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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
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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,

