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**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

**JUL 18 2007**

GARY M. BLAIR, Executive Officer  
BY *Gary M. Blair*  
NARZRALLI BAKSH, Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SANTA BARBARA

11 ODED GOTTESMAN, an individual, ANAT )  
12 GOTTESMAN, an individual, and ODED )  
13 GOTTESMAN and ANAT GOTTESMAN, )  
14 as successors in interest to JONATHAN )  
15 ("YONI") GOTTESMAN, deceased, )

16 Plaintiffs,

17 vs.

18 CATHEDRAL OAKS TENNIS, SWIM & )  
19 ATHLETIC CLUB, INC., a California )  
20 corporation, SANTA BARBARA ATHLETIC )  
21 CLUB, INC., a California corporation, CLUB )  
22 WEST, INC., a California corporation, )  
23 RICHARD BERTI, an individual, RICHARD )  
24 BERTI, as alter ego of CATHEDRAL OAKS )  
25 TENNIS, SWIM & ATHLETIC CLUB, INC., )  
26 MARGUERITE BERTI and RICHARD )  
27 BERTI, as trustees for the RICHARD & )  
28 MARGUERITE BERTI REVOCABLE )  
TRUST, JULIE MAIN, an individual, KEVIN )  
BURNES, an individual, CHARLOTTE )  
VALENTINE, an individual, ESTHER )  
CLARK, an individual, ELIZABETH )  
HELLER, an individual, MICHAEL )  
BOWEN, an individual, DAVID MERIN, an )  
individual, GABRIELE KASIMATIS, an )  
individual, SAM SHIPLEY, an individual, )  
JENNIE DARLING, an individual, )  
MARYAM SOFINYA, an individual, WEST )  
COAST ATHLETIC CLUBS, INC., a )

Case No.: 01246093

**COMPLAINT FOR:**

- 1) NEGLIGENCE
- 2) GROSS NEGLIGENCE
- 3) RES IPSA LOQUITUR NEGLIGENCE
- 4) NEGLIGENCE PER SE
- 5) WILLFUL MISCONDUCT
- 6) WRONGFUL DEATH
- 7) FRAUDULENT TRANSFER OF COAC PROPERTY
- 8) FRAUDULENT TRANSFER OF THE LEASE ON COAC PROPERTY
- 9) FRAUDULENT TRANSFER OF ASSETS FROM COAC TO WCAC
- 10) CONSPIRACY TO FRAUDULENTLY TRANSFER ASSETS
- 11) AIDING AND ABETTING THE FRAUDULENT TRANSFER OF ASSETS

**DEMAND FOR JURY TRIAL**

1 California Corporation, RICHARD ORTALE, )  
2 an individual, RICHARD ORTALE as alter )  
3 ego of CATHEDRAL OAKS TENNIS, )  
4 SWIM & ATHLETIC CLUB, INC., JAMES )  
5 KNELL, an individual, CATHEDRAL OAKS )  
6 HOLDINGS, LLC, a California Limited )  
7 Liability Company, CATHEDRAL OAKS )  
8 PROPERTIES, LLC, a California Limited )  
9 Liability Company, COAC, LLC, a California )  
10 Limited Liability Company, WEST COAST )  
11 ATHLETIC CLUB PARTNERSHIP, a )  
12 partnership, JL MAIN, INC., a California )  
13 Corporation, JAJE, INC., a California )  
14 Corporation, and DOES 1 through 100, )  
15 inclusive, )

16 Defendants.

17 Plaintiffs, Oded Gottesman and Anat Gottesman, allege as follows:

18 **INTRODUCTORY ALLEGATIONS**

19 1. Plaintiffs, Oded and Anat Gottesman (“the Gottesmans”), are husband and wife,  
20 and are the surviving parents and successors in interest of decedent Jonathan (“Yoni”) Gottesman.  
21 The Gottesmans are, and at all times herein mentioned were, residents of the State of California,  
22 County of Santa Barbara.

23 2. Plaintiffs are informed and believe, and thereon allege, that defendant Cathedral  
24 Oaks Tennis, Swim & Athletic Club, Inc. (commonly known as “Cathedral Oaks Athletic Club,”  
25 hereinafter “COAC”), is, and at all times herein mentioned was, a corporation formed under the  
26 laws of the State of California, with its principal place of business in the County of Santa Barbara.

27 3. Plaintiffs are informed and believe, and thereon allege, that defendant Santa  
28 Barbara Athletic Club, Inc. (hereinafter “SBAC”), is, and at all times herein mentioned was, a  
corporation formed under the laws of the State of California, with its principal place of business  
in the County of Santa Barbara.

4. Plaintiffs are informed and believe, and thereon allege, that defendant Club West,  
Inc. (hereinafter “Club West”), is, and at all times herein mentioned was, a corporation formed

1 under the laws of the State of California, with its principal place of business in the County of  
2 Santa Barbara.

3 5. Plaintiffs are informed and believe, and thereon allege, that defendant JL Main,  
4 Inc., is, and at all times herein mentioned was, a corporation formed under the laws of the State of  
5 California, with its principal place of business in the County of Santa Barbara. JL Main, Inc. is  
6 also a partner in West Coast Athletic Club Partnership, an entity which leased the COAC  
7 Property in a transaction intended to defraud defendants' creditors and especially plaintiffs.

8 6. Plaintiffs are informed and believe, and thereon allege, that defendant JAJE, Inc.  
9 is, and at all times herein mentioned was, a corporation formed under the laws of the State of  
10 California, with its principal place of business in the County of Santa Barbara. Defendant James  
11 Knell is the President of JAJE, Inc. JAJE, Inc. is a partner in West Coast Athletic Club  
12 Partnership, which leased the COAC Property in a transaction intended to defraud defendants'  
13 creditors and especially plaintiffs.

14 7. Plaintiffs are informed and believe, and thereon allege, that defendant Cathedral  
15 Oaks Holdings, LLC is a California Limited Liability Company formed under the laws of the  
16 State of California, with its principal place of business in the County of Santa Barbara.

17 8. Plaintiffs are informed and believe, and thereon allege, that defendant Cathedral  
18 Oaks Properties, LLC is a California Limited Liability Company formed under the laws of the  
19 State of California, with its principal place of business in the County of Santa Barbara.

20 9. Plaintiffs are informed and believe, and thereon allege, that defendant COAC,  
21 LLC is a California Limited Liability Company formed under the laws of the State of California,  
22 with its principal place of business in the County of Santa Barbara.

23 10. Plaintiffs are informed and believe, and thereon allege, that defendant West Coast  
24 Athletic Clubs, Inc. (hereinafter "WCAC, Inc.") is a corporation formed under the laws of the  
25 State of California in May 17, 2006, with its principal place of business in the County of Santa  
26 Barbara. WCAC acquired all the assets of COAC after the tragic accident giving rise to this  
27 action and continued the business of COAC uninterrupted. The sole purpose of WCAC acquiring  
28 COAC's assets was to defraud plaintiffs as creditors. As such, WCAC is liable at least to the

1 same extent as COAC. *Strahm v. Fraser*, 32 Cal. App. 447, 448 (1916) (It is well settled that the  
2 identity of a corporation is not destroyed, nor are its legal obligations obliterated, by the mere fact  
3 of reincorporation under the same or a different name, and a transfer of the corporate assets from  
4 the old to the new corporation.)

5 11. Plaintiffs are informed and believe, and thereon allege, that defendant Richard  
6 Berti (hereinafter "Berti"), is, and at all times herein mentioned was, a resident of the State of  
7 California, County of Santa Barbara. Plaintiffs further are informed and believe that Berti is an  
8 alter ego of COAC, SBAC and Club West, that he is the co-owner of COAC, WCAC, Inc., and  
9 Club West, the principal owner of SBAC, and that he serves on the Board of Directors of both  
10 COAC and SBAC. Berti is also a trustee for the Richard & Marguerite Berti Revocable Trust and  
11 is being sued in that capacity in connection with the alleged fraudulent transfer of real property  
12 shortly after the drowning death of Yoni Gottesman.

13 12. Plaintiffs are informed and believe, and thereon allege, that defendant Marguerite  
14 Berti is and at all times herein mentioned was a resident of the State of California, County of  
15 Santa Barbara. Plaintiffs further are informed and believe that Marguerite Berti is a trustee for  
16 the Richard & Marguerite Berti Revocable Trust and is being sued in that capacity in connection  
17 with the alleged fraudulent transfer of real property shortly after the drowning death of Yoni  
18 Gottesman.

19 13. Plaintiffs are informed and believe, and thereon allege, that defendant Richard  
20 Ortale (hereinafter "Ortale"), is, and at all times herein mentioned was, a resident of the State of  
21 California, County of Santa Barbara. Plaintiffs further are informed and believe that Ortale is a  
22 co-owner of COAC and WCAC, Inc., and an alter ego of both corporations.

23 14. Plaintiffs are informed and believe, and on that basis allege, that defendant Julie  
24 Main (hereinafter "Main") is, and at all times herein mentioned was, a resident of the State of  
25 California, County of Santa Barbara. Plaintiffs further are informed and believe that Main is, and  
26 at all times herein mentioned was, the President and Oversight Manager of both COAC, WCAC,  
27 Inc., and SBAC, and that she is responsible for COAC's compliance with all applicable laws and  
28

1 regulations and adherence to appropriate hiring, supervision and training practices for all  
2 personnel. Main is also an officer and shareholder of JL Main, Inc.

3 15. Plaintiffs are informed and believe and on that basis allege that defendant Kevin  
4 Burnes (hereinafter "Burnes") is, and at all times herein mentioned was, a resident of the State of  
5 California, County of Santa Barbara. Burnes is named as a member, manager or partner of  
6 COAC, LLC, an entity at the center if a fraudulent lease transaction involving the COAC  
7 Property, as more specifically alleged below.

8 16. Plaintiffs are informed and believe, and thereon allege, that defendant James Knell  
9 (hereinafter "Knell"), is, and at all times herein mentioned was, a resident of the State of  
10 California, County of Santa Barbara. Knell is a shareholder and officer of JAJE, Inc. JAJE, Inc.  
11 is a partner in the West Coast Athletic Club Partnership, which leased the COAC Property in a  
12 transaction intended to defraud defendants' creditors and especially plaintiffs.

13 17. Plaintiffs are informed and believe, and thereon allege, that defendant Charlotte  
14 Valentine (hereinafter "Valentine"), is, and at all times herein mentioned was, a resident of the  
15 State of California, County of Santa Barbara. Plaintiffs further are informed and believe that  
16 Valentine is, and at all times herein mentioned was, the General Manager of COAC, WCAC, Inc.,  
17 and that she is responsible for the hiring, supervision and training of all COAC personnel.

18 18. Plaintiffs are informed and believe, and thereon allege, that defendant Esther Clark  
19 (hereinafter "Clark"), is, and at all times herein mentioned was, a resident of the State of  
20 California, County of Santa Barbara. Plaintiffs further are informed and believe that Clark is, and  
21 at all times herein mentioned was, the Aquatics Director at COAC, and that she is responsible for  
22 the hiring, supervision and training of swim instructors and lifeguards, and for ensuring proper  
23 certification of swim instructors and lifeguards at COAC.

24 19. Plaintiffs are informed and believe, and thereon allege, that defendant Elizabeth  
25 Heller (hereinafter "Heller"), is, and at all times herein mentioned was, a resident of the State of  
26 California, County of Santa Barbara. Plaintiffs further are informed and believe that Heller was,  
27 at all times herein mentioned, the Activity Camp Director at COAC, and that she was responsible  
28 for the hiring, supervision and training of Activity Camp counselors.

1           20.     Plaintiffs are informed and believe, and thereon allege, that defendant Michael  
2 Bowen (hereinafter "Bowen"), is, and at all times herein mentioned was, a resident of the State of  
3 California, County of Santa Barbara. Plaintiffs further are informed and believe that Bowen was,  
4 at all times herein mentioned, employed by COAC as a lifeguard, and that he was on duty at the  
5 time of the incident described herein.

6           21.     Plaintiffs are informed and believe, and thereon allege, that defendant David Merin  
7 (hereinafter "Merin"), is, and at all times herein mentioned was, a resident of the State of  
8 California, County of Santa Barbara. Plaintiffs further are informed and believe that Merin was,  
9 at all times herein mentioned, employed by COAC as a lifeguard, and that he was on duty at the  
10 time of the incident described herein.

11          22.     Plaintiffs are informed and believe, and thereon allege, that defendant Gabriele  
12 Kasimatis (hereinafter "Kasimatis"), is, and at all times herein mentioned was, a resident of the  
13 State of California, County of Santa Barbara. Plaintiffs further are informed and believe that  
14 Kasimatis was, at all times herein mentioned, employed by COAC as a swim instructor, and that  
15 she was on duty at the time of the incident described herein.

16          23.     Plaintiffs are informed and believe, and thereon allege, that defendant Sam Shipley  
17 (hereinafter "Shipley"), is, and at all times herein mentioned was, a resident of the State of  
18 California, County of Santa Barbara. Plaintiffs further are informed and believe that Shipley was,  
19 at all times herein mentioned, employed by COAC as a Summer Activity Camp counselor, and  
20 that he was on duty at the time of the incident described herein.

21          24.     Plaintiffs are informed and believe, and on that basis allege, that defendant Jennie  
22 Darling (hereinafter "Darling") is, and at all times herein mentioned was, a resident of the State of  
23 California, County of Santa Barbara. Plaintiffs further are informed and believe that Darling was,  
24 at all times herein mentioned, employed by COAC as a Summer Activity Camp counselor, and  
25 that she was on duty at the time of the incident described herein.

26          25.     Plaintiffs are informed and believe, and thereon allege, that defendant Maryam  
27 Sofinya (hereinafter "Sofinya"), is, and at all times herein mentioned was, a resident of the State  
28 of California, County of Santa Barbara. Plaintiffs further are informed and believe that Sofinya

1 was, at all times herein mentioned, employed by COAC as a Summer Activity Camp counselor,  
2 and that she was on duty at the time of the incident described herein.

3 26. All allegations made in this complaint are based upon information and belief,  
4 except those allegations which pertain to the named plaintiffs, which are based on personal  
5 knowledge. The allegations of this complaint stated on information and belief are likely to have  
6 evidentiary support after a reasonable opportunity for further investigation or discovery.

7 27. The true names and capacities, whether individual, corporate, associate or  
8 otherwise, of defendants Does 1 through 100, inclusive, are unknown to plaintiffs, who therefore  
9 sue said defendants by such fictitious names. Each of the defendants designated herein as a DOE  
10 is legally responsible in some manner for the events and happenings herein alleged, and plaintiffs'  
11 damages as alleged herein were proximately caused by such defendants. Plaintiffs will ask leave  
12 of court to amend this complaint and insert the true names and capacities of said DOE defendants  
13 when the same have been ascertained.

14 28. At all times material herein, each defendant was the agent, servant and employee  
15 of certain remaining defendants, and acting within the purpose, scope and course of said agency,  
16 service and employment, with the express and/or implied knowledge, permission and consent of  
17 those remaining defendants, and each of them, and each of said defendants ratified and approved  
18 the acts of the other defendants.

### 19 JURISDICTION AND VENUE

20 29. This Court has jurisdiction over this action pursuant to California Code of Civil  
21 Procedure section 410.10.

22 30. Venue is proper in this Court because the defendants reside and/or maintain a  
23 place of business in Santa Barbara County, and because all of the events and transactions giving  
24 rise to this action took place in Santa Barbara County.

### 25 GENERAL ALLEGATIONS

26 31. On or about August, 2005, COAC maintained a child care program under which it  
27 offered a "Summer Activity Camp" (hereinafter "Camp") for young children. In promotional  
28 materials for the Camp, COAC stated that it was "proud to introduce an exciting and educational

1 program for children ages 4-10.” Part of the educational experience offered in connection with  
2 the Camp was swim lessons. COAC’s brochure for swim lessons touted its “solid reputation for  
3 providing the highest quality swim instruction available,” and promised that participating children  
4 would have a “safe experience.” Even today, COAC’s website boasts that its aquatics instructors  
5 are “professionally trained to help you reach your goals safely,” and that its child care program is  
6 a “fun and safe environment.”

7 32. Despite the public representations that activities at COAC were safe, and the  
8 implication that the Camp was a properly licensed program that met all requirements of the State  
9 of California, in fact the Camp was an unsafe, illegal and unlicensed child care program. The  
10 deficiencies of the Camp included, but were not limited to:

- 11 a) Improper hiring and training of lifeguards, resulting in incompetent  
12 lifeguard personnel being “on duty” when young children were in the pool;
- 13 b) Lack of training of Camp counselors regarding the assignment of specific  
14 children to specific counselors, which would have required the counselors  
15 to observe, monitor and protect the children in their care;
- 16 c) Failure to establish a procedure during the Camp’s “recreational swim  
17 time” under which specific lifeguards and/or counselors were assigned to  
18 observe, monitor and protect specific children in the pool;
- 19 d) Even after administering swim tests to determine the swimming skill level  
20 of all Camp participants, complete failure by the lifeguards and counselors  
21 to monitor the children and ensure they swam only in the section of the  
22 pool (e.g., the shallow end) for which their ability allowed, resulting in  
23 increased and potentially life-threatening danger to the children; and
- 24 e) Improper and inadequate CPR and resuscitation training, procedures and  
25 equipment.

26 33. On the morning of August 15, 2005, Anat Gottesman took her four-year old son  
27 Yoni to his first day at the Camp, believing it to be a safe facility and program to entrust with the  
28 care of her son. The final scheduled activity prior to pick-up that day, as on all days of the Camp,

1 was "recreational swim time" in COAC's pool. During the morning, defendant Kasimatis gave  
2 Yoni a swimming lesson, during which she arrived at the opinion that Yoni was "overconfident in  
3 his swimming abilities," and that he needed to hold on to the side of the pool. This opinion was  
4 not conveyed to the Camp counselors or lifeguards. At the commencement of the "recreational  
5 swim time," defendant Darling gave Yoni a swimming test to determine his ability level, and  
6 subsequently restricted him to the shallow end of the pool. The counselors and lifeguards did  
7 nothing to enforce that restriction, however.

8 34. During the forty-minute "recreational swim time," Yoni Gottesman drowned.  
9 Yoni drowned, not through some unforeseen or unstoppable cause, but through the grossly  
10 negligent and willful misconduct of defendants. The final minutes of Yoni's life were captured  
11 by the surveillance camera focused on the COAC pool. The video shows:

- 12 a) A COAC counselor, defendant Shipley, aggressively "dunking" and  
13 otherwise "rough-housing" with several children in the pool; Yoni  
14 Gottesman is believed to have been among those children;
- 15 b) Shortly thereafter, Yoni is seen struggling to stay afloat, and then  
16 submerging under the water;
- 17 c) Yoni floating face-down in the water for eight minutes while defendant  
18 Bowen, one of the lifeguards on duty at the time, was oblivious; he sat  
19 motionless directly in front and only a few feet away from where little  
20 Yoni was dying;
- 21 d) During the extensive time Yoni was floating face-down in the water,  
22 defendant Shipley returned to within a couple of feet of where Yoni was  
23 floating, continuing to "dunk" other children, but taking no notice of  
24 Yoni's motionless body right next to him; and
- 25 e) The second lifeguard on duty at the time, defendant Merin, also failed to  
26 notice that a four year old was drowning in front of here eyes. He did  
27 nothing to save Yoni for the first six minutes he was floating face-down in  
28 the water; he then walked right past where Yoni was floating face-down

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and motionless to get a soda. Defendant Merin did not return until after Yoni was pulled from the pool.

35. In addition:

- a) It was only after a Camper noticed Yoni floating in the pool and called it to the attention of a Camp counselor, that any action was taken to rescue Yoni;
- b) After Yoni was pulled from the pool, improper CPR techniques and equipment were used;
- c) Inexplicably, there was a lengthy delay in calling 911; and
- d) The 911 operator and paramedics were given erroneous information regarding Yoni's condition and how long he had been under water.

36. Seemingly unfazed by the circumstances surrounding the death of Yoni, the COAC re-opened its day care camp a day after the drowning without modification in its operations. COAC did so even though it did not have a license to operate the Camp.

37. Following the tragic death of Yoni Gottesman, the State of California, Department of Social Services, fully investigated the Camp and determined that: (1) COAC provided child care when it operated the Camp; (2) the Camp did not have a license to provide child care; and (3) the Camp did not meet the criteria to be license exempt. On October 11, 2005, the Department of Social Services sent COAC a letter notifying it that it was operating a child care facility without a license in violation of California Health and Safety Code sections 1596.80 and 1596.805. COAC appealed that ruling three separate times, all of which were rejected by the Department of Social Services. To plaintiffs' knowledge, COAC never attempted to rectify its violation of law by obtaining the requisite license. Even more astounding, prior to the third rejection of COAC's appeals, defendant Main, the President and Oversight Manager of COAC, stated that she didn't know what would happen if the third appeal failed because, in her opinion, "what is needed for child care licensing is not appropriate for a camp-type situation." The fact that COAC is required by law to have a day care license to operate the Camp is lost on defendants to this day.





1 were legally responsible for the activities of the Camp and the safety of Camp participants.

2 Defendants owed a duty to plaintiffs to conduct their activities with reasonable care.

3 46. Defendants breached their duties to plaintiffs by failing to exercise ordinary care  
4 and due diligence in negligently permitting the circumstances to exist that led to the death of Yoni  
5 Gottesman. Defendants' activities contributed in natural and/or continuous sequence to the  
6 drowning, and each of their actions as alleged herein was a substantial factor in Yoni's death. At  
7 all times mentioned herein, defendants, through their negligence as herein alleged, ignored their  
8 responsibilities to plaintiffs and unreasonably jeopardized the health and well-being of Yoni and  
9 caused his death.

10 47. As a direct and proximate result of defendants' negligence, Yoni Gottesman  
11 drowned and plaintiffs are entitled to recover compensatory damages in an amount according to  
12 proof.

13 48. Plaintiffs have been generally damaged in an amount within the jurisdictional  
14 limits of this court.

15 **SECOND CAUSE OF ACTION**

16 **(For Gross Negligence Against Defendants COAC, WCAC, Inc.,**  
17 **SBAC, Club West, Berti, as an individual, Berti as alter ego, Ortale as alter ego,**  
18 **Esther Clark, Elizabeth Heller, Michael Bowen, David Merin, Sam Shipley,**  
19 **Jennie Darling, Maryam Sofinya, Gabriele Kasimatis**  
20 **and Does 1 - 100, inclusive)**

21 49. Plaintiffs reallege and incorporate by reference all of the allegations contained in  
22 Paragraphs 1-48, inclusive, as though fully set forth herein.

23 50. As alleged herein, on August 15, 2005, Yoni Gottesman was enrolled in COAC's  
24 Camp for the purpose of child care. As further alleged herein, defendants' conduct constitute a  
25 want of even scant care and an extreme departure from the ordinary standard of conduct. Such  
26 outrageous lack of care represents an extreme departure from the ordinary standard of conduct in  
27 the context to the situation. This grossly negligent conduct resulted in Yoni's death.  
28



1 **FOURTH CAUSE OF ACTION**

2 **(For Negligence Per Se Against Defendants COAC, WCAC, Inc., SBAC,**  
3 **Club West, Richard Berti, as an individual, Richard Berti as alter ego,**  
4 **Richard Ortale as alter ego and Does 1 - 100, inclusive)**

5  
6 56. Plaintiffs reallege and incorporate by reference all of the allegations contained in  
7 Paragraphs 1-55, inclusive, as though fully set forth herein.

8 57. As alleged herein, on August 15, 2005, Yoni Gottesman was enrolled in COAC's  
9 Camp for the purpose of child care. At that time, COAC was operating a child care facility  
10 without a license in violation of California Health and Safety Code sections 1596.80 and  
11 1596.805.

12 58. Defendants' operation of a child care facility without a license, and without  
13 otherwise adhering to the requirements of the law, constituted violations of state statutes and  
14 regulations that were specifically promulgated to protect the safety of children. Not only did the  
15 Department of Social Services find COAC to be in violation of the above California Health and  
16 Safety Code Sections by virtue of being unlicensed, the COAC Camp did not even meet the state  
17 standards for a licensed child care facility. Accordingly, defendants' actions were negligent as a  
18 matter of law.

19 59. The injury and death suffered in this case was an occurrence the nature of which  
20 the state statutes and regulations were designed to prevent and plaintiffs are within the class of  
21 persons whom such statutes and regulations are intended to protect.

22 60. As a direct and proximate result of defendants' negligence per se, Yoni Gottesman  
23 drowned and plaintiffs are entitled to recover compensatory damages in an amount according to  
24 proof.

25 61. As alleged herein, defendants were guilty of oppression, fraud, and/or malice as  
26 defined in Civil Code section 3294, and plaintiffs should recover, in addition to actual damages,  
27 exemplary and punitive damages to make an example of and to punish defendants, in an amount  
28 according to proof.

1 **FIFTH CAUSE OF ACTION**

2 **(For Willful Misconduct Against Defendants COAC, WCAC, Inc., SBAC,**  
3 **Club West, Richard Berti, as an individual, Richard Berti as alter ego, Richard Ortale as**  
4 **alter ego, Michael Bowen, David Merin, Sam Shipley and Does 1 - 100, inclusive)**

5 62. Plaintiffs reallege and incorporate by reference all of the allegations contained in  
6 Paragraphs 1-61, inclusive, as though fully set forth herein.

7 63. As alleged herein, on August 15, 2005, Yoni Gottesman was enrolled in COAC's  
8 Camp for the purpose of child care, and drowned in the COAC swimming pool that day.

9 Plaintiffs are informed and believe that defendants knew that the following conditions existed at  
10 COAC, knew that the conditions constituted unreasonable hazards to Camp participants, and  
11 knew that the conditions likely would cause a Camp participant to suffer severe injury or death:

- 12 a) A Camp counselor aggressively "dunking" and otherwise "rough-housing"  
13 with children in the pool;
- 14 b) Lifeguards and counselors who ignore, neglect or otherwise are indifferent  
15 to the importance and seriousness of their duties, including by: (i) failing to  
16 monitor the children in a focused, pro-active manner, and instead being  
17 oblivious to the true status of children in the pool or talking among  
18 themselves rather than attentively watching the children in the pool; and  
19 (ii) unnecessarily leaving the pool deck during the short, forty-minute swim  
20 session, thereby leaving the children in the pool without adequate  
21 supervision;
- 22 c) Lifeguards and counselors who are not properly trained in monitoring the  
23 pool area and remaining at their assigned post throughout the "recreational  
24 swim time";
- 25 d) Lifeguards and counselors who are not properly trained in CPR techniques  
26 and who therefore are incompetent to perform proper and potentially  
27 lifesaving resuscitation attempts;
- 28

