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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

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

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

3 35. In addition:

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

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

15 37. Following the tragic death of Yoni Gottesman, the State of California, Department
16 of Social Services, fully investigated the Camp and determined that: (1) COAC provided child
17 care when it operated the Camp; (2) the Camp did not have a license to provide child care; and (3)
18 the Camp did not meet the criteria to be license exempt. On October 11, 2005, the Department of
19 Social Services sent COAC a letter notifying it that it was operating a child care facility without a
20 license in violation of California Health and Safety Code sections 1596.80 and 1596.805. COAC
21 appealed that ruling three separate times, all of which were rejected by the Department of Social
22 Services. To plaintiffs' knowledge, COAC never attempted to rectify its violation of law by
23 obtaining the requisite license. Even more astounding, prior to the third rejection of COAC's
24 appeals, defendant Main, the President and Oversight Manager of COAC, stated that she didn't
25 know what would happen if the third appeal failed because, in her opinion, "what is needed for
26 child care licensing is not appropriate for a camp-type situation." The fact that COAC is required
27 by law to have a day care license to operate the Camp is lost on defendants to this day.
28

38. The drowning of Yoni Gottesman was not the first, or last, water safety incident at COAC or SBAC. Beginning in mid-2000 up through only a week before Yoni's death, a number of near drownings occurred at COAC, which were attributable to negligent supervision. As late as two days prior to Yoni's death, parents observed COAC lifeguards paying little or no attention to the children in the pool. Within weeks following Yoni's death, a parent observed children swimming completely unattended by a lifeguard at the SBAC pool. COAC, SBAC and Club West did nothing to inform parents of these incidents or the lack of supervision prior to enrolling their children in the Camp.

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

ALTER EGO ALLEGATIONS

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

41. Adherence to the fiction of the separate existence of the defendants COAC and WCAC, Inc. as separate entities distinct from Berti and Ortale would permit an abuse of the 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 it 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

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

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

THIRD CAUSE OF ACTION

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

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

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

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

55. As a direct and proximate result of defendants' negligent, careless and reckless acts and omissions, Yoni Gottesman drowned and plaintiffs are entitled to recover compensatory 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;
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- 1 e) Staff who are not properly trained, or otherwise fail, to call 911
2 immediately upon knowing that an emergency situation exists; and
3 f) A child care "camp" that was unlicensed and failed to meet the
4 requirements of the State of California.

5 64. Despite this knowledge, and without regard for the safety of Camp participants,
6 defendants (i) advertised a "safe experience," knowing the Camp failed to meet state standards for
7 a child care facility; (ii) failed to warn participants or their parents of the hazards; and (iii) failed
8 to take any preventive measures to decrease the hazards.

9 65. These acts and failures to act by defendants constitute willful misconduct,
10 consciously undertaken with a willful and conscious disregard of the probable consequences.
11 These acts and failures to act by defendants were so unreasonable and dangerous that defendants
12 knew or should have known that injury was highly probable.

13 66. As a direct and proximate result of defendants' willful misconduct, Yoni
14 Gottesman drowned and plaintiffs are entitled to recover compensatory damages in an amount
15 according to proof.

16 67. As alleged herein, defendants were guilty of oppression, fraud, and/or malice as
17 defined in Civil Code section 3294, and plaintiffs should recover, in addition to actual damages,
18 exemplary and punitive damages to make an example of and to punish defendants, in an amount
19 according to proof.

20 **SIXTH CAUSE OF ACTION**

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

24 68. Plaintiffs reallege and incorporate by reference all of the allegations contained in
25 Paragraphs 1-67, inclusive, as though fully set forth herein.

26 69. Plaintiffs bring this claim for relief based on defendants' negligence, gross
27 negligence, res ipsa loquitur negligence, negligence per se and willful misconduct.
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1 70. As a direct and proximate result of defendants' conduct as alleged herein, the
2 wrongful death of plaintiffs' decedent, Yoni Gottesman, occurred.

3 71. As a direct and proximate result of defendants' negligence, negligence per se,
4 gross negligence and willful misconduct, and decedent's death, plaintiffs have been, and will be,
5 deprived of the love, care, society, affection, comfort, moral support, protection, companionship,
6 guidance, solace, services and support of plaintiffs' decedent, their son, and have thereby
7 sustained, and will continue to sustain, damages in an amount to be ascertained according to
8 proof.

9 72. As a further direct and proximate result of the acts and omissions of defendants,
10 and the death of plaintiffs' decedent, plaintiffs have incurred funeral and related expenses, as well
11 as other expenses, in an amount to be ascertained according to proof.

12 **SEVENTH CAUSE OF ACTION**

13 **(To Set Aside The Fraudulent Transfer of Real Property Against Defendants**
14 **Richard Berti, as trustee for the Richard & Marguerite Berti Revocable Trust,**
15 **Marguerite Berti, as trustee for the Richard & Marguerite Berti Revocable Trust,**
16 **Richard Ortale, Cathedral Oaks Properties, LLC, Cathedral Oaks Holdings, LLC**
 and Does 1-100, inclusive)

17 73. Plaintiffs reallege and incorporate by reference all of the allegations contained in
18 Paragraphs 1-72, inclusive, as though fully set forth herein.

19 74. At all times mentioned herein plaintiffs are and have been the holder of survival
20 and wrongful death claims as alleged herein against defendants Richard Berti and Richard Ortale.
21 Plaintiffs are informed and believe and on that basis allege that the damages claimed in the
22 survival and wrongful death claims exceed the net worth of these defendants.

23 75. No part of the aforementioned claims has matured, and no part of the sum
24 defendants Richard Berti and Richard Ortale are required to pay is due and owing, because the
25 survival and wrongful death claims are still pending and have not yet proceeded to judgment.

26 76. Plaintiffs are informed and believe and on that basis allege that on the date of the
27 incident, August 15, 2005, the real property upon which the COAC is located ("the COAC
28 Property") was owned, controlled and occupied by the Richard & Marguerite Berti Revocable

1 Trust ("Berti Trust") and defendant Richard Ortale. Plaintiffs are informed and believe and on
2 that basis allege the COAC Property is situated in Santa Barbara County, located at 5800
3 Cathedral Oaks Road, Goleta, California 93111 and more particularly described as follows:

4 Parcel C of Parcel Map No. 10,781 in the County of Santa Barbara, State of
5 California, as shown on Map recorded in Book 4, Page 89 of Parcel Maps,
in the Office of the County Recorder of said County.

6 Together with that portion of Cathedral Oaks Road lying easterly of the
7 westerly line of said Parcel C projected southerly, westerly of the easterly
8 line of said Parcel C projected southerly and northerly of the line shown on
said Parcel Map No. 10,781 as "northerly line of Cathedral Oaks Road per
9 Tract 10,305, MB 72-29.

10 77. Plaintiffs are informed and believe and on that basis allege that on August 25,
11 2005, a mere ten days after the incident, defendant Richard Berti caused to be formed Cathedral
12 Oaks Properties, LLC. The Statement of Information filed with the California Secretary of State
13 lists Richard Berti as the only member of Cathedral Oaks Properties, LLC. Plaintiffs are
14 informed and believe and on that basis allege that Cathedral Oaks Properties, LLC is owned by
15 Richard Berti. The formation of Cathedral Oaks Properties, LLC was in furtherance of a plan and
16 conspiracy to fraudulently transfer property owned by the Berti Trust so that it would not be
17 available to satisfy Berti's liability to plaintiffs.

18 78. Plaintiffs are informed and believe and on that basis allege that on August 25,
19 2005, a mere ten days after the incident, defendant Richard Ortale caused to be formed Cathedral
20 Oaks Holdings, LLC as part of a plan and conspiracy to fraudulently transfer assets out of the
21 reach of the plaintiffs as creditors. The Statement of Information filed with the California
22 Secretary of State lists Richard Ortale as the only member of Cathedral Oaks Holdings, LLC.
23 Plaintiffs are informed and believe and on that basis allege that Cathedral Oaks Holding, LLC is
24 owned by Richard Ortale. The formation of Cathedral Oaks Holdings, LLC was in furtherance of
25 a plan and conspiracy to transfer property so as to defraud plaintiffs as creditors.

26 79. Plaintiffs are informed and believe and on that basis allege that on August 27,
27 2005, a mere 12 days after the incident, defendants Richard Berti and Marguerite Berti caused the
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1 Berti Trust to transfer by grant deed its ownership in the COAC Property to Cathedral Oaks
2 Properties, LLC.

3 80. Plaintiffs are informed and believe and on that basis allege that on August 31,
4 2005, a mere 17 days after the incident, defendant Richard Ortale transferred by grant deed his
5 ownership interest in the COAC Property to Cathedral Oaks Holdings, LLC.

6 81. Plaintiffs are informed and believe and on that basis allege that defendants the
7 Berti Trust, Richard Berti, Marguerite Berti and Richard Ortale and others whose identity is
8 presently unknown carried out this transfer of the COAC Property with an actual intent to hinder,
9 delay, or defraud the creditors of Richard Berti, Richard Ortale and other defendants, and
10 especially plaintiffs.

11 82. Plaintiffs are informed and believe and on that basis allege that in exchange for the
12 transfer of the COAC Property to Cathedral Oaks Holdings, LLC and Cathedral Oaks Properties,
13 LLC, defendants Richard Ortale and the Berti Trust received nominal or no consideration. At the
14 time the transfer was made, the value of the COAC Property was in the millions of dollars. Thus,
15 defendants Richard Ortale and the Berti Trust did not receive reasonably equivalent value in
16 exchange for the COAC Property.

17 83. Plaintiffs are informed and believe and on that basis allege that the COAC
18 Property was received by defendants Cathedral Oaks Holdings, LLC and Cathedral Oaks
19 Properties, LLC with knowledge that defendant Richard Berti and Richard Ortale intended to
20 hinder, delay, or defraud the collection of plaintiffs' survival and wrongful death claims in this
21 action. At the time of transfer of the COAC Property, defendants Richard Berti and Richard
22 Ortale knew that this survival and wrongful death action would be filed. Defendants Cathedral
23 Oaks Holdings, LLC, Cathedral Oaks Properties, LLC, the Berti Trust, Richard Berti and Richard
24 Ortale knew that the transfer of the COAC Property was intended to defraud the plaintiffs in the
25 collection of the judgment that will be obtained in this survival and wrongful death action. The
26 transfer occurred within days after the drowning death and was followed shortly thereafter by
27 other suspicious transfers, which plaintiffs are informed and believe were all designed to transfer
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1 assets owned by Richard Berti and Richard Ortale to defendants Cathedral Oaks Holdings, LLC,
2 and Cathedral Oaks Properties, LLC.

3 **EIGHTH CAUSE OF ACTION**

4 **(To Set Aside The Fraudulent Lease of Real Property Against Defendants Richard Berti,**
5 **Marguerite Berti, Richard Ortale, James Knell, Kevin Burnes, Julie Main, Cathedral Oaks**
6 **Holdings, LLC, Cathedral Oaks Properties, LLC, COAC, LLC, West Coast Athletic Club**
7 **Partnership, JL Main, Inc., JAJE, Inc., and Does 1 - 100, inclusive)**

8 84. Plaintiffs reallege and incorporate by reference all of the allegations contained in
9 Paragraphs 1-83, inclusive, as though fully set forth herein.

10 85. Plaintiffs are informed and believe and on that basis allege that on about May 18,
11 2006, defendants caused to be formed COAC, LLC, a California Limited Liability Company.
12 Information on file with the California Secretary of State indicates that defendants James Knell,
13 Kevin Burnes and Julie Main are member, managers and partners of COAC, LLC. The business
14 address for COAC, LLC is the same address used by other business entities owned and controlled
15 by Richard Berti and Richard Ortale.

16 86. Plaintiffs are informed and believe and on that basis allege that on or about
17 September 1, 2006, Cathedral Oaks Holdings, LLC, and Cathedral Oaks Properties, LLC, entered
18 into an agreement to lease the COAC Property to COAC, LLC. The term of the lease is from
19 September 1, 2006 through August 31, 2035. Plaintiffs are informed and believe and on that
20 basis allege that defendants Richard Berti, Marguerite Berti, Richard Ortale, James Knell, Kevin
21 Burnes and Julie Main and others whose identity is presently unknown carried out this transfer
22 with an actual intent to hinder, delay, or defraud the creditors of Richard Berti and Richard Ortale
23 and other defendants, and especially plaintiffs. The purpose of transferring the lease on the
24 COAC Property was to divert revenues from entities directly owned by Richard Berti and Richard
25 Ortale to COAC, LLC, with the objective being to keep lease revenues outside the reach
26 judgment creditors and specifically plaintiffs. The lease was also designed to encumber the
27 COAC Property diminishing its value to creditors of Richard Berti and Richard Ortale while at
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1 the same time vesting in COAC, LLC a valuable leasehold estate. Plaintiffs are informed and
2 believe and on that basis allege that in exchange for transfer of the leasehold interest in the COAC
3 Property, COAC, LLC paid no consideration. At the time the transfer was made, the value of the
4 lease was in the millions of dollars.

5 87. Plaintiffs are informed and believe and on that basis allege that a mere 5 days after
6 obtaining the lease on the COAC Property, on about September 6, 2006, the lease was assigned
7 by COAC, LLC to a partnership known as the West Coast Athletic Club ("WCAC") Partnership.
8 The document evidencing the assignment shows Cathedral Oaks Properties, LLC and Cathedral
9 Oaks Holdings, LLC as lessors.

10 88. Plaintiffs are informed and believe and on that basis allege that in exchange for
11 transfer of the leasehold interest in the COAC Property, WCAC paid no consideration. At the
12 time the transfer was made, the value of the lease was in the millions of dollars.

13 89. Plaintiffs are informed and believe and on that basis allege that the WCAC is a
14 Partnership owned by defendants JL Main, Inc. and JAJE, Inc. During all relevant times, JL
15 Main and JAJE were acting within the scope of the authority as partners in the WCAC
16 Partnership. Julie Main is listed as the President of JL Main and James Knell is listed as the
17 President of JAJE. Julie Main and James Knell were also listed as members and managers of
18 COAC, LLC. JL Main is a corporation owned and controlled by defendant Julie Main. JAJE is a
19 corporation owned and controlled by James Knell.

20 90. Plaintiffs are informed and believe and on that basis allege that the assignment of
21 the lease on the COAC Property was a transaction intended to hinder, delay, or defraud the
22 creditors of Richard Berti, Richard Ortale and other defendants, and especially plaintiffs. The
23 transaction was designed to divert lease revenue from Richard Berti and Richard Ortale, or
24 entitles owned by them, with the actual intent to hinder, delay and defraud creditors.

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1 **NINTH CAUSE OF ACTION**

2 **(To Set Aside the Fraudulent Transfer of the Assets of the Cathedral Oaks Athletic Club**
3 **Against Defendants Cathedral Oaks Tennis, Swim & Athletic Club, Inc., West Coast**
4 **Athletic Clubs, Inc., Richard Berti, Richard Ortale, James Knell, Julie Main, Charlotte**
5 **Valentine, Cathedral Oaks Holdings, LLC, Cathedral Oaks Properties, LLC,**
6 **COAC, LLC, West Coast Athletic Club Partnership, JL Main, Inc.,**
7 **JAJE, Inc., and Does 1 - 100, inclusive)**

8 91. Plaintiffs reallege and incorporate by reference all of the allegations contained in
9 Paragraphs 1-90, inclusive, as though fully set forth herein.

10 92. Shortly after consummating the fraudulent lease transaction described above, an
11 announcement was made in a letter to employees that the Cathedral Oaks Athletic Club is under
12 new ownership. The news was described as "exciting." Plaintiffs are informed and believe on
13 that basis allege that the letter did not disclose that this transfer of ownership was actually part of
14 a scheme to defraud the COAC's creditors, especially including plaintiffs. Incredibly, the letter
15 indicates that Julie Main is the "new owner" of COAC.

16 93. Plaintiffs are informed and believe and on that basis allege that the on May 17,
17 2006, defendants caused to be formed a California corporation named WCAC, Inc. (previously
18 referred to as "WCAC, Inc."). Plaintiffs are informed and believe and on that basis allege that or
19 about September 2006, defendants orchestrated a transaction whereby Cathedral Oaks Tennis,
20 Swim & Athletic Club, Inc. transferred all its assets to WCAC, Inc. Plaintiffs are informed and
21 believe and on that basis allege that no consideration was paid by WCAC, Inc. to acquire these
22 assets. At the time the transfer was made, the value was in the millions of dollars. The purported
23 transfer of these assets was consummated with the actual intent to defraud creditors and
24 especially the plaintiffs.

25 94. The defendants referenced above and others played active roles in this transaction
26 with the actual intent to defraud creditors and specifically plaintiffs. Defendants acted
27 maliciously with a conscious disregard for the rights of the already grieving plaintiffs.

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ELEVENTH CAUSE OF ACTION

(Aiding and Abetting the Fraudulent Transfer of Assets Against Defendants Cathedral Oaks Tennis, Swim & Athletic Club, Inc., West Coast Athletic Clubs, Inc., Richard Berti, Richard Ortale, James Knell, Marguerite Berti, Julie Main, Kevin Burnes, Charlotte Valentine, Cathedral Oaks Holdings, LLC, Cathedral Oaks Properties, LLC, COAC, LLC, West Coast Athletic Club Partnership, JL Main, Inc., JAJE, Inc., and Does 1 - 100, inclusive)

100. Plaintiffs incorporate by reference the allegations of paragraphs 1-99, above as through fully set forth herein.

101. Plaintiffs are informed and believe and on that basis allege that in relation the fraudulent transfers alleged herein, the above named defendants and others aided and abetted and carried out the transfers by providing substantial assistance and encouragement to each other in consummating these transactions. During all relevant times, these defendants knew that plaintiffs had a pending survival and wrongful death claims yet they participated in a premeditated scheme to transfer assets with the intent to defraud plaintiffs.

102. As a proximate result of the wrongful acts alleged herein and in subsequent paragraphs, plaintiffs have and will incur attorney fees to prosecute the claims relating to the fraudulent transfer of assets separate and in addition to the fees necessary to prosecute the survival and wrongful death claims. The attorney fees incurred to prosecute the fraudulent transfer claims are recoverable as an item of special damages since they are caused by the tortuous conduct of the defendants. *Gray v. Don Miller & Associates, Inc.*, 35 Cal.3d 498, 505 (1984) (Attorney fees recoverable if caused by the "tort of another.")

103. Plaintiffs are informed and believe and on that basis allege that during all relevant times, the above named defendants knew that plaintiffs' would rely primarily on COAC Property and property owned by Cathedral Oaks Tennis, Swim & Athletic Club, Inc. to satisfy any judgment in this wrongful death action. Notwithstanding this knowledge, the defendants intentionally, willfully, fraudulently, and maliciously did the things herein alleged to defraud and oppress plaintiff. The defendants acted with a preconceived design to inflict further injury on plaintiffs in a blatant disregard of the law and plaintiffs' rights. Defendants' acts were not the

1 result of spur of the moment decisions, but rather deliberate acts carried out over a substantial
2 length of time. The defendants were premeditated and exhibited a conscious disregard of
3 plaintiffs' rights. Plaintiffs are therefore entitled to recover punitive damages.

4 **PRAYER FOR RELIEF**

5 Wherefore plaintiffs pray for judgment as follows:

6 **On the First, Third and Sixth Causes of Action:**

7 1. For compensatory damages in an amount according to proof.

8 **On the Second, Fourth and Fifth Causes of Action:**

9 2. For compensatory damages in an amount according to proof; and

10 3. For punitive and exemplary damages in an amount according to proof.

11 **On the Seventh, Eighth and Ninth Causes of Action:**

12 4. That the transfer from Richard Ortale to Cathedral Oaks Holding, LLC of
13 its interest in the COAC Property be annulled and declared void as to the plaintiffs herein to the
14 extent necessary set aside;

15 5. That the transfer from the Berti Trust to Cathedral Oaks Properties, LLC of
16 its interest in the COAC Property be annulled and declared void as to the plaintiffs herein to the
17 extent necessary to satisfy plaintiffs' judgment;

18 6. That the lease of the COAC Property from Cathedral Oaks Holding, Inc.
19 and Cathedral Oaks Properties, Inc. to COAC, LLC be annulled and declared void as to the
20 plaintiff;

21 7. That the assignment of the least from COAC, LLC to the WCAC
22 Partnership be annulled and declared void as to the plaintiff;

23 8. That transfer of assets of the Cathedral Oaks Tennis, Swim & Athletic
24 Club, Inc. to WCAC, Inc. be annulled and declared void as to the plaintiffs herein to the extent
25 necessary to satisfy plaintiffs' judgment;

26 9. That defendants West Coast Athletic Clubs, Inc., the WCAC Partnership,
27 Cathedral Oaks Holdings, Inc. and Cathedral Oaks Properties, Inc. be restrained from disposing
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1 of the property until the survival and wrongful death claims by plaintiffs have matured to
2 judgment and the judgment satisfied;

3 10. That a temporary restraining order be granted plaintiffs enjoining and
4 restraining defendants West Coast Athletic Club, Inc., the WCAC Partnership, Cathedral Oaks
5 Holdings, Inc. and Cathedral Oaks Properties, Inc. and their attorneys, and agents from selling,
6 transferring, conveying, or otherwise disposing of any of the property transferred;

7 11. That an order pendente lite be granted plaintiffs enjoining and restraining
8 defendants West Coast Athletic Club, Inc., the WCAC Partnership, Cathedral Oaks Holdings, Inc.
9 and Cathedral Oaks Properties, Inc. and their representatives, attorneys, servants, and agents from
10 selling, transferring, conveying, assigning, or otherwise disposing of any of the property
11 transferred;

12 12. That the judgment herein be declared a lien on the property transferred;

13 13. That an order be made declaring that defendants West Coast Athletic Club,
14 Inc., the WCAC Partnership, Cathedral Oaks Holdings, Inc. and Cathedral Oaks Properties, Inc.
15 holds all the property described above in trust for plaintiff; and

16 14. That defendants West Coast Athletic Club, Inc., the WCAC Partnership,
17 Cathedral Oaks Holdings, Inc. and Cathedral Oaks Properties, Inc. be required to account
18 to plaintiffs for all profits and proceeds earned from or taken in exchange for the property
19 described above.

20 **On the Tenth and Eleventh Causes of Action:**

21 15. For general damages in the amount of the judgment awarded against
22 defendants herein or some other amount according to proof;

23 16. For punitive and exemplary damages in an amount according to proof; and

24 17. For attorney fees attributable to prosecuting the fraudulent transfer claims.

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1 **On All Causes of Action:**

2 For interest, expenses and costs of suit to the extent permitted by law; and

3 For such other and further relief as the Court deems just and proper.

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5 Dated: July 18, 2007

CAPPELLO & NOËL LLP

6
7 By 

8 A. Barry Cappello
9 Leila J. Noel
10 Attorneys for plaintiffs
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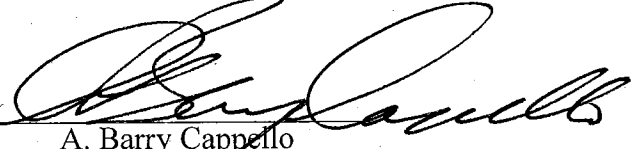
DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all issues so triable in this action.

Dated: July 18, 2007

CAPPELLO & NOËL LLP

By


A. Barry Cappello
Leila J. Noël
Attorneys for Plaintiffs