

## MEMORANDUM

**Re: New Evidence in the Death of Yoni Gottesman**

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This memo highlights new evidence demonstrating that Jonathan "Yoni" Gottesman's death was preventable by Cathedral Oaks Athletic Club ("COAC") had they simply checked the references of their life guards involved in Yoni's death. There is also recent evidence gathered that overwhelmingly shows that COAC ownership knowingly cut corners on safety issues to maximize profits.

### **I. Brief Statement of Facts**

Yoni Gottesman was four years old when he died on August 15, 2005. He drowned in the COAC swimming pool in plain view of, and only a few feet away from, two lifeguards and three camp counselors while he attended what turned out to be an unlicensed day care program at the facility. Yoni's death was captured on video by a security surveillance camera, which shows (1) a COAC counselor aggressively "dunking" children in the pool; (2) immediately after a round of dunking, all of the figures swimming away from the site except one: a single child's form is seen briefly struggling to stay afloat and then going prone; and (3) Yoni floating face down for *eight minutes* without anyone taking any notice of him.<sup>1</sup> It was only when another child noticed Yoni floating in the pool that anyone took any action to save him. The action taken was too little, too late. Even if Yoni could have been saved when he was pulled from the pool, the COAC staff used improper resuscitation and CPR techniques and equipment on Yoni. Mis-communications and misrepresentations to paramedics only compounded the problems. Yoni was pronounced dead upon arrival at the local hospital.

### **II. COAC Was Criminally Negligent In Its Failure To Screen Its Lifeguards**

The evidence recently gathered demonstrates that COAC never checked the references of the lifeguards who contributed to the death of Yoni Gottesman.

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<sup>1</sup> Rather than review the original hard drive, the DA utilized lower-quality video CD's. This not only rendered the video less useful, it also apparently led to the DA's report referencing a slightly different time line (by approximately 8 to 10 seconds) than what is shown on the original hard drive.

**January 26, 2007, declaration of [REDACTED]**

[REDACTED] is the membership activities director of the [REDACTED] Country Club, and former employer of COAC lifeguard, David Merin.<sup>2</sup> [REDACTED]'s full statement was given under oath and is attached as Exhibit 1). In the summer of 2005, the [REDACTED] Country Club employed Merin as a lifeguard. [REDACTED] declared in relevant part:

- “Merin was terminated” because he was “a risk.” “[Merin] was not focused and seemed to be inattentive while he was on duty.” [REDACTED] ¶ 4).
- “...Merin appeared like he was not interested in the role of a lifeguard.” ([REDACTED] ¶ 5).
- “[Merin] was advised that his lack of attention poolside was considered a safety issue, and reminded that as a lifeguard, he was responsible for the safety of our members and their guests in the pool. Despite these admonitions, Mr. Merin failed to perform...” [REDACTED] ¶ 7).
- “In August of 2005, after being counseled regarding his performance, Mr. Merin was apparently unable to perform his job functions in a manner that his supervisor [REDACTED] was comfortable with, and he was terminated...” [REDACTED] ¶ 8).
- “I understand that Mr. Merin, shortly after his termination, was hired as a lifeguard at the Cathedral Oaks Athletic Club. No representative of the Cathedral Oaks Athletic Club contacted the [REDACTED] Country Club, myself, or [REDACTED] in order to verify his employment or check his references.” [REDACTED] ¶ 9).

COAC's failure to contact the references of Merin are criminal, particularly given the short time within which, Merin was back lifeguarding children after being fired for safety concerns from the [REDACTED] Country Club. COAC's failure to check prior employment and references of its lifeguards is not an isolated incident. COAC has failed to contact references of every prior lifeguard we have obtained interviews with so far.

**January 26, 2007, interview of [REDACTED] [REDACTED]**

[REDACTED] was employed as a lifeguard in 2004 and 2005 for COAC. In 2006 she was employed solely as a swimming instructor. On August 15, 2005, [REDACTED]

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<sup>2</sup> Merin was a lifeguard present and “on duty” on August 15, 2005. The video of Yoni's death shows that Merin did nothing to save Yoni for the first *six minutes* Yoni is floating in the water; he then *walks right past where Yoni is floating face-down and motionless in the pool and leaves the pool deck to get a soda*. He does not return to the pool area until after Yoni is pulled from the pool.

was present at COAC and not acting as a lifeguard. [REDACTED]  
[REDACTED]

[REDACTED] stated in relevant part,

- “When I interviewed at Cathedral Oaks, Esther Clark [Aquatics Director] never even looked at my certifications. She never called my references. She never asked me to demonstrate my ability.” [REDACTED]
- “The club [COAC] never acknowledged any responsibility for anything, even though this accident could have been prevented.” [REDACTED]
- “When I first started working as a lifeguard at the club, I was blown away by the way that the Aquatics Department was run... There was a “half-assed hiring process.” [REDACTED]

### III. COAC Cut Corners On Safety To Maximize Profits

[REDACTED] and October 20, 2006,  
declaration of [REDACTED]

[REDACTED] is the former director of COAC’s activity camp. She was employed by COAC from September 2003 - September 2004. [REDACTED] declaration given under oath are attached as Exhibit 3).

- “...Charlotte Valentine [COAC manager] and COAC management cared only about the revenue generated by the camp.” ([REDACTED] Declaration, ¶ 27).
- “When I was hired, it was made very clear to me that money was an issue. I was told, in no uncertain terms, that I was to keep expenses down and that any cost that I incurred would come out of my department’s budget.” ([REDACTED] see also Declaration, ¶ 14).
- “The directors of each department...were paid commission-like bonuses based on the net profits of their departments.” ([REDACTED] see also Declaration, ¶ 15).
- “There was a personal financial motive for the department heads and the club manager to minimize spending, and they did that, even at the expense of safety and hygiene. *The club was about the money, not the kids.*” ([REDACTED] see also Declaration, ¶ 15).
- “The club’s obsession with profits extended into the hiring and staffing of the club, as well. In retrospect, I was probably not the ideal candidate to be the

Director of the activity camp. I didn't have any experience with that type of operation and, really, I had no idea what I was doing. I think that I was just a warm body that was willing to work for the wage that they were offering. I didn't have any training or licensing or anything. [REDACTED] see also Declaration, ¶ 3).

- “[COAC] were much less concerned about hiring qualified, capable people than they were about making sure that their hourly salary requirements were adhered to.” [REDACTED] see also Declaration, ¶ 22).
- The Aquatics department was “driven by profit.” “I would expect that an aquatics director to take a proactive role in making sure that her area, her department, was safe for everyone, and she [Esther Clark] didn't do that.” ([REDACTED]; see also Declaration, ¶ 18).
- “After being there for a year and realizing that the place was all about making money, I decided...to move on. I felt like that place was an accident waiting to happen and I didn't want to be there when it did. I gave my notice.” [REDACTED] see also Declaration, ¶ 26).

**January 26, 2007, interview of [REDACTED]:**

- “I could have been a truck driver from Minneapolis for all [Esther Clark] knew....She was mostly just interested in whether or not I would work for the wage that they were offering.... [s]he didn't seek to hire the best candidates; just the ones that would work for what she was offering.” [REDACTED]).
- “The pay isn't good, and [COAC] always cutting corners to conserve their budget. [The lifeguards] weren't well trained and weren't ready for any real emergency.” [REDACTED]
- “It was obvious to me that the decisions [no new spine-board, adequately supplied first aid kit, properly equipped lifeguards, and proper time procedures] that Esther made within that department were made by a desire to keep her expenses down.” [REDACTED]
- “It was very clear that lifeguard scheduling was done based on the budget, not on safety concerns.” [REDACTED]
- “It was clear to me that the club's primary concern was profit, and I firmly believe that if they had taken the time and money to hire the right people and provide the proper tools and training, this could've been avoided.” [REDACTED]

**January 26, 2007, interview of Jennie Darling**

Ms. Darling was employed at COAC as a Camp Counselor in the Winter of 2004 and the Summer 2005 camp where Yoni died. Ms. Darling stated that COAC placed financial concerns over the safety of its employees and guests. [REDACTED]  
[REDACTED]

- “We (activity camp) used the pool, but there were no lifeguards on duty during the winter session.” [REDACTED]
- Ms. Darling also complained to COAC about safety issues of “rats” and “holes in the field next to the trailer” with the children. [REDACTED]



1 their guests in the pool. Despite these admonitions, Mr. Merin failed to perform to the standard  
2 that was expected of him, causing his supervisor to doubt his ability to act as a lifeguard.

3 8. In August of 2005, after being counseled regarding his performance, Mr. Merin was  
4 apparently unable to perform his job functions in a manner that his supervisor was comfortable  
5 with, and he was terminated from the [REDACTED] Country Club. Mr. Merin's termination was  
6 effected with my knowledge, consent, and approval.

7 9. I understand that Mr. Merin, shortly after his termination, was hired as a lifeguard at the  
8 Cathedral Oaks Athletic Club. No representative of the Cathedral Oaks Athletic Club contacted  
9 the [REDACTED] County Club, myself, or [REDACTED] in order to verify his employment or check his  
10 references.

11 10. If a representative from the Cathedral Oaks Athletic Club, or any other facility  
12 considering hiring Mr. Merin as a lifeguard, had contacted the [REDACTED] County Club, I would  
13 have advised the caller of Mr. Merin's shortcomings and cautioned against placing him in a role  
14 wherein responsibility for, and safety of, persons in a swimming pool would be placed in his care.

15 11. I have no personal animosity towards Mr. Merin; however, his history of inattention and  
16 substandard performance as a lifeguard precluded the continuation of his employment at the  
17 [REDACTED] County Club. As a service to any facility seeking to employ Mr. Merin as such, I  
18 would have advised against hiring him in that capacity, for that reason.

19 I declare under the penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct.

21 Executed this 26<sup>th</sup> day of January 2007, in Santa Barbara, California.  
22

23 [REDACTED]  
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Declarant initials [REDACTED] 2 [REDACTED]



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DECLARATION OF [REDACTED]

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I, [REDACTED], have personal knowledge of the facts stated in this declaration

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and, if called as a witness, I could and would testify competently thereto under oath. I declare as

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follows:

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1. I currently reside in Santa Barbara, California.

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2. From approximately September of 2003 until September of 2004, I was employed by the Cathedral Oaks Athletic Club as the Director of the club's Activity Camp.

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8 3. I was hired, without any prior experience with such an operation, to oversee the day-to-  
9 day operation of the activity camp; a program that proclaimed to provide a safe, educational, and  
10 well managed environment for children ranging from approximately 4 to 11 years of age. In  
11 hindsight, I believe that I was a "warm body" that was willing to do the job at the salary that was  
12 offered; and I admit that I was almost certainly not the ideal candidate for the position. I lacked  
13 the formal education and training necessary to oversee an operation of this type. I had no specific  
14 licensure, or relevant experience.

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16 4. At the time that I started working at the Cathedral Oaks Athletic Club, the activity camp  
17 was in a state of complete disrepair. I inherited from my predecessor, a trailer that was purchased  
18 by Charlotte Valentine. I was informed by Ms. Valentine that the trailer was a surplus  
19 construction trailer. The trailer was stocked with minimal and inadequate furnishings, books, and  
20 toys. There were holes throughout the trailer, which became increasingly infested with mice over  
21 the course of the summer months. By the month of August, 2004, upon arrival at the trailer and  
22 before the camp activities started, I would vacuum the carpets, which were littered with rodent  
23 fecal matter. These were the same carpets that, hours later, children would be playing and sitting  
24 on. Additionally, the mice frequently raided foodstuffs and other materials from the trailer and  
25 occasionally chewed through children's lunchboxes that were left overnight. The mice were  
found inside garbage cans and often left evidence of their presence throughout the trailer.

Declarant initials: [REDACTED]





1 5. I brought the matter of the mouse infestation to the attention of the club manager,  
2 Charlotte Valentine, and the maintenance man, Stefan. Ms. Valentine's solution was to instruct  
3 Stefan to cover the holes in the trailer; however, no attempt to exterminate the trailer was ever  
4 made, despite my warnings that the rodents posed a safety concern and a hygienic problem. No  
5 traps were ever placed in the trailer, and no effort to control the rodent infestation was made,  
6 beyond covering the holes. I believe that a state licensed facility with these types of problems  
7 would have been closed down immediately.

8 6. Additionally, the trailer and the children's activity camp had no water or restroom  
9 facilities. I brought this matter to Charlotte Valentine's attention. The solution to this problem  
10 was to run a hose from a nearby spigot to a makeshift plastic sink near the trailer. There was no  
11 plumbing, and therefore, no drainage, and as a result, any material that was washed into the sink  
12 subsequently wound up on the ground. There was no hot water, and no restroom facility was  
13 ever provided, although Ms. Valentine did offer to install a Port-a-Potty, which I declined to  
14 accept on the grounds that it was not a sanitary or effective solution to the problem.

15 7. There were also several safety concerns that I brought to the attention of the athletic club,  
16 and to Charlotte Valentine specifically. A chain link fence was erected around the area where the  
17 children's activity campers frequently ate lunch. Prior to the beginning of the camp sessions, a  
18 section of the fence had collapsed, and provided a means by which a child could easily crawl  
19 over it and into a nearby creek bed or by which someone could enter the children's area from the  
20 outside. In fact, both of those events did occur, as the problem was never corrected, despite my  
21 concerns.

22 8. On one occasion, a woman and her two children entered through this section of  
23 dilapidated fencing. I confronted the woman, who claimed to be a member on her way to the  
24 athletic club facilities. On a number of other occasions, I observed campers in my charge  
25 attempting to negotiate the fence and "escape." This hazard presented a serious risk of injury to a

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child, yet, it was never addressed by the athletic club. I implemented a policy requiring my staff to closely supervise any child within this area in order to address my concern regarding the fence as best I could.


9. A field adjacent to the activity camp was supposed to be used for the children to run and play in; however, the field was littered with gopher holes that presented a serious risk to children. I implemented a strict "no running" policy in the field, and brought the matter to Charlotte Valentine's attention. An effort was made to poison the gophers; however, no serious effort was made to repair the field; although Stefan, the director of maintenance, did on a few occasions, stamp many of the gopher holes flat. I believe that cost was a factor in the decision to leave the field in a state of disrepair, as Charlotte, Stefan and I researched alternative solutions that were recommended by professionals.

10. On one occasion, a metal "goal" structure that was located in the field collapsed due to poor construction or disrepair. At the time of the collapse, a small girl was injured, and her parents notified. This collapse is another example of the shoddy maintenance and cost cutting measure employed by the athletic club that eventually caused injury to a child. The goal posts should have been removed prior to the injury as opposed to after.

11. The cleaning crew that was responsible for maintaining the rest of the athletic club never visited the activity camp. Cleaning was left to me and my counselors. This was a conscious cost saving decision made by Charlotte Valentine.

12. Charlotte Valentine, in the year that I worked at the Cathedral Oaks Athletic Club, visited the activity camp facilities on two occasions that I am aware of, although her office was located approximately 50 feet from our designated area.


13. I believe that there was a culture of "not caring" that was exhibited regularly and routinely by the management of the Cathedral Oaks Athletic Club where safety issues for the children were concerned.

Declarant initials: 

1 14. Each department of the athletic club, including the Activity Camp, Aquatics, the café,  
2 tennis, and other areas, were run independently of one another. Each generated a certain degree  
3 of revenue. It was made very clear to me at the beginning of my employment that the "bottom  
4 line" was about dollars and cents. I was told that any expenses that were incurred for my camp  
5 came directly from my department's operational budget, and I was encouraged to minimize  
6 expenses at all costs. I obtained books and furniture for the activity camp by visiting yard sales  
7 and thrift stores.

8 15. The director of each department, and Charlotte Valentine, were paid bonuses based on the  
9 bottom-line performance of their department. For example, if the activity camp generated  
10 \$5,000.00 in revenue, but spent \$4,000.00 on furniture, books, and fence repairs, the bonuses  
11 paid to me and to Charlotte Valentine were based on a \$1,000.00 profit. If, on the other hand, the  
12 fence repairs were ignored, books purchased used, and furniture obtained from yard sales, the  
13 expenses may be only \$1,500.00 and the bonuses were based on a profit of \$3,500.00. Charlotte  
14 Valentine and the director of each department, including the activity camp and aquatics, had  
15 financial motivation to minimize expenditures within their respective departments. As a direct  
16 result, I believe that safety and sanitary conditions suffered.

17 16. As a further consequence of the departmental segregation, different departments had  
18 minimal motivation to assist my department with use of their resources and facilities. Esther  
19 Clark, the director of the Aquatics Department, left the development of all pool safety procedures  
20 for my campers up to me. I sought her opinion regarding my procedures; however, she never  
21 appeared interested in providing guidance in this area. She received no monetary gain in her  
22 department through our presence in the pool, and I believe that she felt that her resources were  
23 being tapped without providing her with a direct benefit. If, on the other hand, a child from the  
24 activity camp paid for private swimming lessons, in addition to their camp tuition, then her  
25 department benefited financially, and she was very interested in the revenue that that child

Declarant, initials: 

1 represented.


2 17. I was under the impression that Esther Clark resented having her lifeguards watching the  
3 activity camp children in the pool. In fact, during a winter session, I was discussing lifeguard  
4 presence with Ms. Clark and she said to me, "You know, you can pay for your own lifeguards out  
5 of your budget," or words to that effect.

6 18. Esther Clark took no proactive role in determining a standard of safety in the pool area.  
7 As a consequence, I implemented a series of protocols that were adhered to by the camp  
8 counselors that worked for me. I do not know whether Esther Clark ever gave her staff specific  
9 direction regarding the children in my camp. It did not appear that my campers received any  
10 special attention or consideration.

11 19. In an early conversation with Esther Clark, she provided me with only three directives  
12 regarding pool safety. No food was allowed in the pool area. No running was allowed. Make  
13 sure that all children use the restroom prior to entry into the swimming pool. This final directive  
14 was emphasized as being extremely important. Ms. Clark also made it clear that she expected my  
15 staff to keep the children safe while in the swimming pool.

16 20. When my campers and counselors were in the pool, each counselor had a specific  
17 assignment. One counselor was assigned to watch the Jacuzzi. Another counselor was assigned  
18 to the deep end of the pool, provided that I had sufficient staff. No child 5 years of age or under  
19 was allowed to leave the shallow end of the swimming pool, and other counselors in the water  
20 were assigned three of the "beginning" or "marginal" swimming children apiece to keep an eye  
21 on. The counselor was required to be in the water with the children. Additionally, I implemented  
22 the concept of a "swim test."

23 21. The "swim test" was not based on any particular standard, as I had no training in that area.  
24 It was simply a gauge that I personally used to determine the ability of each individual swimmer.  
25 Again, children under the age of 5 years old, although tested, were not allowed out of the shallow

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1 end of the pool. Older children, if able to successfully swim from one side of the shallow end to  
2 the other, were granted wider latitude and not subject to the 3 to 1 ratio or assigned a specific  
3 counselor. I had hoped that Esther Clark would take an active role in guiding me in the  
4 development and implementation of a system by which the children could be evaluated and  
5 supervised safely in the pool; however, she did not.

6 22. As the director of the activity camp, I was granted the authority to hire my counselors. I  
7 was not given any specific direction regarding the necessary requirements of said counselors.  
8 The only direction that I was given was, "Offer them \$7.00 per hour." Again, this is symptomatic  
9 of the athletic club's mentality. Their concern was less about having qualified, capable  
10 employees and more about making sure that the cost was not "too high."

11 23. I hired, I believe, approximately three additional counselors. One, Amy, was my assistant  
12 director during the Summer session. I do not recall Amy's last name. Myself and the other paid  
13 employees were responsible for approximately 15 to 20 children during the Winter and Spring  
14 camps, and approximately 18 to 30 children during the Summer camp. We maintained,  
15 generally, a ratio of 1 paid counselor to every 6 children. Additionally, I had a small number of  
16 young, high school age volunteers that assisted our paid staff. I believe that each of the  
17 counselors received a drug test prior to their employment, and that they were provided with CPR  
18 and first aid training at the athletic club. The activity camp counselors were never provided with  
19 any water-specific safety training or lifesaving instruction.

20 24. At any given time, our number of available counselors was reduced by at least one. This  
21 is because at any given time, a counselor was required to take children to the bathroom or prepare  
22 meals. The logistics were such that we were constantly moving from the trailer to the dance  
23 room to the restroom to the pool, and at least one counselor was always busy with some logistical  
24 aspect. As a result our staff to child ratio suffered.

25 25. The activity camp made money, but I do not believe that it made as much as many of the


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1 other departments. I often felt as though we were to "make money but stay out of the way." I  
2 was told, on a number of occasions, that the "kids were too loud." I got the impression that the  
3 club was interested in taking the enrollment fees and then allowing us to sit in the trailer and stay  
4 out of the way of the rest of the departments' operations. I did not feel as though the club  
5 considered us important or worthy of investing money toward our comfort, well-being, or safety.

6 26. I chose to terminate my employment with the Cathedral Oaks Athletic Club because I felt  
7 that the management was driven primarily by financial gain and that their desire to make money  
8 superseded their common sense with regard to safety and overall program quality. Many safety  
9 issues were never addressed because they were, in the management's opinion, "cost prohibitive."  
10 I felt that the conditions at the club were such that it was simply a matter of time before a  
11 catastrophic accident occurred, and I did not want to be involved when it did. I tried to offer  
12 constructive criticism and to correct the safety issues that I observed; however, club management  
13 elected to ignore or postpone addressing the issues that I brought to their attention over and over  
14 again.

15 27. I feel that the inaction on the part of Charlotte Valentine and the Cathedral Oaks Athletic  
16 Club exhibited an apathetic attitude toward the children in our charge, and I believe that the stage  
17 was set for a serious accident to occur. I believe that the primary concern of the club was  
18 financial gain, and the safety of the children, as guests of the athletic club, suffered as a result.

19 28. When I resigned from the Cathedral Oaks Athletic Club, I was replaced by a young  
20 woman named Elizabeth. I believe that she was also inexperienced, and I offered to go over my  
21 program with her in order to share with her all that I had learned in my year at the club.  
22 Elizabeth's response to me was, "No, that's okay. I can handle it," or words to that effect. There  
23 was never an official transfer of management. I left, and Elizabeth took over the operation of the  
24 Activity Camp. I do not know whether Elizabeth or Charlotte Valentine continued to employ my  
25 safety protocols after I left.

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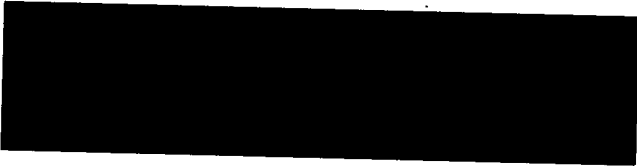


1 29. During the time that I was employed at the Cathedral Oaks Athletic Club, I did the best  
2 that I could to ensure the safety of the children under my care. I feel that my efforts and concerns  
3 were not a matter of great interest to the club management, who were more concerned about  
4 profit margins and ensuring that the activity camp maintained a minimal impact on the operation  
5 of the club than child safety or the activity camp program's quality.

6 I declare under the penalty of perjury under the laws of the State of California that the  
7 foregoing is true and correct.

8 Executed this 20<sup>th</sup> day of October 2006, in Santa Barbara California.

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