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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

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

ODED GOTTESMAN, an individual, ANAT)
GOTTESMAN, an individual, and ODED)
GOTTESMAN and ANAT GOTTESMAN,)
as successors in interest to JONATHAN)
("YONI") GOTTESMAN, deceased,)

Plaintiffs,

vs.

CATHEDRAL OAKS TENNIS, SWIM &)
ATHLETIC CLUB, INC., a California)
corporation, SANTA BARBARA ATHLETIC)
CLUB, INC., a California corporation, CLUB)
WEST, INC., a California corporation,)
RICHARD BERTI, an individual, RICHARD)
BERTI, as alter ego of CATHEDRAL OAKS)
TENNIS, SWIM & ATHLETIC CLUB, INC.,)
MARGUERITE BERTI and RICHARD)
BERTI, as trustees for the RICHARD &)
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 38. The drowning of Yoni Gottesman was not the first, or last, water safety incident at
2 COAC or SBAC. Beginning in mid-2000 up through only a week before Yoni's death, a number
3 of near drownings occurred at COAC, which were attributable to negligent supervision. As late
4 as two days prior to Yoni's death, parents observed COAC lifeguards paying little or no attention
5 to the children in the pool. Within weeks following Yoni's death, a parent observed children
6 swimming completely unattended by a lifeguard at the SBAC pool. COAC, SBAC and Club
7 West did nothing to inform parents of these incidents or the lack of supervision prior to enrolling
8 their children in the Camp.

9 39. The defendants conduct as alleged herein establishes that the defendants are guilty
10 of oppression, fraud, and/or malice as defined in Civil Code section 3294. The COAC and other
11 defendants took on the obligation of operating a child day care summer camp, which included
12 swimming activities for children as young as Yoni. In its operation of the Camp, the defendants
13 exhibited a willful and conscious disregard for the safety of the children and for their parents.
14 Plaintiffs are therefore entitled to recover, in addition to actual damages, exemplary and punitive
15 damages to make an example of and to punish defendants, in an amount according to proof.

16 ALTER EGO ALLEGATIONS

17 40. Plaintiffs are informed and believe and on that basis allege that there exists, and at
18 all times herein mentioned there existed, a unity of interest and ownership between defendants
19 Berti and Ortale and defendants COAC and WCAC, Inc. such that any individuality and
20 separateness between these defendants have ceased. Berti and Ortale, among other things, (1)
21 systematically engaged in a series of transactions intended to transfer assets from COAC to other
22 entities such as WCAC, Inc. and (2) encumbered the COAC Property with a long term lease
23 intended to make the COAC Property unavailable to satisfy a judgment in this action. Berti and
24 Ortale have at all times exercised control and dominion over COAC and WCAC, Inc. with a
25 disregard for the separate legal status of these entities in an attempt to defraud plaintiffs.

26 41. Adherence to the fiction of the separate existence of the defendants COAC and
27 WCAC, Inc. as separate entities distinct from Berti and Ortale would permit an abuse of the
28 corporate privilege and would sanction fraud and promote injustice.

1 42. Plaintiffs are informed and believe and on that basis allege that SBAC, Cal West,
2 COAC and WCAC, Inc. have such a unity of interest and operations that separate personalities of
3 these corporations no longer exist and if the acts are treated as those of the corporations alone,
4 an inequitable result will follow. Plaintiffs are informed and believe and on that basis allege that
5 SBAC, Cal West, COAC and WCAC, Inc. have transferred assets and revenues among and
6 between themselves so as to defraud plaintiffs' creditors. SBAC, Cal West, COAC and WCAC,
7 Inc. are all largely owned and controlled by Berti. These corporations operate not as entities, but
8 rather as one, with the separate corporations used to shield assets and other revenues in a manner
9 to best suit their owners. Moreover, COAC, WCAC, Inc., SBAC, and Club West are the alter
10 egos of each other, in that they all share some of the same ownership, management and
11 marketing.

12 **THE GOTTESMANS BRING THIS ACTION AS SUCCESSORS IN INTEREST, FOR**
13 **WRONGFUL DEATH, AND FOR RELATED FRAUDULENT CONVEYANCES**

14 43. The Gottesmans bring this action as a survival action, as the successors in interest
15 of Yoni, pursuant to Code of Civil Procedure section 377.30, and as a wrongful death action,
16 pursuant to Code of Civil Procedure section 377.60. They also bring this action to address
17 fraudulent conveyances and related actions taken by some of the defendants to hinder collection
18 on the survival and wrongful death claims.

19 **FIRST CAUSE OF ACTION**

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

24 44. Plaintiffs reallege and incorporate by reference all of the allegations contained in
25 Paragraphs 1-43, inclusive, as though fully set forth herein.

26 45. On August 15, 2005, Yoni Gottesman was enrolled in COAC's Camp for the
27 purpose of child care. At that time, defendants (a) owned, operated and/or managed the Camp
28 facility; (b) operated or supervised Camp activities and/or COAC employees; or (c) otherwise

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 51. As a direct and proximate result of defendants' grossly negligent conduct, Yoni
2 Gottesman drowned and plaintiffs are entitled to recover compensatory damages in an amount
3 according to proof.

4 52. As alleged herein, defendants were guilty of oppression, fraud, and/or malice as
5 defined in Civil Code section 3294, and plaintiffs should recover, in addition to actual damages,
6 exemplary and punitive damages to make an example of and to punish defendants, in an amount
7 according to proof.

8 **THIRD CAUSE OF ACTION**

9 **(For Res Ipsa Loquitor Negligence Against Defendants COAC, WCAC, Inc., SBAC, Club**
10 **West, Berti, as an individual, Berti as alter ego, Ortale as alter ego, Esther Clark, Elizabeth**
11 **Heller, Michael Bowen, David Merin, Sam Shipley, Jennie Darling, Maryam Sofinya,**
12 **Gabriele Kasimatis and Does 1 - 100, inclusive)**

13 53. Plaintiffs reallege and incorporate by reference all of the allegations contained in
14 Paragraphs 1-52, inclusive, as though fully set forth herein.

15 54. As alleged herein, on August 15, 2005, Yoni Gottesman was enrolled in COAC's
16 Camp for the purpose of child care, and drowned in the COAC swimming pool that day. The
17 conduct and omissions of defendants are presumed to be negligent because:

- 18 a) The drowning ordinarily would not have happened unless someone was
19 negligent;
- 20 b) The drowning was caused by something that only defendants controlled;
21 and
- 22 c) Yoni Gottesman's voluntary actions did not cause or contribute to his
23 drowning.

24 55. As a direct and proximate result of defendants' negligent, careless and reckless
25 acts and omissions, Yoni Gottesman drowned and plaintiffs are entitled to recover compensatory
26 damages in an amount according to proof.

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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

