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FILED
Superior Court of California
County of San Francisco

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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 **JOHN TARANTINO; STEVEN F.**
14 **FITZ, dba FITZ-BUSKIRK, INC.;**
15 **JOHN ATKINSON; SEAN M.**
16 **HODGES; ERNIE KOEPF; SAU**
17 **A. PHANG; KIU A. PHANG SIN;**
18 **and others similarly situated,**

19 **Plaintiffs,**

20 **v.**

21 **HANJIN SHIPPING CO., LTD.;**
22 **REGAL STONE, LTD.; FLEET**
23 **MANAGEMENT, LTD.; JOHN J.**
24 **COTA; and DOES 2-100,**

25 **Defendants.**

26 **CASE NO. CGC-07-469379**

27 **CLASS ACTION**
28 **FIRST AMENDED COMPLAINT**
FOR DAMAGES 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.**

JURY TRIAL DEMANDED

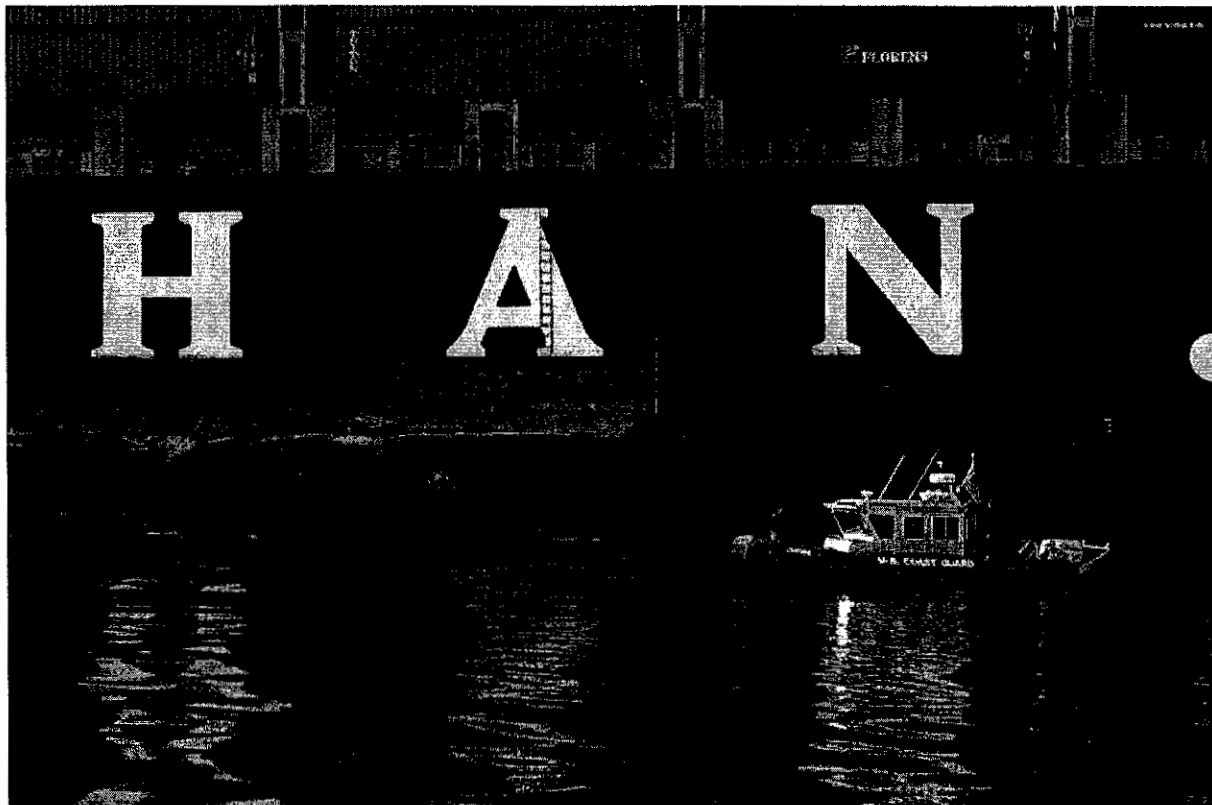
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1 **I. INTRODUCTION**

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 bunker
9 fuel poured into the San Francisco Bay, befouling for years one of the most
10 beautiful and productive bodies of water in the world (hereinafter “the Spill”).
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1 2. The polluting of the San Francisco Bay and its marine life was a
2 direct and foreseeable consequence of a combination of wrongful acts and
3 omissions by those who owned, operated, maintained, managed, chartered, leased
4 and/or exercised control over the Ship and/or the bunker fuel transported therein
5 at the time of the Spill; hereinafter identified as Defendants HANJIN SHIPPING
6 CO., LTD. (hereinafter "HANJIN"); REGAL STONE, LTD. (hereinafter
7 "REGAL"); JOHN COTA (hereinafter "COTA"); FLEET MANAGEMENT
8 LTD. (hereinafter "FLEET"); and/or Does 2-50.

9 3. On the day of the accident, Defendant COTA was the pilot
10 navigating the Ship through the San Francisco Bay. COTA was navigating with
11 the assistance of Captain Mao Cai Sun, and a crew comprised of agents,
12 employees, servants and/or joint venturers of the Defendants HANJIN, REGAL,
13 FLEET, and/or Does 2-50.

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

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

1 contacting private spill-containment operators, allowing the bunker fuel to spread
2 from the gash unabated.

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

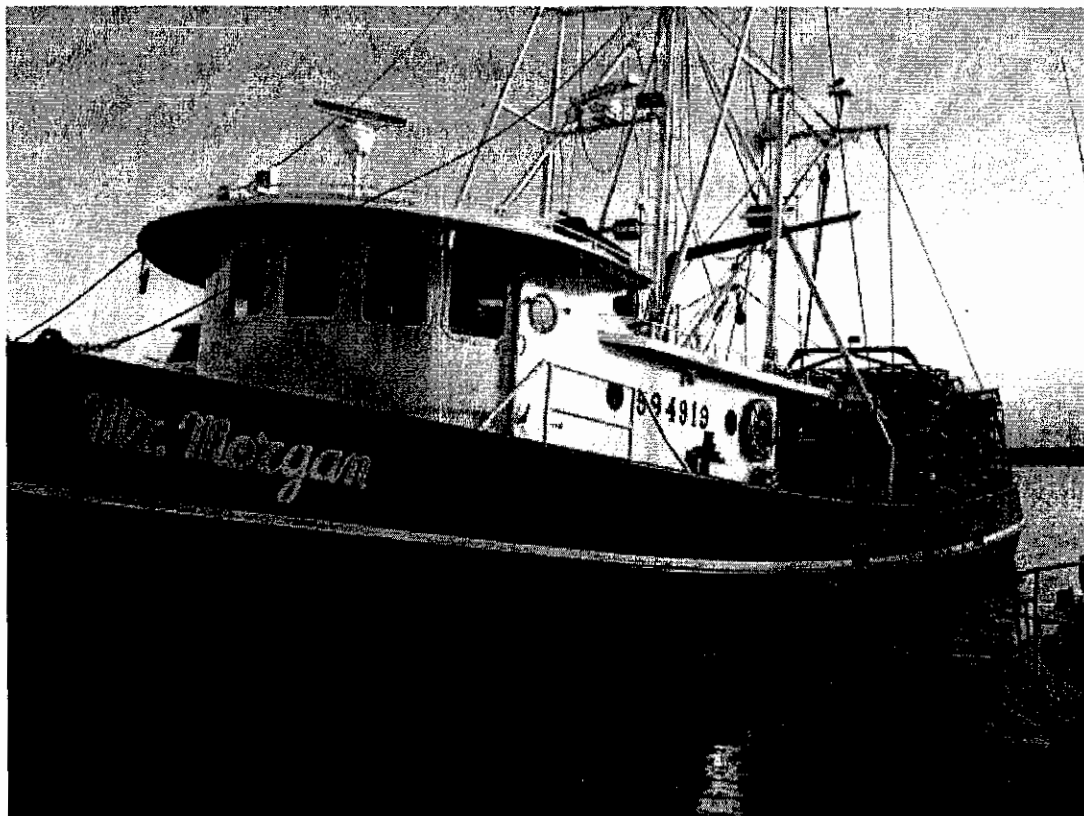
9 **II. PARTIES**

10 **A. The Plaintiffs**

11 7. **JOHN TARANTINO:** Plaintiff JOHN TARANTINO (hereinafter
12 “TARANTINO”) is, and at all relevant times herein was, an individual residing in
13 the City of Corte Madera, County of Marin, California. TARANTINO has earned
14 a living as a commercial fisherman in the San Francisco Bay Area for 35 years.
15 For much of that time, TARANTINO served as the owner and skipper of the
16 fishing vessel “The Crown Royal,” berthed at the Wharf in San Francisco, where
17 he is actively engaged in fishing for crab, as well as various vertebrate fish.
18 TARANTINO receives more than 25% of his earnings from the fishing of these
19 species during the applicable seasons for each. Plaintiff TARANTINO has
20 suffered economic injury, harm and/or damages to his livelihood as a commercial
21 fisherman as a direct, legal and foreseeable consequence of the wrongful acts
22 and/or omissions of Defendants, and each of them, more particularly set forth
23 herein.

24 8. **STEVEN F. FITZ:** Plaintiff STEVEN F. FITZ (hereinafter “FITZ”)
25 is, and at all relevant times herein was, an individual residing in El Granada,
26 County of San Mateo, California. FITZ has earned a living as a commercial
27 fisherman for over 35 years, the last 27 of which he has spent in the San
28 Francisco Bay Area. Since 1989 Fitz has served as the owner and skipper of the

1 fishing vessel "Mr. Morgan" depicted in the photo below, berthed in Pilar Point
2 Harbor in Half Moon Bay where he is actively engaged in fishing for crab, as well
3 as "flat fish," including species more commonly known as Petrale, English sole,
4 Skate, and Sand Dabs, under the name Fitz-Buskirk, Inc. FITZ receives more
5 than 25% of his earnings from the fishing of these species during the applicable
6 seasons for each. Plaintiff FITZ, dba Fitz-Buskirk, Inc., has suffered economic
7 injury, harm and/or damages to his livelihood as a commercial fisherman as a
8 direct, legal and foreseeable consequence of the wrongful acts and/or omissions
9 of Defendants, and each of them, more particularly set forth herein.



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24 9. **JOHN ATKINSON:** Plaintiff JOHN ATKINSON (hereinafter
25 "ATKINSON") is, and at all relevant times herein was, an individual residing in
26 the City of Corte Madera, County of Marin, California. ATKINSON has earned a
27 living as a commercial fisherman in the San Francisco Bay Area for over 17
28 years. Since 1990, ATKINSON has served as the owner and skipper of the

1 fishing vessel "New Rayann," berthed in Sausalito. ATKINSON is actively
2 engaged in fishing for crab and other fishing activities. ATKINSON receives
3 more than 25% of his earnings from the fishing of crab during the applicable
4 season. Plaintiff ATKINSON has suffered economic injury, harm and/or
5 damages to his livelihood as a commercial fisherman as a direct, legal and
6 foreseeable consequence of the wrongful acts and/or omissions of Defendants,
7 and each of them, more particularly set forth herein.

8 10. **SEAN M. HODGES:** Plaintiff SEAN M. HODGES (hereinafter
9 "HODGES") is, and at all relevant times herein was, an individual residing in
10 Novato, County of Marin, California. HODGES has earned a living as a
11 commercial fisherman in the San Francisco Bay Area for over 15 years. Since
12 1996, HODGES has served as the owner and skipper of the fishing vessel "Hog
13 Heaven," berthed in Sausalito. HODGES is actively engaged in fishing for crab
14 and other fishing activities. HODGES receives more than 25% of his earnings
15 from the fishing of crab during the applicable season. Plaintiff HODGES has
16 suffered economic injury, harm and/or damages to his livelihood as a commercial
17 fisherman as a direct, legal and foreseeable consequence of the wrongful acts
18 and/or omissions of Defendants, and each of them, more particularly set forth
19 herein.

20 11. **ERNIE KOEPF:** Plaintiff ERNIE KOEPF (hereinafter "KOEPF")
21 is, and at all relevant times herein was, an individual residing in Oakland, County
22 of Alameda, California. KOEPF has earned a living as a commercial fisherman in
23 the San Francisco Bay Area for over 36 years. KOEPF is the owner and skipper
24 of the fishing vessels "F/V Ursula B" and the "F/V Betty Jane," which are both
25 berthed at Fisherman's Wharf in San Francisco. KOEPF is actively engaged in
26 fishing for herring and salmon and receives more than 25% of his earnings from
27 the fishing of these species during the applicable season for each. Plaintiff
28 KOEPF has suffered economic injury, harm and/or damages to his livelihood as a

1 commercial fisherman as a direct, legal and foreseeable consequence of the
2 wrongful acts and/or omissions of Defendants, and each of them, more
3 particularly set forth herein. Throughout his career as a Bay Area commercial
4 fisherman, KOEPF has been a leader in the community. KOEPF is currently
5 serving as: Chair of the Director's Herring Advisory Council; President of the
6 California Herring Fishermen's Association; Director of the Pacific Coast
7 Federation of Fishermen's Associations, California Herring Association;
8 Member of the California Advisory Council on Salmon and Steelhead Trout; and
9 Project Supervisor/Development of Fishing Families Outreach.

10 12. **SAU A. PHANG:** Plaintiff SAU A. PHANG (hereinafter
11 "PHANG") is, and at all relevant times herein was, an individual residing in the
12 City and County of San Francisco. PHANG has earned a living as a commercial
13 fishermen, with his partner and wife Kiu A. Phang Sin, in the San Francisco Bay
14 Area for over 20 years. Since approximately 2002, PHANG has served as the
15 owner and skipper of the fishing vessel "Car Vella," berthed in Oyster Point.
16 PHANG is actively engaged in fishing for rock fish and receives more than 25%
17 of his earnings from the fishing of rock fish during the applicable seasons.
18 Plaintiff PHANG has suffered economic injury, harm and/or damages to his
19 livelihood as a commercial fisherman as a direct, legal and foreseeable
20 consequence of the wrongful acts and/or omissions of Defendants, and each of
21 them, more particularly set forth herein.

22 13. **KIU A. PHANG SIN:** Plaintiff KIU A. PHANG SIN (hereinafter
23 "SIN") is, and at all relevant times herein was, an individual residing in the City
24 and County of San Francisco. SIN has earned a living as a commercial
25 fisherman, with her partner and husband Sau A. Phang, in the San Francisco Bay
26 Area for over 20 years. Since approximately 2000, SIN has served as the owner
27 and skipper of the fishing vessel "Hop Sang III," berthed in Oyster Point. SIN is
28 actively engaged in fishing for rock fish and receives more than 25% of her

1 earnings from the fishing of rock fish during the applicable seasons. Plaintiff SIN
2 has suffered economic injury, harm and/or damages to her livelihood as a
3 commercial fisherman as a direct, legal and foreseeable consequence of the
4 wrongful acts and/or omissions of Defendants, and each of them, more
5 particularly set forth herein.

6 **B. The Defendants**

7 14. **HANJIN:** Plaintiffs are informed and believe, and thereupon allege,
8 that HANJIN is the owner, operator, lessee, and/or charterer by demise of the
9 Ship and/or the bunker fuel transported therein at the time of the Spill. HANJIN
10 is, and at all times herein mentioned was, a corporation, association, partnership,
11 joint venture, and/or sole proprietorship organized and existing under the laws of
12 Republic of Korea and/or headquartered at Hanjin Shipping Building, 25-11,
13 Yoido-Dong, Youngdeungpo-Gu, Seoul Korea. HANJIN is part of the Hanjin
14 Group, a South Korean conglomerate, which includes, in addition to HANJIN,
15 Hanjin Logistics and Korean Air (KAL). Holding a majority interest in the
16 Senator Lines, Hanjin-Senator is the seventh largest container transportation and
17 shipping company in the world, and is Korea's largest carrier, operating some 60
18 liner and tramper services transporting on 200 containerships, bulk carriers and
19 LNG carriers, more than 100 tons of cargo all over the world, including
20 California and/or the San Francisco Bay Area.

21 15. **REGAL:** Plaintiffs are informed and believe, and thereupon allege,
22 that REGAL is the owner, operator, lessee, and/or charterer by demise of the Ship
23 and/or the bunker fuel transported therein at the time of the Spill. REGAL is, and
24 at all times herein mentioned was, a corporation, association, partnership, joint
25 venture, and/or sole proprietorship organized and existing under the laws of Hong
26 Kong, China and/or is based in Hong Kong, China and transacts business
27 throughout the world, including California and/or the San Francisco Bay Area.

1 16. **FLEET:** Plaintiffs are informed and believe, and thereupon allege,
2 that FLEET is the owner, operator, lessee, and/or charterer by demise of the Ship
3 and/or the bunker fuel transported therein at the time of the Spill. FLEET is, and
4 at all times herein mentioned was, a corporation, association, partnership, joint
5 venture, and/or sole proprietorship organized and existing under the laws of the
6 Hong Kong, China and/or is based in Hong Kong, China and transacts business
7 throughout the world, including California and/or the San Francisco Bay Area.

8 17. **COTA:** Plaintiffs are informed and believe, and thereupon allege,
9 that COTA was piloting the Ship at the time of the collision and discharge of
10 58,000 gallons of bunker fuel into the San Francisco Bay. COTA is a 59 year old
11 individual residing in Petaluma, California. COTA has been a local pilot for
12 more than 25 years.

13 18. In the past 14 years COTA has had several “incidents” requiring an
14 investigation by the State Board of Pilot Commissioners. On several occasions,
15 the Commissioners have “counseled” COTA regarding his piloting activities on
16 the Bay. For example, in July 2006 COTA was reprimanded after it was
17 determined that he had allowed the bulk freighter Pioneer to move out of the
18 channel and run aground when it was approaching a dock at Antioch four months
19 earlier. The report on the incident stated: “Capt. COTA had not realized that the
20 vessel was going off track and did nothing to prevent it.” COTA was also
21 involved in an incident in the San Francisco Bay in 2003 involving a Navy
22 aircraft carrier, for which he received a “letter of concern.”

23 **C. The DOE Defendants**

24 19. The true names and capacities, whether individual, corporate,
25 associate or otherwise of the Defendants DOES 2 through 100 are unknown to
26 Plaintiffs who therefore sue said Defendants by such fictitious names pursuant to
27 Code of Civ. Proc. § 474. Plaintiffs further allege that each said fictitious
28 Defendant is in some manner responsible for the acts and occurrences hereinafter

1 set forth. Plaintiffs will amend this Complaint to show the true names and
2 capacities of these DOES Defendants when the same are ascertained, as well as
3 the manner in which each fictitious Defendant is responsible.

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

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

11 **III. JURISDICTION AND VENUE**

12 21. This Court has jurisdiction over this action pursuant to Code of Civil
13 Procedure Section 410.10. Plaintiffs seek damages and injunctive relief on behalf
14 of themselves and all others similarly situated under the statutory and common
15 laws of the State of California.

16 22. Venue is proper in this Court because the principal acts, occurrences,
17 and injuries alleged herein giving rise to this action occurred within the County,
18 the Defendants transact business within the County, and/or Plaintiffs
19 TARANTINO, KOEPF, PHANG, and SIN are residents of the County.

20 23. This Court has jurisdiction over the Defendants because they transact
21 business in California, and the principal acts, occurrences, and injuries alleged
22 herein giving rise to this action occurred in California.

23 24. Plaintiffs' class action complaint only asserts causes of action under
24 the statutory and common law of the State of California.

25 **IV. CLASS ACTION ALLEGATIONS**

26 25. Plaintiffs bring this action on their own behalf and as representatives
27 of a class consisting of:
28

1 **“all commercial fishing operations, including crab, herring, flat**
2 **fish, salmon, rock fish, and other fish, which are commercially**
3 **fished in and around the San Francisco Bay and surrounding**
4 **ocean areas.”**

5 26. The class is so broad and numerous that joinder of all members is
6 impracticable. Although its exact number is unknown, it is estimated that there
7 are more than 1000 class members.

8 27. Plaintiffs are members of the class, and their claims are typical of the
9 claims of all members.

10 28. Plaintiffs will fairly and adequately protect the interests of all of the
11 class, and the interests of each are coincident and not antagonistic with those of
12 the remainder of the class.

13 29. Plaintiffs are represented by counsel experienced with class action
14 and complex litigation and in the prosecution of violations of law arising out of
15 large scale environmental pollution.

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

18 (a) Whether the Defendants are strictly liable for the economic
19 damages caused to Plaintiffs and the class which are the direct
20 and legal result of the discharge of 58,000 gallons of bunker
21 fuel from the Ship under the Lempert-Keene-Seastrand Oil
22 Spill Prevention and Response Act, Gov't Code §§ 8670, *et*
23 *seq.*;

24 (b) Whether the transport of 58,000 gallons of highly toxic bunker
25 fuel through the San Francisco Bay constitutes an ultra-
26 hazardous activity, and thus whether Defendants are strictly
27 liable for any harm flowing from such activity;

- 1 (c) Whether Defendants were negligent, reckless, willful, wanton
2 or malicious in their conduct which resulted in the discharge
3 of 58,000 gallons of bunker fuel into and upon the San
4 Francisco Bay;
- 5 (d) Whether Defendants have created a public and/or private
6 nuisance by causing or contributing to the discharge of 58,000
7 gallons of highly toxic bunker fuel into and upon the San
8 Francisco Bay and surrounding ocean areas;
- 9 (e) Whether such violations of law are the direct and proximate
10 cause of the economic injuries suffered by the Plaintiffs and
11 the class;
- 12 (f) Whether the wrongful acts and/or omissions of Defendants
13 warrant creation of a monetary fund for future monitoring,
14 testing, evaluation and assessment of the safety and/or fitness
15 of seafood caught for human consumption from the San
16 Francisco Bay and surrounding ocean areas; and
- 17 (g) Whether injunctive or other equitable relief for the benefit of
18 the class is appropriate.

19 31. These and other common questions of law and fact predominate over
20 questions affecting only individual members.

21 32. A class action is superior to other methods of adjudication for a fair
22 and efficient administration of this controversy. Prosecution of these claims
23 within the procedural device of a class action will reduce the possibility of
24 repetitious litigation and conflicting results, while producing redress for claims
25 too small to support the expense of individual, complex litigation.

26 33. Individual adjudications of class member claims, which would as a
27 practical matter be dispositive of the interests of other members not parties to the
28 action, might substantially impair or impede the ability of the absent members to

1 protect their interests, particularly in regard to claims against defendants for
2 punitive damages.

3 34. Individual adjudications of class member claims would also create
4 the possibility of conflicting results, particularly on issues related to the
5 apportionment of fault and responsibility amongst the Defendants, and thus be
6 detrimental to the interests of the Defendants.

7 **V. FACTS**

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

9 35. On or about October 23, 2007, the Ship initiated its voyage from
10 Shanghai, China to Busan, South Korea; and thereafter to Long Beach,
11 California, arriving in Long Beach on November 3, 2007. The Ship subsequently
12 sailed from Long Beach to Oakland, California, arriving in Oakland on the
13 afternoon of November 6, 2007.

14 36. On the morning of November 7, 2007, the Ship left Oakland to
15 return to Buson, South Korea, carrying 2,500 20-foot containers for the China
16 Ocean Shipping Company (COSCO), one of the world's biggest shipping
17 agencies headquartered in Shanghai, China.

18 37. As COTA, Captain Mao, and the Ship's crew attempted to navigate
19 the Ship out of Oakland Harbor through the San Francisco Bay and into the
20 openocean, the Ship collided with the Delta Tower of the Bay Bridge, tearing a
21 large gash in its fuel tanks and discharging approximately 58,000 gallons of toxic
22 bunker fuel into and upon the Bay. This was the *first ever collision between a*
23 *vessel and a Bay Bridge tower* in the bridge's seventy-year history.

24 38. The sequence of events culminating in the collision and Spill played
25 out over a fifteen-hour period on November 7, 2007 is set forth below (all times
26 are approximate):
27
28

- 1 (a) 6:00 a.m. – COTA boarded the Ship at berth 55, Oakland
2 Inner Harbor. COTA at first decided the fog was too thick and
3 waited for it to lift.
- 4 (b) 7:30 a.m. – COTA notified the Coast Guard Vessel Traffic
5 Service that the fog had sufficiently lifted and he intended to
6 sail. COTA told Vessel Traffic Service he intended to use the
7 Delta-Echo span of the Bay Bridge. The Ship was assisted by
8 the tug Revolution.
- 9 (c) 7:30 to 8:20 a.m. – The Ship’s radar allegedly failed as the
10 Ship was passing Yerba Buena Island in the fog. Defendant
11 COTA was then allegedly forced to rely on an “electronic
12 chart” and its interpretation by Captain Mao as to the center of
13 the 2,210-foot Delta-Echo span through which the 131-foot
14 Ship was to pass. During the interchange between Defendant
15 COTA and the Ship’s Captain, an incorrect heading was
16 allegedly supplied directing the Ship *at Delta Tower*, instead
17 of the center of the Delta-Echo span.
- 18 (d) 8:20 - 8:27 a.m. – The Coast Guard Vessel Traffic Service
19 advised Defendant COTA that the Ship was off course. In an
20 effort by Defendant COTA and/or the Ship’s Captain and crew
21 to quickly readjust course, the Ship smashed into the fender of
22 Delta Tower tearing a horizontal gash near the front of the
23 Ship measuring 100 feet long, 12 feet wide and 3 feet deep.
- 24 (e) 8:30 a.m. – Defendant COTA reported to Vessel Traffic
25 Service that the Ship had hit Delta Tower. The collision had
26 ruptured two of the Ship’s fuel tanks, and the bunker fuel
27 contained therein poured out into the Bay. Neither Captain
28

1 Mao nor Defendant COTA requested the services of private
2 spill-containment operators for another hour.

3 (f) 8:52 a.m. – Personnel on a pilot boat sent from Pier 9 in San
4 Francisco noticed that “a substantial flow of oil” was coming
5 from the Ship.

6 (g) 9:03 a.m. – The Coast Guard dispatched its first vessel to the
7 scene.

8 (h) 9:30 a.m. – Captain Mao finally contacted a private spill-
9 containment operator for assistance cleaning up the discharged
10 bunker fuel.

11 (i) 9:46 a.m. – The Marine Spill Response Corp. (“MSRC”),
12 private spill-containment operator, dispatches its first vessel to
13 the scene.

14 (j) 11:00 a.m. – Five MSRC skimming boats designed to contain
15 and mop oil arrived on the scene.

16 (k) 12:15 p.m. – The Coast Guard reports the oil spill at 140
17 gallons based on information provided by the Defendants. The
18 Ship is moved to anchorage south of the Bay Bridge, trailing
19 an oil slick.

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

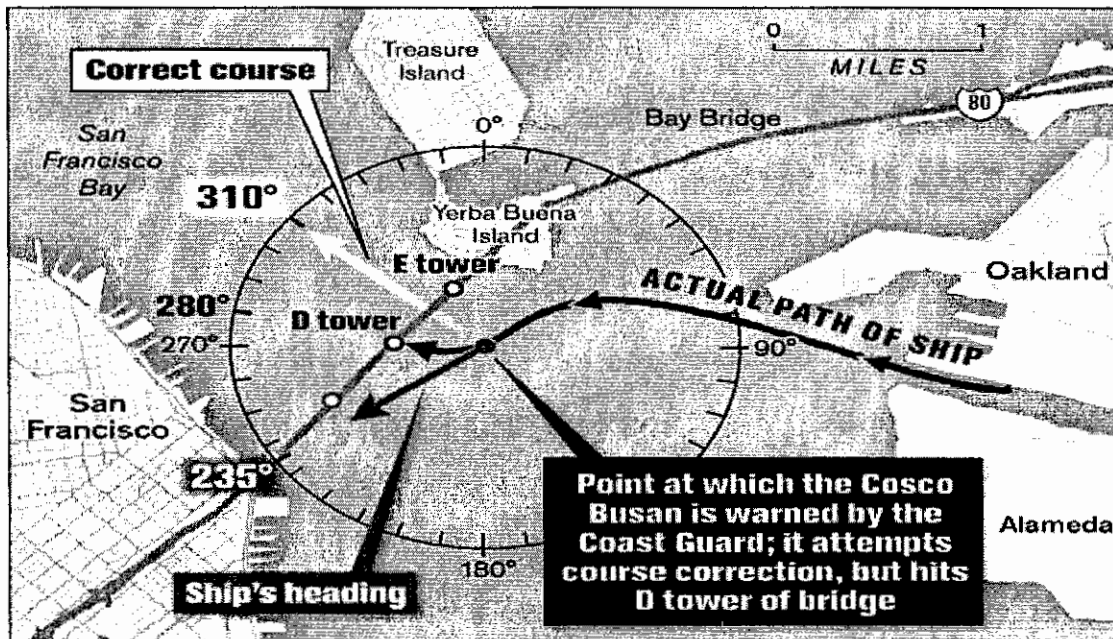
22 (m) 4:49 p.m. – Contrary to earlier assessments provided by the
23 Defendants, the Coast Guard realizes the spill was
24 approximately 58,000 gallons.

25 (n) 8:58 p.m. – The Coast Guard notifies the public of the true
26 extent of spill.
27
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1 39. The graphic below, which appeared in the San Francisco Chronicle,
2 shows in stark contrast the correct course, as opposed to the actual course of the
3 Ship on the morning of November 7th.

Off course

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5
6 This diagram shows the heading of the Cosco Busan at 235 degrees
7 when the ship was contacted by the Coast Guard Vessel Traffic Service.
8 The correct course from the Oakland Bar Channel to the channel
9 between the D and E towers of the Bay Bridge is 310 degrees.
10 The pilot turned the ship right to 280 degrees when he hit the D tower.



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19 Sources: Chronicle reporting; ESRI, TeleAtlas

The Chronicle

20 B. Construction, Ownership, Management, Operation, And Control 21 Of the Ship

22 1. Construction Of the Ship

23 40. The Ship, built in 2001 by Hyundai Heavy Industries Ltd. Co. is a
24 cargo ship, shown below in a picture which appeared in the San Francisco
25 Chronicle. Unlike modern tanker ships and other recently built cargo ships, the
26 Ship's fuel tanks are arrayed along the sides of the ship behind a single hull,
27 commonly called "winged" tanks. In 2006, the International Maritime
28 Organization, a United Nations agency, banned winged fuel tanks along the hull

1 in ships being built or significantly modified beginning in 2010. The agency
2 determined that these container ships should not carry fuel directly behind a
3 single layer hull, like that of the Ship. Instead, the new ships should have their
4 fuel tanks located deeper inside the ship and behind two walls to make their
5 puncture and subsequent discharge less likely.



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

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

24 42. The Ship was subsequently re-christened the COSCO BUSAN.

25 43. Shortly after the Spill, HANJIN issued a press release alleging:
26 “Synergy Marine fully operates the ship as well as manages the entire crew
27 including the captain . . . “
28

1 44. On the day of Spill, Darrell Wilson, an employee of MTI Network,
2 who claimed to be speaking on behalf of REGAL publicly alleged that the Ship
3 was managed by Fleet Management Ltd. and its crew and technical support was
4 provided by Synergy Management Services. Mr. Wilson said REGAL “is
5 stepping up to the plate. It’s their ship. They own it. It’s fully insured.”

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

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

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

16 **1. Toxicity Of Bunker Fuel**

17 47. Bunker fuel is an extremely toxic substance. The heavy fuel oil
18 making up the bulk of bunker fuel is classified as carcinogenic, harmful and
19 dangerous for the environment according to the European Union Dangerous
20 Substances Directive.

21 48. Bunker fuel contains polycyclic aromatic compounds (“PCA”) which
22 have been shown to cause anemia, disorders of the liver, bone marrow and
23 lymphoid tissues in rats during dermal application. Other organs and tissues that
24 may be damaged from bunker fuel exposure are: blood, kidneys, liver, central
25 nervous system and the lens or cornea of the eye. Additionally, it has been
26 demonstrated that certain PCA components from the heavy fuel oil are found in
27 the urine of persons who have been exposed to the heavy fuel oil on the skin.
28

1 2. Consequences of Bunker Fuel Spills

2 49. Because of its high toxicity, bunker fuel contamination can have an
3 overwhelmingly detrimental effect on human and marine life with which it comes
4 into contact.

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

15 51. Spilled bunker fuel can also have a devastating effect on marine life.
16 Bunker fuel is significantly more toxic to marine life than the crude oil that was
17 spilled in the Exxon Valdez case. It is heavier than crude oil, and adheres to the
18 bodies of marine life with which it comes into contact, with equal or greater force
19 than crude oil.

20 52. Jonna Mazet, drawing on results of her laboratory experiments and
21 other research at the University of California, Davis, Veterinary School of
22 Medicine, stated regarding bunker fuel and crude oil: "If you compare the two,
23 bunker oil is more toxic." In particular, exposure to bunker fuel poses a
24 significantly greater risk of damage to the reproductive systems of exposed
25 marine life. Research also suggests that the toxic components of bunker fuel can
26 be taken up the aquatic food chain, as prey pass contaminants to predators.

27 53. The most obvious and immediate marine life victims of a bunker fuel
28 spill are marine mammals and birds which come into contact with the fuel while it

1 is floating on the water. Once in contact with spilled bunker fuel, their bodies can
2 become coated with a thick layer of the toxic fuel. Over time, the fuel becomes
3 stickier, or “weathers,” causing it to adhere to exposed animals with greater
4 strength. Because spilled bunker fuel can appear to some species of fish like
5 floating food, they can be attracted to it which can result in their contact with it.
6 This can further endanger sea birds, which are attracted to schools of fish and
7 may dive through thick oil slicks to get to them.

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

18 55. Less obvious are the deleterious effects on under water marine life
19 which occur as the oil condenses, mixes with, and drops through the water layer
20 to the ocean floor. Documented effects have included: a decrease in the
21 thickness of the fish eggs; damage to fish eggs, larvae and young fish; damage to
22 estuaries, coral reefs, seagrass and mangrove habitats which are the breeding
23 areas of many fish and crustaceans, interference with their breeding; and tainting
24 of fish, crustaceans, molluscs and algae. Because of the heavy density of bunker
25 fuel, a far greater amount generally sinks than lighter crude oil. This not only
26 causes more of it to collect on the sea floor, but also allows for those parts which
27 are water soluble to dissolve and disperse as opposed to evaporate into the
28 atmosphere, as generally happens when lighter crude oil spills and forms longer-

1 lasting slicks. As described in more detail below, crab, because of their feeding
2 and reproductive habits are particularly susceptible to these dangers.

3 56. An informative example of the impact which a large discharge of oil
4 has on marine environments is the Exxon Valdez spill of 1989 off the coast of
5 Alaska. Thousands of animals died immediately; the best estimates include:
6 250,000-500,000 seabirds; 2,800-5,000 sea otters; approximately 12 river otters;
7 300 harbor seals; 250 bald eagles; and 22 orcas; as well as the destruction of
8 billions of salmon and herring eggs. Due to a thorough cleanup, little visual
9 evidence of the event remains, but the effects of the spill continue to be felt today.
10 In the long-term, reductions in population have been seen in various ocean
11 animals, including stunted growth in pink salmon populations. Almost 19 years
12 after the spill, a team of scientists at the University of North Carolina have found
13 that the Exxon Valdez spill effects are lasting far longer than expected. The team
14 estimates some shoreline habitats may take up to 30 years to recover.

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

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

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

20 **a. Development Of The Fishery**

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

26 59. In a matter of a few years, the prolific Dungeness crab formed the
27 basis of one of the premier commercial fisheries on the west coast. Shortly after
28 the turn of the century, Sicilian fishermen began plying the waters outside San

1 Francisco's Golden Gate Bridge in search of the Dungeness crab. The men would
2 fish the tides during the day then return in time to sell their crabs at the Meiggs
3 Wharf wholesale market. Fishmongers from the teeming Chinatown markets,
4 Onataro's in the Fillmore and the popular Crystal palace in the mission, renown
5 for its four giant fish markets, all gathered at Meiggs Wharf around midnight to
6 vie for the day's catch. The area known as Meiggs Wharf was set aside by state
7 legislature in 1925 for the sole use of the fishermen in the city; it then became
8 known as Fisherman's Wharf as it is called today.

9 60. The newly founded crab fishery was a welcome boon to once poor
10 fishermen. The seemingly endless demand for crabs ameliorated even the Great
11 Depression. The Dungeness crab became the gold of the 1920's, 30's and 40's.

12 61. By 1940 with the implementation of the modern day crab pot and
13 larger, diesel powered boats, the crab catch rose dramatically. *There seemed to*
14 *be an endless profusion of crabs, fortunes were made and Fisherman's Wharf,*
15 *San Francisco was propelled to national prominence as the capital of the*
16 *Dungeness crab.* The Dungeness crab created an unforgettable scene which
17 attracted visitors from around the world.

18 62. The Port of San Francisco became the center of Northern
19 California's fishing industry and home to most of the Bay Area's leading
20 commercial seafood companies. The Fisherman's Wharf Processing Center,
21 located at Pier 45, supplies the highest quality seafood to local, regional and
22 world markets and serves as a model for modern fish processing facilities
23 throughout the United States.

24 63. Looking at the 2006 California Department of Fish and Game statistics
25 for crab landings alone at the San Francisco Port and others affected by the Spill
26 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 |

| | | | | |
|---|-------------------------|----------------|------------------|--------------------|
| 1 | Princeton-Half Moon Bay | Dungeness Crab | 1,477,999 | \$3,063,763 |
| 2 | Berkeley | Dungeness Crab | 8,769 | \$21,525 |
| 3 | Sausalito | Dungeness Crab | 9,975 | \$26,046 |
| 4 | Emeryville | Dungeness Crab | 5,686 | \$14,299 |
| 5 | Alameda | Dungeness Crab | 12,262 | \$23,897 |
| 6 | Oakland | Dungeness Crab | 8,713 | \$15,809 |
| 7 | TOTAL | | 3,773,218 | \$7,551,152 |

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b. San Francisco Dungeness Crab Season

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64. Much of the catching and selling of Dungeness crab each year in the San Francisco Bay Area occurs in the first two weeks of the season. Dungeness crab season is usually from mid-November to mid-June. This year, the Dungeness crab season officially opened November 15th in San Francisco Bay. There is always a host of activity on the opening day of the season. Visitors come from all over the globe for some of the best crab on the West Coast, the best crab restaurants in the United States, and some of the world's best crab markets and crab festivals. The crab season is a source of income for many parts of San Francisco.

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

66. About 150 boats set out from San Francisco, Half Moon Bay and Bodega Bay minutes after owners agree on a price with the processors. In the tradition of their ancestors, crabbers equipped with 100-300 crab traps or pots are

1 set out. Each 90-pound trap will be baited with squid and/or mackerel, dropped
2 to the ocean floor and marked by buoys. When the first catches of the season are
3 brought in, you see thousands of pounds of crabs waiting to be unloaded.

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

12 c. **Immediate Effects Of The Oil Spill On The**
13 **Dungeness Crab Fishery**

14 68. Following the Spill, crabbers stayed off the water amid health
15 concerns. Crab buyers at Fisherman's Wharf refused to buy crab based on crab
16 market concerns over the public health risk of crabs contaminated with bunker
17 fuel from the Spill. Max Boland, director of sales at Alber Seafoods, a wholesaler
18 on the wharf, said, "It just takes one crab and you'll have a problem. It's a
19 lawsuit waiting to happen." Assemblyman Mark Leno, D-San Francisco said,
20 "It's extremely disappointing and I think potentially reckless . . . I don't want to
21 be an alarmist, but we don't know for certain that this is safe."

22 69. Public concern over the safety of local crab was exacerbated by the
23 wording of the Executive Order signed by Governor Arnold Schwarzenegger
24 soon after the Spill which prohibits the operation of holding tanks that pump in
25 water within the closed fishing area, which includes all of San Francisco Bay.
26 Nearly all local crab boats use live-well holding tanks. Thus, the order
27 effectively prohibits crab fishermen from offloading their catch to the wholesalers
28 in San Francisco, regardless of where the crabs were caught. The impact of this
calamity is graphically depicted in the photograph below which reveals a

1 graveyard of crab pots abandoned by fishermen in a parking lot adjacent to Pillar
2 Point Harbor.



17
18 **d. Long-term Effects On The Dungeness Crab Fishery**

19 70. The San Francisco Bay, however, is not only important to crab and
20 other fishermen as a place to catch and sell fish. It is also fundamentally
21 important for fishermen's future livelihoods, supplying the fish which fishermen
22 depend on in the future. The Spill severely threatens the Bay's functionality in
23 this regard, and thus the future livelihoods of Bay areas fishermen who depend
24 upon it.

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

1 72. Dungeness crabs mate from spring through fall. Fertilization of the
2 egg does not occur at the time of the mating. The female crab stores the sperm
3 until her eggs are fully developed. The eggs are fertilized when the female
4 extrudes them under her abdomen where they are carried until hatching. A large
5 female crab can carry 2.5 million eggs.

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

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

23 75. Many predict that crab, as well as shrimp, clams, oysters and other
24 molluscs which come into contact with the bunker fuel will die quickly from
25 acute toxicity and/or tainting of the flesh. Not only does this threaten the adult
26 male crabs which would have been otherwise available for fishermen to catch, it
27 also severely threatens future generation of crabs.
28

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

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

15 78. Finally, the long-term risks of the Spill to the Bay's Dungeness crab
16 population is exacerbated by their eating habits. Crabs are described as
17 "opportunistic omnivores," meaning that they eat almost anything they can catch,
18 and will attempt to feed on oil, oiled prey, and oiled sediments. Thus, even
19 though heavy oils are not normally considered to be biologically available to most
20 marine organisms, the benthic scavenging of crabs put them at greater and
21 continuing risk from the effects of the Spill.

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

23 79. The Spill is also expected to have a huge impact on flat fish,
24 including species more commonly known as Petrale, English sole, Skate, and
25 Sand Dabs, all of which are bottom-feeding fish. Much of the high density
26 bunker fuel is expected to sink, smothering and killing the bottom feeders and
27 their food. Furthermore, as it sinks, the water soluble elements of the fuel, which
28 generally would evaporate from a slick caused by the spill of a lighter density oil,

1 will likely dissolve. This would further exacerbate the Spill's impact on water-
2 column organisms, such as flat fish: bunker fuel is often high in aromatics, which
3 is the primary source of both acute and chronic toxicity to aquatic organisms, and
4 many of these aromatics are water soluble.

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

6 80. The Spill is also likely to have severe short and long-term effects on
7 other fisheries of the San Francisco Bay, including, but not limited to, herring,
8 salmon and rock fish.

9 81. The San Francisco Bay fishery is the largest for herring south of
10 British Columbia and is presently the United States' only "urban commercial
11 fishery." During the herring season, herring boats can be seen near the shores of
12 Sausalito, along the walkways of the Embarcadero and near the Emeryville
13 mudflats.

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

20 83. Furthermore, herring are particularly sensitive to environmental
21 factors, which play a much greater role in determining the size of their schools
22 than the success of the fishing fleets.

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

27 85. As a result of the Spill, the livelihoods of fishermen who depend on
28 these fisheries and others are also at risk.

1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

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

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

7 87. Defendants REGAL, HANJIN, FLEET, and/or DOES 2-50, at the
8 time of the Ship's collision with the Bay Bridge and discharge of 58,000 gallons
9 of bunker fuel into the San Francisco Bay, were the owners, operators, lessees,
10 and/or charters by demise of the Ship and/or the bunker fuel transported therein.

11 88. Defendants REGAL, HANJIN, FLEET, and/or DOES 2-50, are
12 "responsible parties," under Gov't Code § 8670.3(w), and therefore "absolutely
13 liable without regard to fault for any damages incurred by any injured party which
14 arises out of, or are caused by, the discharge or leaking of oil into or onto marine
15 waters." Gov't Code § 8670.56.5.

16 89. The San Francisco Bay and surrounding ocean areas are "marine
17 waters." *Id.*, § 8670.3(i).

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

20 91. The contamination legally caused by the discharge of bunker fuel by
21 the Ship into or upon the San Francisco Bay injured, destroyed, caused to be lost,
22 and/or impaired the use of natural resources on which Plaintiffs and the class
23 depend for their livelihood, including but not limited to, the local populations of
24 Dungeness crab, flat fish, herring, rock fish, and salmon. Plaintiffs and the class
25 dependence upon these natural resources constitute at least 25% of their earnings
26 during the respectively applicable seasons for such resources.

27 92. The injury, destruction, loss, and/or impairment of usability of these
28 natural resources has caused Plaintiffs and the class to lose profits, and will cause

1 future losses of profits by Plaintiffs and the class and/or impairment of their
2 earning capacities.

3 93. The injury, destruction, loss, and/or impairment of usability of these
4 natural resources has also caused, and will cause, Plaintiffs and the class losses of
5 net profits.

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

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

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

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

8 98. Defendants REGAL, HANJIN, FLEET, COTA and/or DOES 2-50,
9 in transporting approximately one 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 99. 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.

16 100. 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/or sell Dungeness crabs during the
21 most productive and lucrative period of the 2007-08 Dungeness crab
22 season;

23 (b) Plaintiffs inability to harvest and/or sell other commercial fish species,
24 including but not limited to flat fish, herring, rock fish and salmon, in the
25 period following the Spill;

26 (c) the reduced physical size and quantity of future populations of
27 Dungeness crab in the San Francisco Bay area as a result of destruction of,
28 and injury to, San Francisco Bay Dungeness crab estuary;

1 (d) the damage done to populations of other commercial fish species,
2 including but not limited to flat fish, herring, rock fish and salmon, affected
3 by contamination of San Francisco Bay caused by the discharged bunker
4 fuel;

5 (e) the damage done to short, middle, and long-term reputation of San
6 Francisco Bay fishery resulting from the public perception of
7 contamination to the fishery and related safety of fish caught there; and

8 (f) the cost already incurred, and to be incurred in the future, in order to
9 monitor the effects of the contamination of the San Francisco Bay and
10 surrounding ocean areas on marine species, including, but not limited to,
11 Dungeness crab, flat fish, herring, rock fish and salmon, in order to ensure
12 their safety and fitness for human consumption.

13 101. As a direct and legal cause of the Defendants wrongful acts and/or
14 omissions herein above set forth, Plaintiffs and/or the class have suffered and will
15 suffer economic harm, injury, and/or losses as herein above set forth.

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

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

19 **THIRD CAUSE OF ACTION**

20 **(Negligence)**

21 103. Plaintiffs hereby incorporate by reference all paragraphs above as if
22 fully set forth in detail herein.

23 104. Plaintiffs are informed and believe, and thereupon allege that at all
24 times prior to the collision, the Spill, and the immediate aftermath Defendants
25 HANJIN, REGAL, FLEET, COTA, and/or DOES 2-50 negligently, carelessly
26 and/or unlawfully owned, operated, controlled, managed, leased, loaned,
27 borrowed, bailed, chartered, and/or maintained the Ship so as to cause the
28 collision, the Spill and subsequent events hereinabove described, and legally

1 caused the economic harm, injury, and/or damage to Plaintiffs and/or the class
2 which are hereinabove set forth.

3 105. The acts and omissions of the Defendants described herein were also
4 in violation of various California state laws including but not limited to: (a) the
5 Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Gov't Code §§
6 8670, *et seq.*; (b) the Porter-Cologne Water Quality Control Act, Cal. Water Code
7 §§ 13000, *et seq.* Defendants' violations of these statutes directly and
8 proximately caused, and will cause, injury to Plaintiff and the class of a type
9 which the statutes are intended to prevent. Plaintiff and the class are of the class
10 of persons for whose protection these statutes were enacted.

11 106. As a direct and legal cause of the Defendants' wrongful acts and/or
12 omissions, Plaintiffs, the class and the environment have suffered and will suffer
13 as set forth hereunder.

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

15 **FOURTH CAUSE OF ACTION**

16 **(Negligent Entrustment)**

17 107. At all times herein mentioned, Defendants HANJIN, REGAL,
18 FLEET, COTA, and/or DOES 2-50 negligently, wantonly, carelessly and/or
19 recklessly hired, retained, supervised, trained, and/or entrusted the Ship to one
20 another, for the purpose of transporting cargo aboard a container ship filled with
21 bunker fuel through the San Francisco Bay. Thereafter, the Defendants, and each
22 of them, controlled, navigated, and/or managed the Ship with the knowledge,
23 consent, permission, and/or within the scope of authority conferred by Defendants,
24 and each of them.

25 108. Plaintiffs are informed and believe that Defendants, and each of
26 them, were at all times mentioned incompetent and unfit to safely own, operate,
27 manage, maintain, lease, charter, or otherwise control the Ship for transport of
28 cargo within the San Francisco Bay.

1 which the statutes are intended to prevent. Plaintiff and the class are of the class
2 of persons for whose protection these statutes were enacted.

3 117. As a direct and legal cause of the Defendants wrongful acts and/or
4 omissions herein above set forth, Plaintiffs and/or the class have suffered and will
5 suffer economic harm, injury, and/or losses as herein above set forth.

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

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

9 **SIXTH CAUSE OF ACTION**

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

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

13 120. The above acts and omissions also created a private nuisance *vis-a-*
14 *vis* the Plaintiffs and the class, interfering with their use and enjoyment of private
15 property rights and rights incidental to those property rights.

16 121. As a direct and legal cause of the Defendants wrongful acts and/or
17 omissions herein above set forth, Plaintiffs and/or the class have suffered and will
18 suffer economic harm, injury, and/or losses as herein above set forth.

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

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

22 **SEVENTH CAUSE OF ACTION**

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

24 123. Plaintiffs hereby incorporate by reference all paragraphs above as if
25 fully set forth in detail herein.

26 124. As a direct and legal result of the acts and omissions of the
27 Defendants, causing or allowing or contributing to the discharge of 58,000
28 gallons of highly toxic bunker fuel into the San Francisco Bay and surrounding

1 ocean areas, Plaintiffs have been denied the ability to assure themselves and
2 consumers of fish caught in the San Francisco Bay and surrounding ocean areas
3 of the short, middle, and long-term safety and fitness for human consumption of
4 fish caught in the San Francisco Bay and surrounding ocean areas, including, but
5 not limited to, Dungeness crab, flat fish, herring, rock fish and salmon. This
6 inability to assure themselves and fish consuming public of the safety and fitness
7 for human consumption of fish caught in the San Francisco Bay and surrounding
8 ocean areas has caused, and will cause, severe economic injury to Plaintiffs and
9 the class, who depend on the sale of fish caught in the San Francisco Bay and
10 surrounding ocean areas for significant portions of their livelihoods. Monitoring
11 and testing procedures exist which make the detection and evaluation of marine
12 life contamination and the safety and fitness of such marine life for human
13 consumption possible and beneficial.

14 125. Assuring the safety and fitness for human consumption of fish
15 caught in the San Francisco Bay and surrounding ocean areas, including but not
16 limited to, Dungeness crabs, flat fish, herring, rock fish and salmon, and thereby
17 repairing and maintaining the short, middle, and long-term reputation of the
18 fisheries of the San Francisco Bay and surrounding ocean areas can only be
19 accomplished by the creation of a marine life contamination monitoring fund to
20 provide a marine life contamination monitoring program, including:

- 21 (a) Periodic and regular sampling and testing of fish caught in the
22 San Francisco Bay, including, but not limited to, Dungeness
23 crab, flat fish, herring, rock fish and salmon by an independent
24 and qualified testing entity; and
25 (b) Widespread publication and dissemination of the results of
26 such sampling and testing to the fish consuming public.

27 126. Plaintiffs and the class have no adequate remedy at law in that
28 monetary damages alone do not compensate for the continuing nature of the harm

1 to them, and a monitoring program which assures Plaintiffs, the class, and the fish
2 consuming public of the safety and fitness for human consumption of fish caught
3 in the San Francisco Bay and surrounding ocean areas can prevent greater injury
4 to the fish consuming public and the reputations of the fisheries of the San
5 Francisco Bay and surrounding ocean area and serve to repair and maintain those
6 reputations.

7 127. Without a court-approved monitoring program and a declaration of
8 the rights of the Plaintiffs and the class to such a monitoring program, the safety
9 and fitness for human consumption of fish caught in the San Francisco Bay and
10 surrounding ocean areas cannot be assured and the reputation with the fish
11 consuming public of the fisheries of the San Francisco Bay and surrounding
12 ocean areas cannot be repaired or then subsequently maintained.

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiffs pray for judgment as follows:

- 15 1. Enter an order certifying the class requested by Plaintiffs;
- 16 2. Enter a judgment in favor of Plaintiffs and the class, against
17 defendants, jointly and severally, for economic damages sustained by
18 them by reason of Defendants' unlawful conduct;
- 19 3. Enter a judgment awarding Plaintiffs and the class punitive damages
20 for Defendants' willful, reckless and wanton acts;
- 21 4. Enter a judgment in favor of Plaintiffs and the class, against
22 defendants, jointly and severally, for the creation of a fund to
23 monitor contamination of marine life in the San Francisco Bay and
24 surrounding ocean areas in order to assure the safety and fitness for
25 human consumption of fish caught in the San Francisco Bay and
26 surrounding ocean areas;

