTH CAUSE OF ACTION**

3 **(Private Nuisance - Civ. Code §§ 3479 *et seq.*)**

4 113. Plaintiffs hereby incorporate by reference all paragraphs above as if
5 fully set forth in detail herein.

6 114. The above acts and omissions also created a private nuisance vis-a-
7 vis the Plaintiffs and the class, interfering with their use and enjoyment of private
8 property rights and rights incidental to those property rights.

9 115. As a direct and legal cause of the Defendants wrongful acts and/or
10 omissions herein above set forth, Plaintiffs and/or the class have suffered and will
11 suffer economic harm, injury, and/or losses as herein above set forth.

12 116. The acts and omissions of Defendants, and each of them, were done
13 with malice, fraud, and/or oppression as herein above set forth.

14 WHEREFORE, Plaintiffs pray for relief as set forth below.

15 **SEVENTH CAUSE OF ACTION**

16 **(Declaratory Relief And Request for Monitoring of Contamination)**

17 117. Plaintiffs hereby incorporate by reference all paragraphs above as if
18 fully set forth in detail herein.

19 118. As a direct and legal result of the acts and omissions of the
20 Defendants, causing or allowing or contributing to the discharge of 58,000
21 gallons of highly toxic bunker fuel into the San Francisco Bay and surrounding
22 ocean areas, Plaintiffs have been denied the ability to assure themselves and
23 consumers of fish caught in the San Francisco Bay and surrounding ocean areas
24 of the short, middle, and long-term safety and fitness for human consumption of
25 fish caught in the San Francisco Bay and surrounding ocean areas, including, but
26 not limited to, Dungeness crab, herring, flat fish and salmon. This inability to
27 assure themselves and fish consuming public of the safety and fitness for human
28 consumption of fish caught in the San Francisco Bay and surrounding ocean areas
has caused, and will cause, severe economic injury to Plaintiffs and the class, who

1 depend on the sale of fish caught in the San Francisco Bay and surrounding ocean
2 areas for significant portions of their livelihoods. Monitoring and testing
3 procedures exist which make the detection and evaluation of marine life
4 contamination and the safety and fitness of such marine life for human
5 consumption possible and beneficial.

6 119. Assuring the safety and fitness for human consumption of fish
7 caught in the San Francisco Bay and surrounding ocean areas, including but not
8 limited to, Dungeness crabs, herring, flat fish, and salmon, and thereby repairing
9 and maintaining the short, middle, and long-term reputation of the fisheries of the
10 San Francisco Bay and surrounding ocean areas can only be accomplished by the
11 creation of a marine life contamination monitoring fund to provide a marine life
12 contamination monitoring program, including:

- 13 (a) Periodic and regular sampling and testing of fish caught in the
14 San Francisco Bay, including, but not limited to, Dungeness
15 crab, herring, flat fish, and salmon by an independent and
16 qualified testing entity; and
- 17 (b) Widespread publication and dissemination of the results of
18 such sampling and testing to the fish consuming public.

19 120. Plaintiffs and the class have no adequate remedy at law in that
20 monetary damages alone do not compensate for the continuing nature of the harm
21 to them, and a monitoring program which assures Plaintiffs, the class, and the fish
22 consuming public of the safety and fitness for human consumption of fish caught
23 in the San Francisco Bay and surrounding ocean areas can prevent greater injury
24 to the fish consuming public and the reputations of the fisheries of the San
25 Francisco Bay and surrounding ocean area and serve to repair and maintain those
26 reputations.

27 121. Without a court-approved monitoring program and a declaration of
28 the rights of the Plaintiffs and the class to such a monitoring program, the safety
and fitness for human consumption of fish caught in the San Francisco Bay and

1 surrounding ocean areas cannot be assured and the reputation with the fish
2 consuming public of the fisheries of the San Francisco Bay and surrounding
3 ocean areas cannot be repaired or then subsequently maintained.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiffs pray for judgment as follows:

- 6 1. Enter an order certifying the class requested by Plaintiffs;
- 7 2. Enter a judgment in favor of Plaintiffs and the class, against
8 defendants, jointly and severally, for economic damages sustained by
9 them by reason of Defendants' unlawful conduct;
- 10 3. Enter a judgment awarding Plaintiffs and the class punitive damages
11 for Defendants' willful, reckless and wanton acts;
- 12 4. Enter a judgment in favor of Plaintiffs and the class, against
13 defendants, jointly and severally, for the creation of a fund to
14 monitor contamination of marine life in the San Francisco Bay and
15 surrounding ocean areas in order to assure the safety and fitness for
16 human consumption of fish caught in the San Francisco Bay and
17 surrounding ocean areas;
- 18 5. Award Plaintiffs and the class pre-judgment and post-judgment
19 interest, costs, expenses, including the costs of retaining expert
20 witnesses, and attorneys' fees in this action; and
- 21 6. Grant such other relief as this Court may deem just and equitable.

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24 DATED: November 20, 2007

COTCHETT, PITRE & McCARTHY

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26 By 

FRANK M. PITRE
Attorneys for Plaintiffs

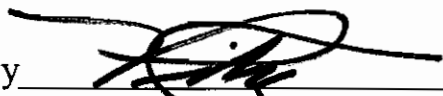
JURY DEMAND

Plaintiffs demand trial by jury on all issues so triable.

DATED: November 20, 2007

COTCHETT, PITRE & McCARTHY

By



FRANK M. PITRE
Attorneys for Plaintiffs

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