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June 5, 2025

[REDACTED]

Via Lawyer's Service

[REDACTED]

RE: The Estate of Chu Ming Zheng v. Bayonne Board of Education, et al
Docket No.: HUD-L-763-23

The Estate of Jack Jiang v. Bayonne Board of Education, et al
Docket No.: HUD-L-761-23

[REDACTED]

Please accept this Mediation Statement submitted on behalf of Plaintiffs. Your Honor and all counsel will also be provided with a link to a video prepared in connection with these cases ("Zheng/Jiang LifeNow Video"). The Zheng/Jiang LifeNow Video provides a brief summary of the relevant issues in these cases to date. In short, as the video demonstrates, the cases are indefensible, the damages are inestimable, and the facts underlying these cases are incredibly shocking. The aspirations of Zheng/Jiang Family ("Family"), which held so much promise, have

been destroyed by the egregious conduct of the collective Defendants in failing to protect Chu Ming Zheng ("Chu Ming") and Jack Jiang (Jack") from their horrific and easily preventable drowning deaths. The "American Dream" they yearned to achieve, and the legacy they worked so hard to build, died with their sons, Chu Ming, who was just 19 years old, and his younger brother Jack, who was only 16 years old.

For convenience, the Zheng/Jiang LifeNow Video may be accessed by the following link and using the password, "lifenow25". This link is (to be supplied). A flash drive containing the Zheng/Jiang LifeNow Video and a video containing a compilation of compelling video deposition testimony from the depositions of Defendants Corey Kettleman, Ashley Danback, Lisa Kohler, Alex Mariak and John Rickard will also be provided to Your Honor with the service of the hard copy of this Mediation Statement. Notably, insofar as Plaintiffs' expert reports are not due to be served until August 15, 2025, the defense is being provided with a copy of this Mediation Statement that does not include any of Plaintiffs' liability expert reports and does not refer to or identify any of the Plaintiffs numerous liability experts.

It is strongly suggested that all individuals and entities interested and/or affected by the outcome of this Mediation review the Zheng/Jiang LifeNow Video in its entirety prior to the Mediation. It cannot be stressed enough that the list of the interested and/or affected parties by this Mediation include, but is not limited to, the Bayonne Board of Education ("BBOE"), its insurers and reinsurance providers, all individual Defendants, the BBOE Superintendent John Niesz, and all those whose financial interests, political, educational, business and/or professional reputations will be adversely affected by these cases if the cases are not resolved at Mediation. Indeed, the residents of Bayonne whose tax dollars fund the school district, have a right to know

the extent of the willful disregard for their safety and the callousness with which the Lincoln School Pool was operated by the Defendants.

I. INTRODUCTION

These cases involve the devastating and absolutely preventable drowning deaths of two brothers, Chu Ming and Jack, whose lives were taken due to the egregious mismanagement of Lincoln School Pool by the Defendant BBOE and its staff and the cowardice incompetence of the defendant lifeguards who were supposed to protect them.

Notably, it was the safety policy of the BBOE and the management of the Lincoln School Pool to have at least three (3) lifeguards posted on the pool deck of the Lincoln School Pool at all times. Although all of the Defendant lifeguards have admitted at deposition that prior to the boys drowning there were never less than 3 lifeguards posted on the pool deck during open swim sessions, inexplicably there were only two (2) lifeguards stationed on the pool deck when both these boys drowned.

As per the importance of having at least three (3) lifeguards posted on the pool deck to ensure the safety of the children and people using the pool, video evidence proves that several of the Defendants patently lied to the investigating detective and police officers when they mendaciously claimed there were three (3) lifeguards posted on the pool deck when the boys drowned. As set forth in more detail below, these lies were only exposed as a result of the video surveillance that the defendants were unaware existed when they lied to the police after these boys drowned.

The abject failures of the BBOE and grossly negligent mismanagement of the Lincoln School Pool in failing to properly train their lifeguards, failing to have and practice an Emergency Action Plan (“EAP”), and failing to ensure there were reasonable and sufficient safety measures in place, constitutes a conscious disregard for the safety of those children and people of the community using the Lincoln School Pool and directly led to these boys drowning. In fact, several of the Defendants have admitted at deposition that the Defendant BBOE was negligent in this matter. (*infra.*)

With respect to the Defendant lifeguard’s cowardice disregard for the lives of Chu Ming and Jack, it cannot be ignored that Defendant Kettleman did not even attempt to rescue the boys when he observed them struggling in the water and is captured on video surveillance apathetically walking to get assistance when these two boys were drowning. (*infra.*)

Additionally, the individual lifeguards failed to adhere to the Lincoln School Pool Rules, Regulations and Guidelines designed to ensure there were an adequate number of lifeguards on duty protecting the community members using the pool.

The dive well at the Lincoln School Pool in which the boys drowned was an extremely dangerous condition created by the BBOE, which was not mitigated in any way shape or form by any reasonable measures that could and should have been taken.



As seen in the above photograph annexed as Exhibit 16, the dive well where the boys drowned contained a four foot submerged shelf on which most children and adults could stand, and a precipitous drop to thirteen (13) feet immediately adjacent to the shelf where a simple misstep would cause a person to be immediately submerged into the thirteen (13) feet of water. As set forth in more detail below, several of the Defendant lifeguards, and Defendant Rickard, who was the Administrator in Charge of the pool, have admitted that several effective, simple and inexpensive safety measures could and should have been implemented by the Defendant BBOE to make the dive well significantly safer and that the failure of the BBOE to do so was negligent. (*infra.*)

It is unfathomable that the events unfolded in such a tragic manner that these two incredible young boys will never live out their promising lives. It is disturbing that the BBOE completely abdicated its responsibility to keep the residents of Bayonne safe and set their lifeguards up for failure, at the expense of the lives of Chu Ming and Jack.

While inconceivable that so many derelictions led to such an unspeakable loss, it is reprehensible that the individual Defendant lifeguards, who were completely unaware that there was surveillance footage in the lobby area of Lincoln School Pool, shamelessly lied to the investigating police officers about the facts and circumstances surrounding that evening, knowing that two boys died on their watch. Their deplorable behavior on the evening of the drownings has been carried into this litigation. If ever a case warranted an award of punitive damages, this would certainly be the one.¹

II. BRIEF STATEMENT OF FACTS

Family Background

Plaintiffs Qing Zheng and Mei Jiang came to the United States in search of the American dream. They worked extremely hard and tirelessly to raise their children the right way, with core family values, respect for others and virtue. The future Qing and Mei dared to envision was coming to fruition. They were raising their three beautiful, amazing and wonderful children in Bayonne, New Jersey and they had laid the foundation for success, so that their children, Chu Ming, Jack and Kate could dream bigger than them and achieve everything they could not.

Chu Ming was the eldest child and son of Qing and Mei. He was an extraordinary young man and was wise beyond his years. Even though he was only 19 at the time of his death, he effectively served as the patriarch of the family. Chu Ming understood from a young age that his parents came from very little and had very humble beginnings. Unlike his parents who were born

¹ Plaintiffs Motion to Amend the Complaint to include Spoliation/Fraudulent Concealment and Punitive Damages
[REDACTED] [REDACTED]

in China and spoke very little English, Chu Ming was born in the United States and was fluent in the English language. He knew he would need to work extra hard in school to excel as his parents were not equipped to assist due to the language barrier. Because of this, as he grew older, he willingly and eagerly took the role of family leader, as he understood the responsibility of being the first-born son.

As the first born, Chu Ming did everything for his family. He assisted his parents with paying the bills, working at the family business, handling the utilities and contributed to the household however he could whether it was financially, emotionally or socially. Because he had such academic prowess, Chu Ming helped his brothers and sisters with their homework and played with them when he was not studying or doing schoolwork. He never left any task uncompleted. With his guidance, the entire family was thriving. But it was not only the family unit that was thriving, as Chu Ming set himself up for success. He worked academically to the top of his class and earned a scholarship to the University of Miami, where he would study Finance and Accounting. Chu Ming was the pride of his family, as he won the hearts of all his teachers and friends with his strong work ethic and loyalty. While his parents relied heavily on him on a daily basis, it was the promise of the future he would bring to them that motivated him. His future was so bright, his parents became the envy of the community.

Jack Jiang was named by his father to continue the legacy of his mother, Mei Jiang, who had no men in her family to carry on her family name. (See Deposition Testimony of Qing Zheng T15:25-16:5 annexed as Exhibit 1). He was the more playful of the two brothers, always hugging and kissing his mom, all the while often joking and playing with his brother and sister. He was athletic, had a love of basketball and was a tremendous chess player. Although Jack was not as

academically gifted as his brother, he strove to emulate his big brother every way he could. He often looked to Chu Ming for help and wanted to follow in his footsteps.

Like Chu Ming, Jack also took his responsibilities to the family very seriously. He was closer in age to his baby sister, Kate, so he always took care of her. Jack also worked in the family restaurant with his brother, and the two of them helped their father with the heavy chores at home. Jack was the smart, clever kid in the family, and anything he put his mind to, he could achieve.

Both boys always held part-time jobs, and they shared their earnings with their family. They reciprocated their parents' nurturing with love and the promise that they would take care of them when they grew old. The loss of Chu Ming and Jack to their family is beyond devastating.

The Tragic Events Of June 8, 2022 When Chu Ming And Jack Drowned At The Lincoln School Pool

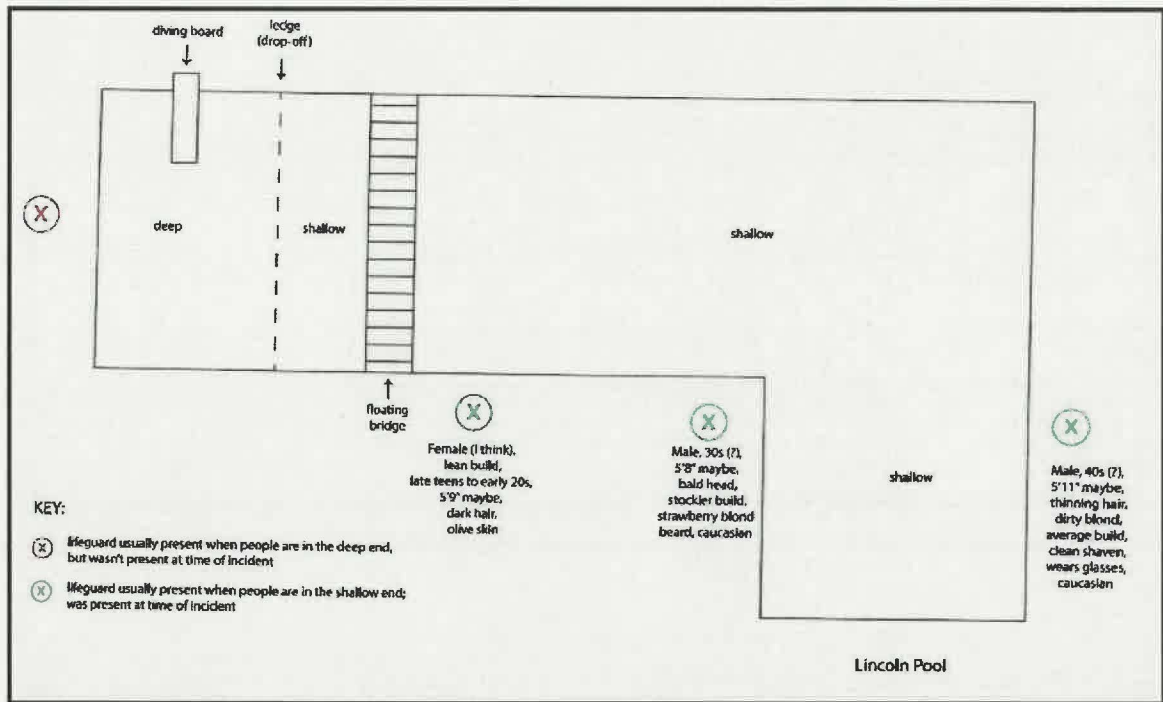
Chu Ming returned home to New Jersey from studying at the University of Miami to spend the summer at home with his family. On June 8, 2022, he and his younger brother Jack accompanied their younger sister Kate to the Lincoln School Pool during open swim, which was accessible to the residents of Bayonne from 6:30-8:30 p.m. upon payment of a fee.² Prior to that evening, Chu Ming, Jack, Kate and their father had been to the Lincoln School Pool on approximately eight (8) to ten (10) occasions (See Deposition Testimony of Qing Zheng T33:5-8 annexed as Exhibit 1). During each and every open swim and on each occasion they went to the Lincoln School Pool prior to June 8, 2022, **there had always been a minimum of three to five**

² There is no sign-in sheet for patrons of the pool nor is any contemporaneous record of the fees collected at the Lincoln Community School Pool. (See Deposition Testimony of Rickard T139:12-16 as Exhibit 5, Danback T110:11-111:-15 as Exhibit 3, Kohler T30:12-14 as Exhibit 4).

lifeguards. (See Deposition Testimony of Qing Zheng T47:10-13 annexed as Exhibit 1; Kettleman T221:19-222:22 annexed as Exhibit 2, Danback T123:16-124:5 annexed as Exhibit 3; Kohler T110:21-111:6; 108:6-14 annexed as Exhibit 4; Rickard T176:6-20 annexed as Exhibit 5). On the night of June 8, 2022, the only lifeguards on the pool deck at the time Chu Ming and Jack drowned at the Lincoln School Pool were Defendants Corey Kettleman and Alex Mariak. (See Deposition Testimony of Kettleman T241:15-24:3 annexed as Exhibit 2).

The three siblings entered the school at around 6:19 p.m. and spent most of the evening swimming in the shallow lap pool area. (See Lobby Video 1 annexed as Exhibit 20, Statements of Gonzalez and Moodie annexed as 11). When they entered the Lincoln School Pool, there were people using the dive well as a lifeguarding class was being conducted that was scheduled to end sometime before 7 p.m. Defendant Kettleman testified it was a very busy night; all the lanes were taken, there were children and adults in the main pool, and he was distracted by weak swimmers and unruly kids who were not Chu Ming or Jack engaged in rough housing in the pool. (See Deposition Testimony of Kettleman T200:18-201:4, T205:15-22, T206:7-25 annexed as Exhibit 2). Joshua Gonzalez described the atmosphere as rowdy. (See Statement of Joshua Gonzalez annexed as Exhibit 11).

Chu Ming, Jack and Kate were all swimming together in the shallow area of the pool in their own lane, where there is four feet of water. Trish Moodie and Joshua Gonzalez were adults who frequently swam at the Lincoln School Pool and were swimming in the lane adjacent to Chu Ming, Jack and Kate. Below is a diagram prepared by Trish Moodie depicting the swim area and their recollection.



(See Diagram annexed hereto as Exhibit 18).

Trish Moodie and Joshua Gonzalez provided written statements in this matter and have recently been deposed. (See Statements of Moodie and Gonzalez annexed as Exhibit 11). Trish and Joshua uniformly agree on the following:

- They often came to the Lincoln School Pool to swim.
- Chu Ming, Jack and Kate were also present on some occasions when they were at the pool and were clearly learning how to swim.
- Chu Ming Jack and Kate were nice, polite, and well behaved.
- **Chu Ming and Jack could not swim the length of the pool or any distance and needed to stand and/or hold on to a floating safety line or pool wall after a few strokes.**
- Chu Ming and Jack were learning how to swim, though Chu Ming was a slightly better swimmer than Jack
- On the evening of June 8, 2022, Chu Ming, Jack and Kate were swimming in the shallow lap pool area in the first lane closest to the top of the diagram next to the pool wall adjacent to Trish and Josh's lane.
- **Chu Ming and Jack eventually left the shallow pool and were standing in dive well on the shallow shelf. (No lifeguards testified they saw them in this area prior to Kettleman seeing them in distress.)**
- At the time of the drownings, there were only two lifeguards on the pool deck.

- Chu Ming and Jack were not engaged in any type of roughhousing, game playing, or dangerous activity at any time.
- Trish and Joshua did not hear the lifeguards tell the boys to move from the dive well at any time.
- The dive well was almost always open on the occasions Trish and Josh were at the Lincoln School Pool.
- There was no indication that the deep end of the pool was closed on the evening of June 8, 2022, including signage or an announcement that the deep end or the floating bridge was closed.
- Trish saw the slides (flip-flops) that belonged to Chu Ming or Jack on the floating bridge.
- At some point, they saw Defendant Kettleman staring intently in the water of the deep end.
- They did not see Defendant Kettleman or hear anyone blow a whistle before they noticed commotion in the dive well area of the pool.
- Joshua Gonzalez heroically jumped into the water to try to rescue one of the boys. (In contrast, Defendant Kettleman never got wet!).
- Trish and Joshua did not see Defendant Danback in the pool area on June 8, 2022 at any time before the boys drowned.

(See Statements of Moodie and Gonzalez annexed as Exhibit 11).

The testimony in this case has consistently been that Chu Ming and Jack were polite, kind and obedient to any instructions given to them and they would have complied with any instructions given to them by the lifeguards. (See Deposition Testimony of Kettleman T38:23-39:13 as Exhibit 2 and Qing Zheng T76:2-14 as Exhibit 1, Statements of Moodie and Gonzalez annexed as Exhibit 11). According to Trish and Joshua, there were no indicators that the dive well was closed. No one told Chu Ming and Jack that the dive well was closed and/or that they were not permitted to be in the dive well. No lifeguards saw them in the dive well area prior to them drowning. Kate left her older brothers in the pool area and went into the ladies locker room to change. (See Statements of Moodie and Gonzalez). Unbeknownst to her, she would never see her two brothers alive again.

Sometime before 8:18 p.m., Defendant Kettleman, a lifeguard assigned to patrol the main pool area, observed Chu Ming and Jack struggling in the 13' dive well area of the pool, which

Defendants claim was supposed to be closed at that time. *It remains inexplicable how Trish Moodie and Josh Gonzalez both testified they observed the boys and Kate on the ledge of the dive well for an extended period of time, and Defendant Kettleman, whose duty as lifeguard was to “constantly and carefully observe all persons using the pool to prevent injury and/or loss of life” claims he never saw Chu Ming, Jack and/or Kate leave the shallow end, enter the dive well or in the dive well at any time before he claims he saw the boys struggling.*

At that moment when Defendant Kettleman noticed Chu Ming and Jack, they were both alive and he observed one boy doing flips and the other going down. (See Deposition Testimony of Kettleman T252:14-254:12, T318:20-23 annexed as Exhibit 2). He recalled seeing one boy look up at the sky in terror just before sinking in the depths of the deep end of the pool. (See Police Report annexed as Exhibit 7). Instead of blowing his whistle to get timely assistance and entering the pool to save Chu Ming and Jack when he observed them in apparent distress, as all lifeguards are trained to do, Defendant Kettleman walked the length of the pool to the baby pool to summon the assistance of Defendant Alex Mariak, the only other lifeguard working the entire pool deck that busy evening. (See Deposition Testimony of Kettleman T239:13-240:4, T322:5-10, T232:11-14 annexed as Exhibit 2). After doing so, Defendant Kettleman then inexplicably WALKED OUT of the pool area and can be seen on surveillance video at 20:18:53 summoning Defendant Danback, who had been in the front lobby office all night and on her phone at the time. As a result, only one lifeguard, Defendant Alex Mariak, [REDACTED], attempted

³ Defendant Alex Mariak testified he [REDACTED] e is assigned to guard the kiddie area of the pool. (See Deposition Testimony of Alex Mariak T183:3 – 184:5; T24:16-20; T52:24 -T53:8 annexed as Exhibit 6).

to rescue two actively drowning victims without any assistance. (See Lobby Video #38 annexed as Exhibit 20 and Deposition Testimony of Kettleman T321:20-322:15 annexed as Exhibit 2).

The egregious apathy demonstrated by Defendant Kettleman as he leisurely walks for assistance as these boys were drowning is beyond comprehension and must be watched on the Zheng/Jiang LifeNow Video.

After Defendant Kettleman slowly walked back into the pool area at 20:19:05 p.m., Defendant Danback can be seen leaving the front office on her cell phone and heading to the pool area through the girls' locker room. (See Lobby Video #38 annexed as 20). Only after being confronted with the video at his deposition, Defendant Kettleman agreed he was walking leisurely through the lobby with absolutely no sense of urgency despite knowing two boys were actively drowning and he did not enter the pool to attempt to rescue Chu Ming and/or Jack. (See Lobby Video #38 annexed as Exhibit 20 and Deposition Testimony of Kettleman T322:5-10 annexed as 2). In fact, Defendant Kettleman did not enter the pool to rescue either boy and **NEVER GOT WET!** (See Deposition Testimony of Kettleman T322:11-19 annexed as Exhibit 2).

Defendant Danback likewise never entered the pool or demonstrated any effort whatsoever to save Chu Ming or Jack from their drowning deaths. At 20:20:32, Defendant Danback called Defendant Rickard, who was seemingly just coming back into the building, to advise him that there were two boys drowning in the diving portion of the pool. Defendant Mariak, [REDACTED] lifeguard, entered the pool to retrieve one of the boys from the water. Unfortunately, after pulling one of the boys from the depths of the dive well, because he was the only lifeguard to have entered the water to try to rescue the boys he was so fatigued when he emerged from the water he uttered,

“I can’t” leaving the second victim still at the bottom of the dive well. (See Statement of Gonzalez annexed as Exhibit 11).

Defendant Rickard subsequently entered the pool area, and his eyes met the eyes of Joshua Gonzalez who had seen the commotion. Defendant Rickard told Joshua Gonzalez to “GO” and Mr. Gonzalez entered the dive well to retrieve the second victim. It was ultimately Mr. Gonzalez, a patron of the pool who was not a lifeguard, who jumped in heroically after he saw the boys at the bottom of the dive well in an attempt to rescue the second victim. (See Statement of Gonzalez annexed as Exhibit 11). Unfortunately, his efforts were unsuccessful as were all attempts to resuscitate Chu Ming and Jack. Both brothers were pronounced dead that evening, despite the pleas of their mother and father for the physicians at the hospital to bring their boys back to life and to save them. (See Deposition Testimony of Qing Zheng T64:19-22, T11-15 annexed as Exhibit 1).

911 was called at approximately 8:23 p.m. (See Bayonne Police CAD activity report annexed as Exhibit 9). The recording of the call is chilling as the dispatcher reacts in disbelief that there were “TWO” people pulled from the bottom of the pool not breathing. (See Audio of 911 Call annexed as Exhibit 8). There is also body cam footage from the responding police officers as well as surveillance footage of the lobby of the Lincoln School Pool. Furthermore, the police interviews conducted of Defendant lifeguards Kettleman, Danback, and Rickard all substantiate that the Defendants lied without remorse despite two (2) young boys dying due to their negligence. (See Police Interviews annexed as Exhibit 10). ***Were it not for such compelling evidence of the blatant misrepresentations and fabricated lies, the Defendants may have gotten away with their despicable behavior.***

III. LIABILITY

A. The Lack Of Sufficient Lifeguards And Having Only Two On The Pool Deck At The Time Of The Drownings Was Reckless And Unreasonably Dangerous.

Notwithstanding the Defendants original lies to the investigating police, it is now undisputed that there were only two lifeguards (Defendant Kettleman and Defendant Mariak) on the pool deck of the Lincoln School Pool on June 8, 2022 when Chu Ming and Jack drowned. Every person deposed in these cases testified that this night that the two boys drowned was the only time they are aware that there were less than three lifeguards stationed on the pool deck of the Lincoln School Pool during an open swim session. In fact, on many occasions, there were four or five lifeguards stationed in the pool area for the purpose of ensuring that the pool area was safely being guarded. (See Deposition Testimony of Qing Zheng T47:10-13 as Exhibit 1; Kettleman T115:18-24, T107:14-21, T108:6-14, T133:24-134:4 as Exhibit 2, Danback T123:16-25, T133:20-134:2 as Exhibit 3, Kohler T110:24-111:6 as Exhibit 4; Defendant Rickard T177:25-178:9, T172:10-17; T177:25-178:9, T187:7-189:16; T190:6-13, T199:5-12 annexed as Exhibit 5).

Two lifeguards on the pool deck were clearly not enough to protect those using the pool and unreasonably increased the risk of harm. (See Deposition Testimony of Kettleman T115:18-24, T107:14-21, T108:6-14, T133:24-134:4 as Exhibit 2, Danback T123:16-25, 133:20-134:2 as Exhibit 3, Kohler T110:24-111:6 as Exhibit 4, Defendant Rickard T187:7-15 annexed as Exhibit 5). The BBOE chose to risk the lives of all the patrons by only having two lifeguards on the deck, [REDACTED] and usually only worked the baby pool because of his [REDACTED] (See Deposition of Mariak T183:3 – 184:5, T24:16-20; T:52:24 -53:8 annexed as Exhibit 6). Furthermore, having only two lifeguards was a violation of Lincoln School Pool safety policy and

created a dangerous situation that increased the likelihood that someone would drown as the lifeguards that were working were given more responsibilities than they were used to as indicated by the following testimony of Defendant Danback:

3 Q. Would you agree if there were only
4 two lifeguards working on the pool deck during the
5 open swim session on June 8, 2022 when from 8 to
6 8:30, that would be inconsistent with your
7 expectations regarding safety at the Lincoln
8 School Pool?

9 A. Yes.

12 Q. Would you agree that if there were
13 only two lifeguards working on the pool deck
14 during the open swim session on June 8, 2022 from
15 8 to 8:30, that violated the safety policy of the
16 Board of Education to have at least three
17 lifeguards working on the pool deck of the Lincoln
18 School Pool at all times there was an open swim?

21 A. Yes.

22 Q. Do you agree if there were only two
23 lifeguards working on the pool deck during the
24 open swim session on June 8, 2022 from 8 to 8:30,
25 that created a situation in which the two
1 lifeguards who were working on the pool deck were
2 given more duties and responsibilities than they
3 were used to or accustomed to?

7 A. Yes

(See Deposition Transcript of Danback T134:3-T135:7 annexed as Exhibit 3).

Defendant Lisa Kohler, who by many accounts (except hers) was the pool manager or supervisor of the lifeguards, was scheduled to work on the evening of June 8, 2022, and would have been working at the Lincoln School Pool patrolling the pool deck from 8:00 to 8:30 p.m. but had called out that day due to a medical appointment. (See Deposition Testimony of Kohler T56:2-6 annexed as Exhibit 4). Notably, although Lincoln Community School Pool Policy Rules and

Regulations, #6, specifically states, "If you are unable to cover your lifeguard shift, YOU must find a replacement and notify administration" instead of finding a replacement and notifying John Rickard who was the Administrator in Charge, Defendant Kohler testified that she called Defendant Danback to tell her that she would not be able to work her shift and asked her if they were "good." Her testimony was as follows:

7 Q. When you just alluded to your
8 communication with Ms. Danback when you told her
9 you were calling out, you added, I told her that I
10 wasn't going to be there, are you good, or
11 something like that.

12 A. Yeah.

13 Q. Did you say that?

14 A. Yeah. Something along those lines,
15 yes.

16 Q. What do you mean by, are you good?

17 A. You know, like, would they be okay
18 if I wasn't there.

Defendant Kohler provided the following compelling testimony:

17 Q. I want you to slowly and loudly read
18 to us No. 6.
19 A. "If you are unable to cover your
20 lifeguarding shift, you must find a replacement
21 and notify administration."
22 Q. You would agree that with respect to
23 you not being able to act as a lifeguard on June
24 8, 2022 because of a doctor's appointment, you
25 failed to comply with Rule No. 6 of the Lincoln

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1 Community School Pool Rules and Regulations that
2 state, "If you are unable to cover your
3 lifeguarding shift, you" capitalized you "must
4 find a replacement and notify administration."
5 Correct?
6 A. Yes.
7 Q. You failed to find a replacement for
8 you. Correct?
9 A. Yes.
10 Q. And you failed to notify the
11 administration that you would not be able to
12 fulfill your duties as a lifeguard at the Lincoln
13 School Pool on June 8, 2022. Correct?
14 A. Yes.

(See Defendant Kohler Deposition T75:17-76:14 annexed hereto as Exhibit 4).

6 You called out, but the schedule in
7 the world of who was supposed to be there that day
8 in terms of certified lifeguards actually would
9 have been you, Alex, Corey, Ashley, and Nicole; at
10 least five lifeguards. Correct?
11 MR. CORLETT: Object to the form.
12 You can answer.
13 MR. REGINA: Same objection.
14 A. Yes.

(See Deposition Testimony of Kohler⁴ at T108:6-14 annexed hereto as Exhibit 4).

⁴ (Defendant Nicole Layo started her shift as a lifeguard on June 8, 2022, but she had a commitment she informed the administration about and left the premises sometime before 8 p.m.)

24 Q. Because you called out and there was
25 no replacement and Ashley was in the office, as

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1 you understand it, there were not three lifeguards
2 on deck between 8 and 8:30 when these boys
3 drowned. True?
4 A. Yes.

(See Deposition Testimony of Defendant Kohler at T133:24-134:4 annexed hereto as Exhibit 4).

Defendant Kohler further testified she was unaware that Defendant Danback would not cover her absence on the pool deck and that there would not be three (3) lifeguards on the pool deck during the entire shift. She had no idea Defendant Danback would spend the entire night in the front office rather than patrolling the pool deck and she never told Ashley to work in the front office that day

Even though Defendant Kohler usually does the assignments, Defendant Danback and her stepfather Defendant Rickard both claim that Defendant Danback was scheduled to work that evening in the front office to collect fees. (See Deposition Testimony of Danback T152:15-18 as Exhibit 3; Rickard T163:16-23 annexed as Exhibit 5). Defendant Danback claims she only knew at the start of her shift that Lisa Kohler was not going to be able to cover her shift.

2 Q. Did you have any idea on June 8th,
3 2022 that Defendant Kohler was not going to cover
4 her shift as a lifeguard that day or evening
5 before your shift started?

6 A. No.

7 Q. When did you first learn that
8 Defendant Lisa Kohler was not going to cover her
9 shift as a lifeguard on June 8, 2022?

10 A. When I got there.

(See Deposition Testimony of Danback T145:2-10 annexed as Exhibit 3). Defendant Danback admitted she did nothing in the wake of Defendant Kohler's call out that day to ensure there were three lifeguards on the pool deck. She testified as follows:

15 If you knew there were only two
16 lifeguards covering the pool deck on June 8, 2022
17 starting at 8 p.m., and you were covering the
18 front office and did nothing in an effort to get a
19 third lifeguard to cover the pool deck or to get
20 somebody to cover the front office so you can
21 cover the pool deck, do you think that would be
22 reasonable conduct on your part?

24 You can answer.

25 A. I don't believe that that was my
1 responsibility to do that.

(See Deposition Testimony of Danback T164:15-165:1 annexed as Exhibit 3).

She further agreed during her deposition that it was unreasonable for her not to find another lifeguard, close the pool or find coverage for herself in the office. She stated:

6 Q. Okay. If you are one of three
7 lifeguards working for the Bayonne Board of
8 Education, you know we never have only two
9 lifeguards covering the pool deck, and I'm in the
10 front office, do you agree it would be
11 unreasonable conduct on your part to not try to do
12 something to make sure a third lifeguard was
13 covering the pool deck or something was done to
14 either close the pool or find coverage for the
15 office position so that you could go and be the
16 third lifeguard?

17 A. Yes.

(See Deposition Testimony of Danback T166:6-17 annexed as Exhibit 3).

Defendant Kettleman conscience must have caught up with him during his second police interview when he confessed that "something was bothering him" and Defendant Kohler told him

that Defendant Danback was supposed to be covering Defendant Kohler on the pool deck due to Defendant Kohler calling out. (See Police Interview of Kettleman annexed as Exhibit 10). In this statement, he stated he was unaware that Defendant Danback was not going to be on the pool deck that evening and that it was only he and Defendant Mariak were left guarding the entire pool deck. Defendant Kettleman further stated that instead of manning her lifeguard post, Defendant Danback was in the front office the entire night and was never on the pool deck, also evidenced by the surveillance footage from the lobby that evening showing Defendant Danback in the office all night. (See Police Interview of Kettleman annexed as Exhibit 10).

B. The Defendants Violated The Lincoln Community School Pool Rules And Regulations.

The lifeguards had a tremendously important responsibility to safeguard those using the Lincoln School Pool including the duty to constantly and carefully observe persons using the pool to prevent injury and death. (See Deposition Testimony of Rickard T112:24-115:2, T97:24-98:8 as Exhibit 5, Kohler T48:22-49:11 annexed as Exhibit 4). The lifeguards were required to be ready to respond to an emergency situation in an appropriate manner and assist anyone in distress. (See Deposition Testimony of Rickard T255:13-21 annexed as Exhibit 5). Lifeguards were required to have the ability to respond quickly and effectively to an emergency situation. (See Deposition Testimony of Rickard T250:17-24 annexed as Exhibit 5). Lifeguards were required to know that hesitation could mean the difference between life and death and that “every second counts” when it comes to fulfilling your job as a lifeguard. (See Deposition Testimony of Rickard T253:16-23 as Exhibit 5, Kettleman T91:14-20 as Exhibit 2, Mariak T93:12-19, annexed as Exhibit 6).

The Lincoln School Pool had Rules and Regulations that were displayed in the lifeguard office. (See deposition of Rickard T157: 14-19 annexed as Exhibit 5). The lifeguards were required to follow these safety rules and failure to do so increased the risk of serious injuries and/or drowning. (See Deposition Testimony of Defendant Rickard T145:11-25 as Exhibit 5). Defendant Rickard testified the reason lifeguards were supposed to remain on the pool deck was to ensure there was a sufficient number of lifeguards patrolling the pool deck at all times (See Deposition Testimony of Rickard T146:17-147:18 annexed as Exhibit 5).

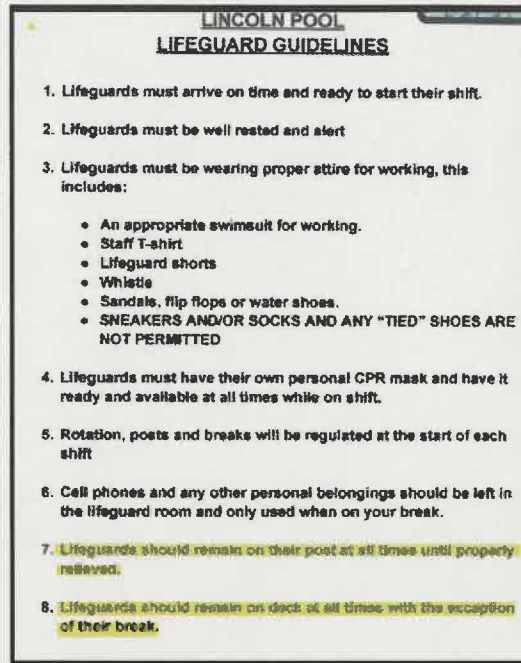
The LCSP Rules and Regulations were as follows:

- LINCOLN COMMUNITY SCHOOL POOL
RULES AND REGULATIONS**

 1. No eating while you are working.
 2. Cell phone use is not permitted during your work shift. (For emergency calls go into lifeguard room)
 3. All staff must be in their assigned areas at all times unless told differently by administration.
 4. All staff *must wear bathing suits* while working.
 5. All staff must wear proper footwear on deck (no shoes).
 6. If you are unable to cover your lifeguarding shift, *YOU must find a replacement and notify administration.*
 7. *Please be aware you must be present on pool deck during your entire shift.*
 8. Lifeguards are responsible for the enforcement of the conduct of pool area.
 9. *Be attentive at all times and pool area should NEVER be left unattended.*
 10. *Private lesson instructors must work their lessons. You may NOT find coverage if you cannot make a lesson we must have advance notice in order to notify the parents.*

(See Lincoln Community School Pool Rules and Regulations annexed as Exhibit 15).

In addition, the Lincoln School Pool had Lifeguard Guidelines which required the lifeguards to remain at their posts until properly relieved and to remain on deck at all times with the exception of their break. The Guidelines provide:



(See Lincoln Pool Lifeguard Guidelines annexed as Exhibit 14).

The lifeguards violated these Rules and Regulations and ignored the guidelines, and such failures directly resulted in the tragic drownings of Chu Ming and Jack.

1. Ashley Danback Was Not Present On The Pool Deck and Lied to Police

Defendant Danback understood the importance of being a lifeguard. She stated as follows in her deposition:

18 Q. Okay. Now, whenever it was that you
19 first became a lifeguard, did you understand that
20 people in the community, children and families,
21 would be relying on you to fulfill a tremendously
22 important function?

23 A. Yes.

24 Q. And did you understand that if you
25 fail to fulfill your duties and responsibilities
1 as a lifeguard, there was a distinct possibility
2 that a child or an adult could sustain serious

3 injuries or die as a result of drowning?

4 A. Yes.

(See Deposition Testimony of Danback T59:24-60:4 annexed as Exhibit 3).

Defendant Danback absolutely knew that she was supposed to be on the pool deck, protecting Chu Ming, Jack and the others using the pool and that is precisely the reason she lied to the police two (2) days after the drownings and told them she was working on the pool deck. During her interview with the investigating detective on June 10, 2022, she lied incessantly. Pertinent portions of her false statements to the Detective have been transcribed below:

Q. What is your title there?

A. A lifeguard.

Q. Lifeguard. How did you come to find out about the incident and how it was happening, how it occurred? Where were you when it happened, what was going on?

A. I was in the shallow end of the pool on the other side in the kiddie area –

Q. Right.

A. -- the two-foot area. And I had gone to leave the bathroom -- leave to go to the bathroom. And I had walked out into the lobby, into the main lobby of the -- where the gym is over there –

Q. Yeah.

A. -- because all the other ones were occupied. And I came out of the bathroom. **And the lifeguard Corey, with the red beard, came out and said there are two bodies at the end of the deep end. And before I had left, Corey had told the children, the two kids that were in the deep**

end, to please get out because the area -- it was closed.

Q. Did he tell you he told them or did you witness him --

A. No, I witnessed him tell --

Q. You witnessed him?

A. Yes, yes.

Q. Where were you when he --

A. I was walking out into the lobby to go to the bathroom. He had just walked back from the platform --

**Q. So, he was -- he was --
Okay. So, Corey was more towards the deep end, that's his --**

A. Right.

Q. -- area that he was --

A. Yes. Yes.

Q. So, when he starts to -- you start to walk that way to go to the bathroom --

A. Yes.

Q. -- he's walking back from telling them.

A. Yes.

Q. But you observe him telling them?

A. Yes. Yes.

Q. Okay.

A. And I come out of the bathroom, and I'm just walking back into the locker room, and he

was running out into the lobby to get me. So, I came into the locker room, opened the door, and turned around to get John, who was in the -- right -- standing right by the gym where the Karate area was.

Q. Okay.

A. And we both went in together through the -- through the entrance to the pool. And John dove in the pool as soon as we saw what was happening while Corey and Alex were, you know, rescuing them at the bottom of the pool. And um, that's when I started calling, um, the police.

A. And when he entered the pool, while Corey and Alex were in the pool, and he was instructing me as he was saving them to call the ambulance, which I had already started. And I was calling 911 from my cell phone. And it was bouncing from -- I got Staten Island. And then I went to the phone in the office that -- the phone line was not working. And that's when I called from my cell phone the 6900 number, and I was connected here. And I stayed on the phone and told them that we needed an ambulance, that two people were -- had drowned. And that's really --

Q. Okay. Now, when you initially said that you were working the shallow end, the kiddie area?

A. Yes.

Q. Were you actually in the water or were you --

A. No, I was above. I was standing right there (inaudible) at the edge of the water.

Q. Alex was with you over there?

A. Alex was on the side, yes. He's --

where the lanes were.

Q. Yes.

A. He was over there, yes.

Q. Okay. So, on a normal day, normal shift for lifeguards, is it usually three of you at the pool at all times?

A. Usual -- yes. Three to four of us.

Q. Okay.

A. To cover all ends of the pool, yes.
And the deep -- that's why the deep end was closed. Because, usually, we would need four.

Q. So, if you had a fourth lifeguard, the deep end would be open?

A. Correct.

Q. Okay. But since there was three of you, you have --

A. Just the pool, just a four-foot area.

Q. I guess you guys, you were in the kiddie area, or we'll call it the shallow end --

A. Right.

Q. Alex is on the one side of the lanes?

Q. Okay. Yeah. So, when you get -- Corey comes out and tells you what's going on. You and John rush back to the pool?

A. Yes.

Q. What's the first thing you see?

A. First thing I see is Corey in the

pool. He was -- Corey was actually underwater trying to retrieve one of the bodies, and Alex was on the edge with the life saving --

Q. The long stick?

A. Yeah, the long stick, trying to grab the other one up as he, Corey, is retrieving the body. That's when John entered the water and pulled the kid up, the one that Alex was helping. And then Alex entered the pool and helped Corey get the other one up.

Q. Okay. So, you said Corey's in the pool?

A. **Corey was in the pool, yes.** He had

Q. Is he -- is he, like -

A. **He was in the pool.**

(See Police Interview of Danback annexed as Exhibit 3).

As proven by the surveillance video of the lobby area which clearly proves that Defendant Danback was never in the pool area until after the boys were at the bottom of the dive well, the entire interview Defendant Danback provided to the Detective consists of blatant and calculated misrepresentations of what actually happened, created by Defendant Danback in a shameless effort to absolve herself from any responsibility for the drowning deaths that occurred just two days prior. Quite notably, Defendant Danback admitted during her deposition she was unaware there was a surveillance camera in the lobby when she gave her interview to the police and believed she would get away with her atrocious lies. (See Deposition of Danback T170:16-171:1 annexed as Exhibit 3). As a true testament to her "character," Defendant Danback testified that she did not believe a person should tell the truth if it is not in a

person's best interests to do so. In this regard, she defended lying in the wake of the deaths of the two boys as follows:

9 Q. Do you believe people should tell
10 the truth, especially when the truth pertains to
11 the death of two young boys, even when not telling
12 the truth may be in the person's best interest?

15 A. No.

(See Deposition Testimony of Danback T170:9-15 annexed as Exhibit 3).

Defendant Danback was aware there would only be two (2) lifeguards on the pool deck during her shift and did nothing to ensure there was adequate coverage on the pool deck. She did not inform her stepfather, Defendant Rickard, who was the Administrator in Charge. She did not seek a replacement for Defendant Kohler and testified she did not believe it was her responsibility to do so. Despite this knowledge, Defendant Danback remained in the front office and failed to maintain her post. Instead of doing her job by being on the pool deck, after she walked her daughter out of the building to her stepfather Defendant Rickard at 7:21 p.m., she spent the rest of the night in the front office collecting fees for the BBOE. Defendant Danback can also be seen in Lobby Video #38 on her cell phone.

A malicious cover-up was fabricated by Defendant Danback. Instead of cooperating with the investigating police officers, she purposely and intentionally lied with every breath and word she spoke. Defendant Danback engaged in obstructionist behavior and then destroyed her cell phone knowing full well it would be evidence against her. As per this issue, Defendant Danback destroyed her phone despite the lifeguards being instructed by attorneys, investigators and/or representatives for the BBOE to preserve their phone and the preservation letters served on the

BBOE by Counsel for the Plaintiffs. (See Deposition Testimony of Mariak.T13:20-14:8 annexed as Exhibit 6).

2. The Defendant BBOE Never Created An Emergency Action Plan (EAP)/Emergency Response Plan (ERP) or Provided Any Drills or Training For the Lifeguards

The BBOE did absolutely nothing to equip their employee lifeguards with the tools necessary to react appropriately to any emergencies or situations that required them to fulfill their job duties. In reality, the lifeguards were stripped of even the most basic training, and they were completely unprepared to handle the risks involved in safely operating the pool.

The Defendant Lifeguards all admitted that “every second counts” when responding to an emergency. (See Deposition Testimony of Kettleman T91:3-7 annexed as Exhibit 2; Mariak T93:12-19 annexed as Exhibit 6; Rickard T253:16-23 annexed as Exhibit 5). However, The BBOE had no Emergency Action Plan or an Emergency Response plan in place at the Lincoln School Pool in the event of an emergency. (See all Defendants’ Answers to Interrogatories, question Nos. 73 and 75 annexed as Exhibit 13). There were no on-site drills, in-service training, audits or assessments or even any form of orientation to assist the lifeguards with their duties. (See Deposition Testimony of Kettleman T47-50, 326 as Exhibit 2; Mariak T36:3-9, T42:21-43:24 as Exhibit 6; Rickard T125:17-127:3, T122:21-123:5, T121:21-122:3, T120:18-121:5, T124:7-14 annexed as Exhibit5).

Defendant Mariak testified that the BBOE and the management of the Lincoln School Pool provided absolutely no onsite training. (See Deposition Testimony of Mariak T36:3-9, T42:21-43:24 annexed hereto as Exhibit 6, Defendant Kettleman likewise testified that he had absolutely

no emergency training and/or drills to make sure he was in position to respond to an emergency correctly. (See Deposition Testimony of Kettleman T312:7-11 annexed as Exhibit 3).

Defendant Mariak even admitted the BBOE was negligent. He testified:

20 And you would agree the failure of
21 the Bayonne Board of Education and the management
22 of the Lincoln School Pool to provide you and
23 Mr. Kettleman with such training was negligent.
24 Correct?

1 A. Um-hum.

3 Q. Yes?

4 A. Yes.

(See Deposition Testimony of Mariak T43:18-44:4 annexed as Exhibit 6).

3. Defendant Kettleman Failed In So Many Ways

Defendant Kettleman first became employed by the BBOE as a school aide in 2017. Defendant Kettleman admitted that he had no desire to become a lifeguard and worked as a lifeguard at the Lincoln Community School Pool for the sole purpose of earning extra money as there were no other positions available that would enable him to do so within the district. (See Deposition Testimony of Defendant Kettleman T26:14-27:1 annexed as Exhibit 2).

Defendant Kettleman testified it was his responsibility to constantly and carefully observe persons using the pool to prevent injury and/or loss of life by way of drowning. (See Deposition Testimony of Kettleman T58:9-15 annexed as Exhibit 2). Notably, Defendant Kettleman testified he absolutely had NO CLUE of the following:

1. When he last saw the boys in the main pool; (See Deposition Testimony of Kettleman T316:14-18 annexed as Exhibit 2).

2. When the boys got out of the main pool; (See Deposition Testimony of Kettleman T317:15-318:14 annexed as Exhibit 2).
3. Where the boys got out of the main pool; (See Deposition Testimony of Kettleman T317:15-318:14 annexed as Exhibit 2).
4. Where the boys entered the dive well; (See Deposition Testimony of Kettleman T317:15-318:14 annexed as Exhibit 2).
5. How long the boys were in the dive well before he first saw them in the dive well; (See Deposition Testimony of Kettleman T317:15-318:14 annexed as Exhibit 2).
6. When the traffic cone was placed on the diving board; (See Deposition Testimony of Kettleman T203:24-204:4 annexed as Exhibit 2).
7. Who placed the cone of the diving board; (See Deposition Testimony of Kettleman T205:4-11 annexed as Exhibit 2).

Defendant Kettleman was entrusted with guarding the lives of those using the pool and not only did he clearly not do his job on June 8, 2022, he has since admitted that he misled the police about what happened. (See Deposition Testimony of Defendant Kettleman T303:7-16, 307:6-17, T311:1-7 annexed as Exhibit 2). He too was unaware there was surveillance which captured his lack of urgency after he discovered two boys actively drowning on this watch. (See Deposition Testimony of Defendant Kettleman T304:3-6 annexed as Exhibit 2).

Defendant Kettleman agreed that “every second counts” when it comes to drowning and admitted that if he was not rushing, he was negligent and did not fulfill his duties as a lifeguard. Defendant Kettleman also admitted that he walked over to Defendant Mariak and the surveillance video depicts him nonchalantly walking in the lobby area to get assistance as the two boys were on the bottom of the dive well. (See Deposition Testimony of Defendant Kettleman T282-283, 293-295 annexed as Exhibit 2).

Defendant Kettleman testified he did not blow his whistle or yell for help. This testimony was as follows:

10 Q. And you do recognize that you are
11 absolutely positively trained by Joe Cecala to use
12 your whistle immediately in the -- in the event
13 you need to try to get someone's attention. True?

14 A. True.

(See Deposition Testimony of Defendant Kettleman T241:10-14 annexed as Exhibit 2).

10 Q. Okay. And, in fact, you were
11 trained to use different whistles, number of
12 blows, for different reasons. True?

13 A. True.

14 Q. Do you remember anything about that
15 training, in other words, what type of whistle you
16 were supposed to blow for one event versus another
17 event versus another event?

18 A. I think it was, like, one blow for
19 getting somebody's attention in the pool. And
20 three if there was an incident.

21 Q. And you agree you should have blown
22 the whistle. True?

23 A. I should have blown the whistle.

(See Deposition Testimony of Defendant Kettleman T242:10-23 annexed as Exhibit 2).

Defendant Kettleman was not aware of the surveillance footage in the lobby but when shown the video footage, ultimately had to agree he was walking.

Q. Let me ask you your own
4 characterization of how you're walking.
5 **What you see on that video looks as**

6 though you're walking leisurely through the lobby.

5 Is that fair?

6 A. Yes.

7 Q. Yes?

8 A. Yes.

11 Q. Okay. You never entered the pool to
12 rescue either boy. Correct?

13 A. Correct.

14 Q. Mr. Kettleman, you never got wet?

15 A. I didn't get wet.

18 Q. You did not get wet. True?

19 A. I did not get wet.

(See Deposition Testimony of Defendant Kettleman T322:3-19 annexed as Exhibit 2).

Defendant Kohler testified she was shocked to see how Defendant Kettleman was moving to come back from the office because when two boys are drowning in a pool and you are a lifeguard, you better be running to get help if you are not getting wet. (See Deposition Testimony of Kohler T11:13-24 annexed as Exhibit 4). Defendant Rickard testified that as the supervisor of the lifeguards, it was upsetting to watch Defendant Kettleman walk in the surveillance video. (See Deposition Testimony of Rickard T:16:2-25 annexed as Exhibit 5). Defendant Mariak testified that Defendant Kettleman was walking like he was out for a stroll to the office, with no urgency and that you would never be able to tell by the manner in which Defendant Kettleman was walking that two boys were at the bottom of the dive well. He further agreed that such conduct was egregious, negligent and contributed to the boys dying. (See Deposition Testimony of Mariak T123:1-124:8 annexed as Exhibit 6).

4. Lisa Kohler Did Not Find A Replacement And Notify Administration When She Called Out On The Night Of June 8, 2022.

Lincoln Community School Pool Policy Rules and Regulations, #6, specifically states, "If you are unable to cover your lifeguard shift, YOU must find a replacement and notify administration requires that lifeguards are required to find a replacement and notify administration if they are unable to cover a shift." The rule was designed for the administration to make decisions about whether there were a sufficient number of lifeguards to take steps to make sure the pool was safely guarded. (See Deposition of Rickard T149:21-150:12 annexed as Exhibit 5).

Defendant Kohler admitted that she violated policies and procedures by failing to find a replacement and notifying administration. She testified as follows:

19 A. "If you are unable to cover your
20 lifeguarding shift, you must find a replacement
21 and notify administration."

22 Q. You would agree that with respect to
23 you not being able to act as a lifeguard on June
24 8, 2022 because of a doctor's appointment, you
25 failed to comply with Rule No. 6 of the Lincoln
1 Community School Pool Rules and Regulations that
2 state, "If you are unable to cover your
3 lifeguarding shift, you" capitalized you "must
4 find a replacement and notify administration."
5 Correct?

6 A. Yes.

7 Q. You failed to find a replacement for
8 you. Correct?

9 A. Yes.

10 Q. And you failed to notify the
11 administration that you would not be able to

12 fulfill your duties as a lifeguard at the Lincoln
13 School Pool on June 8, 2022. Correct?

14 A. Yes.

(See Deposition Testimony of Defendant Kohler T75:22-76:14 annexed as Exhibit 4).

Defendant Rickard, the Administrator in Charge and the supervisor of the lifeguards, admitted he was totally unaware that Defendant Kohler was not covering her shift on June 8, 2022, and that there were only two (2) lifeguards on the pool deck between 8:00 and 8:30 p.m. (See Deposition Testimony of Rickard T191:17-192:3 annexed as Exhibit 5).

5. Defendant Rickard Failed Miserably as the Administrator in Charge, Impermissibly Left the Premises, and Made Misrepresentations to Police.

Defendant Rickard was the Administrator in Charge and supervisor of the lifeguards at the Lincoln School Pool on June 8, 2022. (See Deposition of Rickard T:158:21-159:4 annexed as Exhibit 5). Notably, he admitted that as the Administrator in Charge, he was legally required to be physically on the Lincoln School premises at all times. (See Deposition Testimony of Rickard T131:6-10). Although he knew he was not supposed to leave the building, Defendant Rickard testified that he left the Lincoln School premises to run personal errands, including going to see his granddaughter (Defendant Danback's daughter), going to a restaurant called Teddy's to get dinner, and to get gas. (See Deposition Testimony of Rickard T281:13-283:16 annexed as 5).

Tragically, it appears Defendant Rickard impermissibly left the school's premises and did not return until Chu Ming and Jack were in the process of drowning. As per this issue, the video surveillance of the lobby demonstrates that at approximately 7:21 p.m., Defendant Danback walked her daughter out of the Lincoln School Pool lobby doors. She testified that this was likely to walk her daughter out to her stepfather, Defendant Rickard. (See Lobby Video 10 at 19:21:04

annexed as Exhibit 20 and Deposition Testimony of Danback T260:23 -262:16 annexed as 20). She then reenters the building, and the surveillance video does not show Defendant Rickard until 8:20 p.m. when he seemingly reenters the building, holding a bag of food, keys and his cell phone (as the boys are drowning in the pool). (See Lobby Video #38 at 20:20:13, 20:20:32). As such, it appears that Defendant Rickard was impermissibly off the premises running personal errands when these boys were drowning, when he was required to be on site supervising the lifeguards.

Likely in an effort to protect himself and his stepdaughter Defendant Danback, Defendant Rickard lied and misled the police detective when he too told the detective there were three lifeguards on the pool deck when asked about the number of lifeguards working the pool. (See Police Interview of Rickard and Deposition Testimony of Rickard T315:2-316:15 annexed as Exhibit 5).

6. The Were No Elevated Lifeguard Stands

New Jersey Sanitary Code, Public Recreational Bathing, NJAC 8:26, Section 7(A)
Requires that:

Lifeguard platforms or stands shall be provided for swimming pools where water surface area is greater than 2,000 square feet, or where there are diving areas, or where the depth of the water is greater than five feet.

Lifeguard platforms or stands shall be elevated and located at the water's edge, so as to provide a clear, unobstructed view of the swimming pool surface and bottom.

There were no elevated lifeguard stands at the LCSP. (See Deposition Testimony of Kettleman T130:22-131:5, 129:12-17 as Exhibit 2; Rickard T129:8-131:5 annexed as Exhibit 5). Such stands would have easily increased the ability of the two lifeguards on duty to scan a larger

area and would have enabled Kettleman or Mariak to see Chu Ming and Jack sooner before they drowned.

7. The Policy of Placing a Traffic Cone on the Diving Board to Close the Dive Well was Woefully Inadequate

The BBOE had a policy of placing a small traffic cone on the diving board in a ridiculous effort to signal that the dive well was closed. In addition, the staff of the pool would verbally inform patrons that they cannot use the diving board and diving well. (See all Defendants' Answers to Interrogatories, question #38 annexed as 13). The policy was grossly ineffective as the lifeguards admitted they still had to constantly tell patrons of the pool not to enter the well when it was closed. (See Defendant's Answers to Interrogatories question 38 annexed as 13). In fact, Defendant Rickard admitted that this policy was grossly insufficient, stupid and ineffective to make children and people aware that the diving well was closed. He stated as follows:

**25 Q. Do you agree that the policy if
2 the diving well was closed, pool staff would
3 place a traffic cone on top of the diving
4 board was grossly insufficient, stupid and
5 ineffective, to make children and people
6 using the pool aware that the diving well was
7 closed?**

14 A. I agree.

(See Deposition Testimony of Rickard T205:25-206:14 annexed as Exhibit 5).

Defendant Kettleman testified there were actually two (2) cones at the Lincoln School Pool, but they were always together with one on top of the other. He admitted it would have obviously made much more sense to put one cone on the diving board and another on the bridge to better warn of the dive well closure and make the pool safer. (See Deposition Testimony of Kettleman

T124:6-125:13 annexed as Exhibit 2). He also admitted one cone on the diving board was insufficient to adequately warn children and other people using the pool that the dive well was closed. (See Deposition Testimony of Kettleman T135:22-136:7 annexed as Exhibit 2).

Defendant Kettleman conceded that there was not one sign posted anywhere that evening that warned people that if the cone was on the diving board, it meant that the dive well was closed and that there were no lifeguards posted at the diving well. (See Deposition Testimony of Kettleman T153:16-25 annexed as Exhibit 2). In fact, Defendant Kettleman agreed that it was exponentially more dangerous when the dive well was closed with a cone on the diving board than it was when open and guarded. (See Deposition Testimony of Kettleman 114:17-115:2 annexed as Exhibit 2).

8. There were numerous Easy, Simple and Inexpensive Safety Measures That The Defendant BBOE Should Have Implemented

There were numerous simple and inexpensive safety measures that could and should have been implemented to make the dive well significantly safer for the children and people using the pool. The photo below demonstrates just a few of the simple and inexpensive measures that numerous

Defendants have admitted at deposition could and should have easily been taken by the Defendant BBOE to make the dive well substantially safer.



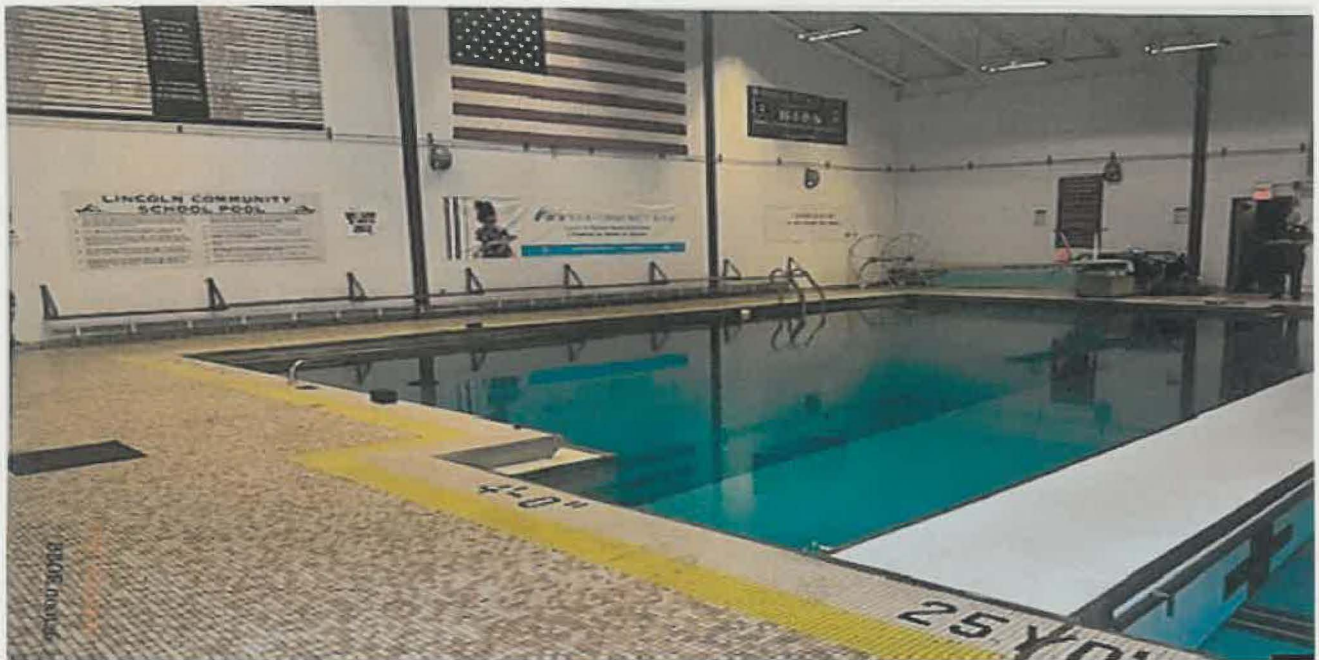
(See Photograph of Safety Measures annexed hereto as Exhibit 17).

As depicted in the above photograph, some of the safety measures that should have been taken include:

- Floating Safety line with buoys across the dive well to show the location of the dangerous ledge and that swimmers could grab when needed. The hooks for such a safety line already existed in the pool but a floating safety line was not used;
- Warning signs that the dive well was closed and that no lifeguard was guarding the dive well;
- Caution tape signaling closure of the dive well area;

- Traffic Cones with a sign on a broom stick clearly warning that the dive well was closed;
- Painting the submerged ledge a different color to make the dangerous drop-off to 13 feet visible;
- Warnings signs of the change from 4 feet to 13 feet on the pool deck and bridge.

(See Deposition Testimony of Rickard T235:13-238:17 as Exhibit 5; Kettleman T155:1-173:25 as Exhibit 2; Mariak T160:24-167:20 annexed as Exhibit 6). As depicted in the photo and borne out by the testimony of the Defendants, there were innumerable options available to the BBOE and the BBOE's failure to employ any or all the options was palpably unreasonable.



(Photograph of Dive Well as it existed on June 8, 2022 annexed hereto as Exhibit 16).

LEGAL ARGUMENT

I. DEFENDANTS ARE LIABLE FOR THE NEGLIGENT SUPERVISION OF THE LINCOLN SCHOOL COMMUNITY POOL

Negligent supervision occurs when a public employee undertakes supervision and fails to exercise reasonable care, resulting in injury. Liability arises when the employee's actions or omissions constitute negligence and directly caused the injury. While public entities and employees are generally immune from liability for failing to provide supervision of public recreational facilities, this immunity does not apply if the employee negligently supervised the facility or if the failure to supervise involved a dangerous condition as defined under Chapter 4 of the New Jersey Tort Claims Act., Popek v. State, Dept. of Human Services, 240 N.J. Super. 128 (App. Div. 1990).

Whether the public employee acted in accordance with the legal standard of reasonable conduct in light of the apparent risk includes considering whether the employee's actions were a substantial contributing factor to the harm suffered. To establish liability based on negligent supervision, a plaintiff must show that an injury was sustained (1) at a public recreational facility; (2) that a public employee undertook supervision of a public recreational facility, and (3) that the employee was negligent in supervision of the public recreational facility. Sharra v. Atlantic City, 199 N.J. Super. 535. (App. Div. 1985). In Morris v. Jersey City, 179 N.J. Super. 460 (App. Div. 1981).

THE DIVE WELL OF THE POOL WAS A DANGEROUS CONDITION CREATED BY THE PALPABLY UNREASONABLE CONDUCT OF THE BAYONNE BOARD OF EDUCATION.

Pursuant to Model Civil Jury Charge 5.20A, a public entity is responsible for injuries proximately caused by a dangerous condition of its property in accordance with the terms of the Tort Claims Act, N.J.S.A. 59:1-1 et seq. when Plaintiffs have established the following:

- The property was in a dangerous condition at the time of the injury.
- The injury was proximately caused by the dangerous condition.
- The dangerous condition created a reasonably foreseeable risk of the kind of injury incurred.
- Either the condition was created by a negligent or wrongful act or omission of a public entity's employee, or the public entity had actual or constructive notice of the condition in sufficient time to take protective, Norris v. Borough of Leonia, 160 N.J. 427 (1999)
- That the measures taken by the public entity or its failure to take any measures were palpably unreasonable.

Plaintiffs have clearly met their burden and are entitled to recovery against the BBOE. Defendant Rickard agreed that the BBOE had the duty to take reasonable steps to reduce the risk of drowning or serious injury. (See Deposition Testimony of Rickard T213:16-22 annexed as Exhibit 5). The depth of the dive well was dangerous due to its depth, the submerged shelf which dropped precipitously to 13 feet, the fact that the edge was not painted a different color, there were no signs warning of the drop, no safety line or buoy, to show the location of the ledge or allow a swimmer to hold on. (See Deposition Testimony of Rickard T216:21-222:19; T223:18-23; T:224:2, T223:12-15, T226:23-228-8 annexed hereto Exhibit 5).

The BBOE's failure to address the dangerous condition was palpably unreasonable conduct bringing it outside any protection of immunity offered by the Tort Claims Act. Lopez v. City of

Elizabeth, 245 N.J. Super. 153. This is ample evidence that the BBOE's actions were patently unacceptable under the circumstances. The drowning deaths which were caused by the dangerous condition of the dive well was a foreseeable risk. The dangerous condition was created by the BBOE and unmitigated by any safety measures. Although the BBOE is taking the position that the cone on the diving board signaled closure of the dive well, this was clearly inadequate as the lifeguards still had to frequently tell people not to go in the dive well. There were ample easy, simple, inexpensive and reasonable measures that could have been employed and Defendant BBOE failed to implement them. (See Animation annexed hereto as Exhibit 19). The failure of the BBOE was palpably unreasonable and directly led to the death of Chu Ming and Jack.

II. **PUNITIVE DAMAGES ARE WARRANTED AGAINST DEFENDANT DANBACK AND DEFENDANT KETTLEMAN**

Model Civil Jury Charge 8.60 provides that punitive damages are supported when the Plaintiff:

has proved, by clear and convincing evidence, that the injury, loss, or harm suffered by (plaintiff) was the result of (defendant's) acts or omissions⁵ and that either (1) (defendant's) conduct was malicious or (2) (defendant) acted in wanton and willful disregard of (plaintiff's) rights.

Malicious conduct is intentional wrongdoing in the sense of an evil-minded act. Willful or wanton conduct is a deliberate act or omission with knowledge of a high degree of probability of harm to another who foreseeably might be harmed by that act or omission and reckless indifference to the consequence of the act or omission.

In determining whether to award punitive damages, the trier of fact "shall" consider the following factors:

⁵ N.J.S.A. 2A:15-5.12(a).

- The likelihood, at the relevant time, that serious harm would arise from the defendant's conduct;
- The defendant's awareness of reckless disregard of the likelihood that the serious harm at issue would arise from the defendant's conduct;
- The conduct of the defendant upon learning that its initial conduct would likely cause harm; and
- The duration of the conduct or any concealment of it by the defendant.

[*N.J.S.A. 2A:15-5.12(b).*]

The conduct of Ashley Danback and Corey Kettleman went well beyond mere negligence, and they acted with reckless disregard for the safety of all the patrons of the Lincoln School Pool. Plaintiffs are entitled to an award of punitive damages as the Act explicitly states that punitive damages are intended to punish egregious misconduct and deter similar behavior in the future.

Ashley Danback

Defendant Ashley Danback blatantly lied to the police about virtually every detail surrounding the events of June 8, 2022. From the moment her interview with the investigating Detective began, she spewed lie after lie. Even though she was keenly aware she was supposed to be on the pool deck, she spent the entire evening of June 8, 2022 in the front office of Lincoln School Pool, leaving an unprecedented two (2) lifeguards to man the entire pool deck on an extremely busy night. The lobby surveillance, the existence of which was unbeknownst to her, confirmed that she never entered the pool area the entire night until Defendant Kettleman walked out to get her when Chu Ming and Jack were actively drowning.

Although she was aware at the beginning of her shift, she failed to advise anyone that Defendant Lisa Kohler informed her that she was calling out. Defendant Danback did nothing to secure replacement and did not even inform her stepfather Defendant Rickard, who was the

administrator in charge. Defendant Danback was then caught on surveillance using her cell phone in violation of NJ law and the Lincoln School Pool Rules and Regulations. (See Lobby Video #38 annexed as Exhibit 20). She agreed she was using her phone in the front office and could have been talking on the phone, texting, surfing the web, watching TikToks, or using social media. (See Deposition of Danback T219:6-16 annexed as Exhibit 3). On the evening of the deaths, she can be seen on camera laughing with police in the aftermath of the boys' drowning.



(See Body Cam 1 at 41:29 annexed as Exhibit 12).

Additionally, despite being instructed by attorneys, representatives and/or investigators of the BBOE to preserve her cell phone, she inexplicably discarded the cell phone she was using on the night of June 8, 2022.

Corey Kettleman

Corey Kettleman ignored clear signs of distress from Chu Ming and Jack, who were literally in the process of drowning before his own eyes. (See Police Interview of Kettleman as Exhibit 10 and Deposition of Kettleman T252:11-253:2 annexed as Exhibit 2). He testified that

saw one victims body spinning and then he started to go down. (See Police Interview of Kettleman annexed as Exhibit 10 and Deposition of Kettleman T253:25-254:5 annexed as Exhibit 2). Instead of blowing his whistle and jumping in to save either distressed swimmer under his watch, he WALKED over to Defendant Mariak and then inexplicably WALKED out of the pool area to summon Defendant Danback, who was supposed to be on the pool deck but was actually in the front office during her entire shift. (See Deposition of Defendant Kettleman T252:9-253:2 annexed as Exhibit 2). Knowing there were two lives in jeopardy and apparently struggling, Defendant Kettleman walked with zero urgency to summon help. Defendant Kettleman never blew his whistle despite it clearly being wrapped around his neck and he never even got wet. The questioning went as follows:

17 Q. You would agree you did not use your
18 whistle at any point in time as you were trained
19 to do?

20 A. I did not use the whistle.

21 Q. You would agree you did not yell for
22 help to Mr. Mariak?

23 A. I did not yell for help. I did not
24 yell for help.

Defendant Kettleman was not aware of the surveillance footage and the lobby but when shown ultimately had to agree he was walking.

3 Q. Let me ask you your own
4 characterization of how you're walking.
5 What you see on that video looks as
6 though you're walking leisurely through the lobby.
7 Is that fair?

8 A. Yes.

9 Q. Yes?

10 A. Yes.

11 Q. Okay. You never entered the pool to
12 rescue either boy. Correct?

13 A. Correct.

14 Q. Mr. Kettleman, you never got wet?

15 A. I didn't get wet.

16 Q. You did?

17 A. No.

18 Q. You did not get wet. True?

19 A. I did not get wet.

(See Deposition Testimony of Kettleman T322:3-19 annexed as Exhibit 2).

The foreseeability of harm is a critical factor in determining whether punitive damages are appropriate. The lifeguard's role inherently involves the duty to prevent foreseeable harm, such as drowning, to individuals using the pool. If the lifeguards omissions were accompanied by an awareness of the likelihood of serious harm and a reckless disregard for that risk, punitive damages may be justified. The Punitive Damages Act emphasizes the importance of the defendants awareness of the risk and their conduct upon learning of the potential harm.

While the New Jersey Tort Claims Act (TCA) generally precludes punitive damages against public entities, it does not categorically bar such damages against individual public employees, such as lifeguards, provided the statutory standard is met J.H. v. Mercer County Youth Detention Center, 396 N.J. Super. 1 (App. Div 2007), Seals v. County of Morris, 417 N.J. Super. 74 (App. Div. 2010). The TCA does not preclude the imposition of such damages if the employees conduct constitutes actual malice, willful misconduct, or an intentional wrong.

In conclusion, punitive damages may be awarded when, by clear and convincing evidence, that the lifeguards' failure to prevent the drowning was actuated by actual malice or accompanied by a wanton and willful disregard for the safety of others. The lifeguard's role as a public employee does not shield them from liability for punitive damages if their conduct meets the statutory standard. This case underscores the importance of holding individuals accountable for egregious misconduct to ensure deterrence and promote public safety.

Punitive damages "are awarded as punishment or deterrence for particularly egregious conduct" and "must be reserved for special circumstances." Maudsley v. State of N.J., 357 N.J. Super. 560 (App. Div. 2003) at 590-91.

EXPERT REPORTS

Plaintiffs have retained the world's leading Lifeguarding and Pool Safety experts, however, insofar as discovery is not yet completed and Plaintiffs' expert reports are not due to be served until August 15, 2025, at this time, Plaintiffs are only serving with the defense four expert reports that pertain to Damages only.

As per this issue, Plaintiffs are annexing two expert reports dated May 31, 2025, authored by Peter Salgo, M.D. (See Peter Salgo, M.D.'s reports annexed hereto as Exhibit 22). Dr. Salgo's expert reports address the conscious pain and suffering Chu Ming and Jack sustained leading to their horrific deaths. In same, Dr. Salgo opines:

Mr. [Zheng/Jiang] drowned.

The drowning sequence begins as water is inhaled with air and reaches the back of the throat, leading to a coughing sensation. A powerful reflex that closes the throat to prevent more water from getting into the lower respiratory tract follows this. This is a primitive reflex. Once the throat is closed no further air is brought to the lungs. With this failure to oxygenate the blood or remove carbon dioxide, the level of carbon dioxide in the blood increases rapidly and the level of oxygen

decreases. Air hunger and the "drive to breathe" at first is driven by this increase in carbon dioxide in the blood after the throat closes by reflex.

The brain then responds with increasingly desperate commands to breathe in order to meet the body's unceasing need for oxygen and to expel carbon dioxide. However, with the "closing the throat" reflex occurring breathing is not possible. It is the conflict between the need to breathe versus the inability to breathe that results in the terrifying sensation known as "air hunger", with panic and terror as a result. The person experiencing air hunger knows that he must breathe but is also conscious and aware that he cannot.

At this point, the brain clearly perceives what is going on. Victims know that they have to breathe to live. In addition the primal breathing reflex, breathe or die, is driving a growing sensation of the increasing need to breathe. But drowning victims cannot breathe. Mr. [Zheng/Jiang] was caught in a situation from which it was impossible to escape. There was a reflex mechanism preventing his breathing a powerful, irresistible reflex driving him to breathe, and he could not get to the surface to take in sufficient air.

At some point in the process, if individuals like Mr. [Zheng/Jiang] remain underwater, not breathing, their carbon dioxide levels increasing and their oxygen levels falling, the biochemical imperative to breathe overpowers the reflex preventing breathing. Even though the individuals consciously know that, by attempting to breathe, water will get into the lungs, they attempt to breathe anyway while under water. Knowing they will die, they are nonetheless impelled to take water into their lungs. The horror of that moment is simply unimaginable.

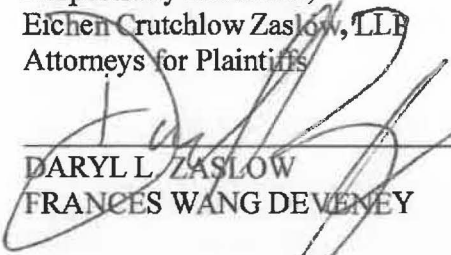
The lungs cannot extract oxygen from the water and transfer it to the blood. The oxygen level in the blood slowly decreases. Vital organs become starved and malfunction, and the individual dies from hypoxia.

The time from immersion to unconsciousness is dependent upon many factors. Mr. [Zheng/Jiang] was young in excellent health and athletic (a good swimmer). He was awake and neurologically unimpaired at the time of the accident. It is reasonable to conclude that he experienced conscious pain and suffering after his immersion for greater than three minutes, and less than five minutes.

Plaintiffs are also annexing two expert reports authored by Stan V. Smith, Ph.D., of Smith Economics Group. In these reports, Mr. Smith calculates the financial value of the losses sustained as a result of the deaths of Chu Ming and Jack. (See Smith Expert Reports annexed hereto as Exhibits 23 & 24).

Finally, Plaintiffs reserves the right to rescind any and all prior Settlement Demands at any time without further notice.

Respectfully submitted,
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DLZ/FWD/rc -Encls.

cc: All counsel of record /with enclosures – Via Email and Lawyers Service