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KATE BIEKER
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

BY:

D. Wagner
D. WAGNER

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF CONTRA COSTA
11

12 KAREN CURRY, individually and as
Successor-in-Interest to Decedent BENJAMIN
13 CURRY; THOMAS CURRY, individually and
as Successor-in-Interest to Decedent
14 BENJAMIN CURRY,

15 Plaintiffs,

16 vs.

17 SAN RAMON VALLEY UNIFIED SCHOOL
DISTRICT; AARON BECKER; and DOES 1
18 through 50, et al.,

19 Defendants.
20

Case No. **C18-02403**
Unlimited Jurisdiction

**COMPLAINT FOR WRONGFUL
DEATH-SURVIVORSHIP**

1. NEGLIGENCE
2. NEGLIGENT HIRING/ RETENTION/
SUPERVISION/TRAINING
3. WILLFUL MISCONDUCT

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 33, FOR ALL
PURPOSES.

21 COMES NOW Plaintiffs Karen Curry, individually and as Successor-in-Interest to
22 Decedent Benjamin Curry, and Thomas Curry, individually and as Successor-Interest to
23 Decedent Benjamin Curry, ("Plaintiffs"), for causes of action against Defendant San Ramon
24 Valley Unified School District ("San Ramon Valley USD"), a public entity, Aaron Becker , and
25 Does 1 through 50, inclusive, complain and allege as follows:

26 **GENERAL ALLEGATIONS**

27 1. This lawsuit arises out of the tragic and senseless death of 15-year old Benjamin
28 Curry, who drowned on May 8, 2018 during his fourth period physical education class at San

1 Ramon Valley High School. It is being brought on behalf of Karen and Thomas Curry,
2 individually as the parents of Benjamin Curry, and on behalf of the Estate of Benjamin Curry as
3 his lawful Successors in Interest.

4 The teacher of the 4th period physical education class was Aaron Becker. There were 57
5 students in the class. Towards the end of the class, Aaron Becker instructed the students to
6 tread water for 3 minutes and told his students that if they touched the lane ropes he would
7 extend the time for them to tread water; Mr. Becker extended the time to tread water for an
8 additional 30 seconds, and during that time, Benjamin Curry became exhausted, slipped under
9 the water, and drowned.

10 The incident was captured on a surveillance camera located at the school. The
11 surveillance footage shows Defendant Becker standing on the diving board approximately 15
12 feet from Benjamin Curry when Benjamin Curry slipped under the water for the final time, and
13 Defendant Becker apparently looking at his cell phone while the 57 students were treading
14 water. It appears the actual time the children were treading water was closer to 4 minutes,
15 rather than the 3 minutes and 30 seconds.

16 Defendant Becker had minimal training in water safety and his lifeguard certification
17 had expired on March 16, 2018. There were no lifeguards present at the pool to assist him in
18 supervising the 57 students, and Defendant San Ramon Valley USD had no rules, regulations,
19 policies or procedures in place to guide him in his instruction of the class.

20 Defendant Becker, supervising these students without assistance, failed to notice that
21 Benjamin Curry had slipped below the water surface well within his view, and recessed the
22 class at the end of 4th period without checking to make sure that all of his students had safely
23 left the pool. He then left the pool area without taking roll at the end of class, with Benjamin
24 under the water, and Benjamin's clothing and cell phone alongside the pool. 56 students left
25 the pool that day with Benjamin under water.

26 The 5th period physical education class began after the lunch period and was being
27 instructed by Samantha Libby. Soon after her class began, one of her students noticed
28 Benjamin's body at the bottom of the pool; he was extricated from the pool and life saving

1 measures were undertaken. Benjamin was rushed by ambulance to Kaiser Hospital in Walnut
2 Creek, where medical treatment was administered, and soon thereafter he was pronounced
3 dead.

4 To make matters worse, news reports characterized Benjamin's death as a suicide. This
5 incident received extensive media coverage in both newspapers and television throughout the
6 San Francisco Bay Area; with some reports indicating that Benjamin had taken his own life.
7 Employees of the San Ramon Valley USD were well aware that these news reports were
8 inaccurate, in that Benjamin had died in class under the supervision of Aaron Becker. For
9 approximately six months after this incident, neither the school district, nor the high school
10 administrators, made any effort to correct the false narrative permeating the community
11 surrounding Benjamin's death. On November 2, 2018 the San Ramon Valley USD issued a
12 press release in an attempt to both apologize to the Curry family and the community, and to
13 address the rumors surrounding Benjamin's death.

14 On May 31, 2018 the Contra Costa County Coroner's Report was released with the
15 finding that Benjamin had died an accidental death of drowning, and suicide was ruled out.
16 Soon thereafter the Danville Police Department and the Contra Costa County Sheriff's
17 department issued their report, concurring with the Coroner's report, that Benjamin had died an
18 accidental death of drowning and had not committed suicide. Neither department found any
19 evidence that Benjamin's conduct caused or contributed to his drowning.

20 Plaintiffs believe that the San Ramon Valley USD and its employees owed a duty of
21 care to Benjamin Curry to supervise, protect, assist and control the safety of Benjamin, and they
22 failed to do so. Plaintiffs further believe that a special relationship existed between San Ramon
23 Valley Unified School District, Aaron Becker and Benjamin Curry, as an invitee on their
24 premises, and the Defendants, and each of them, were required to take reasonable protective
25 measures to ensure his safety, and protect him from foreseeable conduct, and not allow him to
26 participate in dangerous activities during school. Plaintiffs further believe that other school
27 district employees, breached their duty of care to them, and to Benjamin, when they carelessly
28 and negligently trained and supervised Aaron Becker, and failed to provide any guidelines,

1 policies, procedures, rules or regulations such as limiting class size, or creating lesson plans for
2 the physical education classes.

3 Aaron Becker 's failure to properly supervise the children under his care during the 4th
4 period physical education class was negligent and done with a willful and knowing disregard
5 for the rights and safety of Plaintiffs and Plaintiffs' Decedent. Defendant Becker's actions
6 show that he was aware of the probable and dangerous consequences of his conduct, and
7 deliberately failed to avoid those consequences. His leaving the pool and closing down the class
8 without accounting for Benjamin was despicable and subjected Benjamin and his parents, to a
9 cruel and unjust hardship in knowing disregard for Benjamin and their rights.

10 2. Plaintiffs are informed and believe, and thereupon allege, that Aaron Becker and
11 other San Ramon Valley USD's employees, agents and/or servants, acting within the course and
12 scope of their employment with Defendant San Ramon Valley USD, and whose duties include
13 supervising, protecting, assisting and assisting in the supervision and control and safety of
14 minor students, such as Benjamin Curry and others similarly situated, thereby establishing a
15 special relationship with students, such as Benjamin Curry and others similarly situated, had a
16 heightened duty of care to take reasonable steps to protect minor students within their district,
17 such as Benjamin Curry.

18 3. Plaintiffs are informed and believe, and thereupon allege, that Defendant San
19 Ramon Valley USD is liable for any breach of said duty by its employees, agents and/or
20 servants under the legal theory of respondeat superior, as provided under California
21 Government Code §§ 815.2 and 820.

22 4. Plaintiffs are further informed and believe, and thereon allege, that Defendant
23 San Ramon Valley USD's and Aaron Becker's careless, negligent, reckless and unlawful
24 conduct in regard to the events surrounding the subject incident was the direct, legal and
25 proximate cause of the fatal injuries sustained by Benjamin Curry.

26 5. Plaintiffs are further informed and believe, and thereupon allege, that at all times
27 mentioned herein, Defendant San Ramon Valley USD and its employees, agents and/or servants
28 had a special relationship existing with Benjamin Curry, as an invitee, to take reasonable

1 protective measures, especially with young students, to ensure his safety and otherwise protect
2 him from reasonably foreseeable dangerous conduct and to warn him as to such reasonably
3 foreseeable dangerous conduct during school activities.

4 PARTIES

5 6. At all times mentioned herein, Plaintiffs Karen Curry and Thomas Curry are the
6 parents and surviving heirs of Decedent Benjamin Curry and are residents of Contra Costa
7 County. As the parents and surviving heirs of Decedent Benjamin Curry, Plaintiffs bring these
8 causes of action against Defendant San Ramon Valley USD, Aaron Becker and DOES 1
9 through 50, inclusive, for Benjamin Curry's wrongful death. Moreover, Plaintiffs Karen Curry
10 and Thomas Curry are Decedent Benjamin Curry's successors-in-interest for all purposes in this
11 litigation pursuant to Code of Code Civil Procedure § 377.32 and bring this action on behalf of
12 Decedent's estate.

13 7. Defendant San Ramon Valley USD, at all times relevant herein, was a public
14 entity duly organized and existing under and by virtue of the laws of the State of California and
15 authorized to do, and is doing, business in the State of California.

16 8. Defendant San Ramon Valley USD is a public entity, upon which Plaintiffs
17 have, pursuant to Government Code §§ 905 & 910 et seq., timely served with written
18 government claims, pursuant to Government Code § 945.4.

19 9. On May 8, 2018, Defendant Aaron Becker was a physical education teacher
20 employed by the San Ramon Valley USD and at all times mentioned was acting within the
21 course and scope of his employment with the San Ramon Valley USD.

22 10. The true names and capacities, whether individual, plural, corporate, partnership,
23 associate, or otherwise, of Does 1 through 50, inclusive, are unknown to Plaintiffs who
24 therefore sue said defendants by such fictitious names. The full extent of the facts linking such
25 fictitiously sued defendants is unknown to Plaintiffs. Plaintiffs are informed and believe, and
26 thereupon allege, that each of the defendants designated herein as a Doe was, and is, negligent,
27 or in some other actionable manner, responsible for the events and happenings hereinafter
28 referred to, and thereby negligently, or in some other actionable manner, legally and

1 proximately caused the hereinafter described injuries and damages to Plaintiffs. Plaintiffs will
2 hereafter seek leave of the Court to amend this Complaint to show the defendants' true names
3 and capacities after the same have been ascertained.

4 11. Plaintiffs are informed and believe, and thereon allege, that at all times
5 mentioned herein, San Ramon Valley USD, Aaron Becker and Does 1 through 50, inclusive,
6 were agents, servants, employees and/or successors in interest, of their co-defendants, and were,
7 as such, acting within the course, scope, and authority of said agency, employment, and/or
8 venture, and that each and every Defendant, as aforesaid, when acting as a principal, was
9 negligent in the selection and hiring of each and every other Defendant as an agent, servant,
10 employee and/or successor in interest.

11 **FIRST CAUSE OF ACTION**

12 **WRONGFUL DEATH**

13 **(Negligence Against All Defendants and DOES 1 through 50, Inclusive)**

14 12. Plaintiffs re-allege and incorporate herein by reference each and every allegation
15 and statement contained in the prior paragraphs.

16 13. Plaintiffs are informed and believe, and thereon allege, that at all times
17 mentioned herein, Defendant San Ramon Valley USD, Aaron Becker and Does 1 through 50,
18 inclusive, owed a duty of care to all reasonably foreseeable people, including Decedent, to
19 supervise, protect, assist and assist in the supervision and control and safety of minor students,
20 such as Benjamin Curry and to protect minor students within their district, such as Benjamin
21 Curry.

22 14. Plaintiffs are further informed and believe, and thereupon allege, that at all times
23 mentioned herein, Defendant San Ramon Valley USD, Aaron Becker and Does 1 through 50,
24 inclusive, had a special relationship existing with Benjamin Curry, as an invitee, to take
25 reasonable protective measures, especially as a young student, to ensure his safety and
26 otherwise protect him from reasonably foreseeable dangerous conduct and to warn him as to
27 such reasonably foreseeable dangerous conduct during school activities.

28 15. Plaintiffs are informed and believe, and thereon allege, that at all times

1 mentioned herein, Defendant San Ramon Valley USD, Aaron Becker and Does 1 through 50,
2 inclusive, breached their duty of care when they carelessly and negligently supervised,
3 protected, assisted and assisted in the supervision, control and safety of Benjamin Curry and
4 failed to protect minor students within their district, such as Benjamin Curry, which resulted in
5 Decedent's death for which Defendant San Ramon Valley USD, Aaron Becker, and Does 1
6 through 50, inclusive, are legally responsible.

7 16. Plaintiffs are informed and believe, and thereon allege, that at all times
8 mentioned herein Benjamin Curry was being supervised on school property by Defendant San
9 Ramon Valley USD's agents, employees, and/or independent contractors with the consent,
10 knowledge, and permission of Defendant San Ramon Valley USD and Does 1 through 50,
11 inclusive, which renders Defendant San Ramon Valley USD and Does 1 through 50, inclusive,
12 vicariously liable for the negligent acts and omissions of such agents, employees, and/or
13 independent contractors.

14 17. Plaintiffs are informed and believe, and thereon allege, that at all times
15 mentioned herein, Defendant San Ramon Valley USD was a public entity located in the County
16 of Contra Costa, which managed, controlled, and/or operated San Ramon Valley High School.

17 18. Plaintiffs are informed and believe, and thereupon allege, that as a public entity,
18 Defendant San Ramon Valley USD has a statutory duty and is statutorily liable for injuries
19 proximately caused by an act or omission of an employee of the public entity within the scope
20 of his or her employment if the act or omission would have given rise to a cause of action
21 against that employee or his or her personal representative, as provided in Government Code §
22 815.2(a).

23 19. Plaintiffs are informed and believe, and thereupon allege, that public employees
24 have a statutory duty and are statutorily liable for injury caused by their act or omission to the
25 same extent as a private person would be, as provided by Government Code § 820(a).

26 20. Plaintiffs are informed and believe, and thereupon allege, that Defendant San
27 Ramon Valley USD is liable for any breach of said duty by its employees, agents and/or
28 servants under the legal theory of respondeat superior, as provided under California

1 Government Code §§ 815.2 and 820.

2 21. Plaintiffs are further informed and believe, and thereon allege, that Defendant
3 San Ramon Valley USD's said careless, negligent, reckless and unlawful conduct in regard to
4 the events surrounding the subject incident was the direct, legal and proximate cause of the fatal
5 injuries sustained by Benjamin Curry.

6 22. Plaintiffs are further informed and believe, and thereupon allege, that at all times
7 mentioned herein, Defendant San Ramon Valley USD, Aaron Becker and its employees, agents,
8 and/or servants had a special relationship existing with Benjamin Curry, as an invitee, to take
9 reasonable protective measures, especially as a young student, to ensure his safety and
10 otherwise protect him from reasonably foreseeable dangerous conduct and to warn him as to
11 such reasonably foreseeable dangerous conduct during school activities.

12 23. As a direct and proximate result of the negligence, carelessness, recklessness,
13 and violations of the law of Defendant San Ramon Valley USD and Does 1 through 50,
14 inclusive, Decedent was injured in his health, strength and activity, sustaining injury to his
15 body, and shock and injury to his person, all of which caused Decedent great physical, mental,
16 and emotional pain and suffering prior to his untimely death, all to Plaintiffs' damages in an
17 amount which will be stated according to proof, pursuant to § 425.10 of the California Code of
18 Civil Procedure.

19 24. As a direct and proximate result of the negligence, carelessness, recklessness,
20 and violations of the law of Defendant San Ramon Valley USD and Does 1 through 50,
21 inclusive, Plaintiffs were compelled to and did employ the services of physicians, surgeons, and
22 other medical personnel, and Plaintiffs were compelled to and did incur other incidental
23 expenses, including, but not limited to, medical, funeral, and/or burial expenses related to the
24 necessary care and treatment of Decedent.

25 25. As a direct and proximate result of the negligence, carelessness, recklessness,
26 and violations of the law of Defendant San Ramon Valley USD and Does 1 through 50,
27 inclusive, Plaintiffs claim general damages resulting from the loss of love, affection, society,
28 service, comfort, support, right of support, counseling, companionship, solace, and mental

1 support, as well as other benefits and assistance of the Decedent in a sum in excess of the
2 jurisdictional limits of this Court, which will be stated according to proof at the time of trial,
3 pursuant to § 425.10 of the California Code of Civil Procedure.

4 26. Plaintiffs have also incurred and medical, funeral and burial expenses in an
5 amount to be stated according to proof, pursuant to § 425.10 of the California Code of Civil
6 Procedure.

7 SECOND CAUSE OF ACTION

8 (Negligent Hiring/Retention/Supervision/Training by Plaintiffs as Against All Defendants 9 and DOES 1 through 50, Inclusive)

10 27. Plaintiffs re-allege and incorporate herein by reference each and every allegation
11 and statement contained in the prior paragraphs.

12 28. Plaintiffs are informed and believe, and thereupon allege, that at all times
13 mentioned herein, Defendant San Ramon Valley USD and its employees, agents and/or servants
14 had a special relationship existing with Benjamin Curry, as an invitee, to take reasonable
15 protective measures, especially with students, to ensure his safety and otherwise protect him
16 from reasonably foreseeable dangerous conduct and to warn him as to such reasonably
17 foreseeable dangerous conduct during school activities.

18 29. By virtue of said special relationship, Defendant San Ramon Valley USD and
19 Does 1 through 50, inclusive, owed a duty to take reasonable measures to protect all students
20 under their control and supervision, including Decedent, from foreseeable injury at the hands of
21 their employees, agents and/or servants acting negligently or intentionally, by not engaging in
22 the negligent hiring, retention, training, and supervision of those employees, agents and/or
23 servants of Defendant San Ramon Valley USD and Does 1 through 50, inclusive, with direct
24 contact and/or interaction with minor students under their control and supervision, including,
25 but not limited to, Decedent.

26 30. Plaintiffs are informed and believe, and thereon allege, that at all times
27 mentioned herein, Defendant San Ramon Valley USD Does 1 through 50, inclusive, were
28 negligent and reckless in their hiring, training, supervision, and/or retention of certain

1 employees, agents and/or servants, in that they knew or should have known that said
2 employees, agents and/or servants, were unfit for the specific and mandatory tasks to be carried
3 out and performed during the course and scope of employment, such as maintaining, inspecting,
4 supervising, managing, regulating, warning, patrolling, protecting, guarding, training, and
5 controlling the subject swimming pool on school property, which was the legal and proximate
6 cause of the Decedent suffering pre-death physical injuries, mental anguish, terror, anxiety,
7 unconsciousness, and ultimately death.

8 31. Plaintiffs are informed and believe, and thereupon allege, that as a public entity,
9 Defendant San Ramon Valley USD has a statutory duty and is statutorily liable for injuries
10 proximately caused by an act or omission of an employee of the public entity within the scope
11 of his or her employment if the act or omission would have given rise to a cause of action
12 against that employee or his or her personal representative, as provided in Government Code §
13 815.2(a).

14 32. As a direct and proximate result of the negligence, carelessness, recklessness,
15 and violations of the law of Defendant San Ramon Valley USD and Does 1 through 50,
16 inclusive, Decedent was injured in his health, strength and activity, sustaining injury to his
17 body, and shock and injury to his person, all of which caused Decedent great physical, mental,
18 and emotional pain and suffering prior to his untimely death, all to Plaintiffs' damages in an
19 amount which will be stated according to proof, pursuant to § 425.10 of the California Code of
20 Civil Procedure.

21 33. As a direct and proximate result of the negligence, carelessness, recklessness,
22 and violations of the law of Defendant San Ramon Valley USD and Does 1 through 50,
23 inclusive, Plaintiffs were compelled to and did employ the services of physicians, surgeons, and
24 other medical personnel, and Plaintiffs were compelled to and did incur other incidental
25 expenses, including, but not limited to, medical, funeral, and/or burial expenses related to the
26 necessary care and treatment of Decedent.

27 34. As a direct and proximate result of the negligence, carelessness, recklessness,
28 and violations of the law of Defendant San Ramon Valley USD and Does 1 through 50,

1 inclusive, Plaintiffs claim general damages resulting from the loss of love, affection, society,
2 service, comfort, support, right of support, counseling, companionship, solace, and mental
3 support, as well as other benefits and assistance of the Decedent in a sum in excess of the
4 jurisdictional limits of this Court, which will be stated according to proof at the time of trial,
5 pursuant to § 425.10 of the California Code of Civil Procedure.

6 35. Plaintiffs have also incurred and will incur medical, funeral and burial expenses
7 in an amount to be stated according to proof, pursuant to § 425.10 of the California Code of
8 Civil Procedure.

9 **THIRD CAUSE OF ACTION**

10 **WILLFUL MISCONDUCT**

11 36. Plaintiffs re-allege and incorporate herein by reference each and every allegation
12 and statement contained in the prior paragraphs.

13 37. At all times herein mentioned, defendant Aaron Becker was aware of the
14 dangers to Benjamin Curry and others, when he instructed his class of 57 students to tread
15 water in a pool approximately 12 feet deep. Aaron Becker was aware of the fact that looking at
16 his cell phone while 57 school children were treading water under his exclusive supervision
17 would create a strong likelihood that a serious injury would occur. Notwithstanding this
18 knowledge, defendant, Aaron Becker, in willful and conscious disregard of the safety of
19 Benjamin Curry and other students, stood on a diving board looking at his cell phone and took
20 no action while Benjamin Curry became exhausted during class and slipped under the water.
21 He then recessed the class and left the pool area without accounting for the safety of the
22 children under his supervision, including Benjamin Curry.

23 **PRAYER FOR RELIEF**


24 WHEREFORE, Plaintiffs pray judgment against Defendants and Does 1 through 50,
25 inclusive, and each of them, as follows:

26 1. For general damages (also known as non-economic damages), including but not
27 limited to, past and future loss of love, companionship, comfort, care, assistance, protection,
28 affection, society, moral support and guidance, in an amount in excess of the jurisdictional

- 1 minimum, according to proof against all Defendants;
- 2 2. For punitive damages against Aaron Becker according to proof.
- 3 3. For special damages (also known as economic damages), including but not
- 4 limited to, loss of gifts and benefits, funeral and burial expenses, and reasonable value of
- 5 household services, in excess of the jurisdictional minimum, according to proof against all
- 6 Defendants;
- 7 4. For hospital, medical, professional and incidental expenses incurred by
- 8 Plaintiffs, according to proof against all Defendants;
- 9 5. For hospital, medical, professional and incidental expenses incurred by
- 10 Decedent, according to proof against all Defendants;
- 11 6. For prejudgment interest, according to proof;
- 12 7. For pre-trial interest, according to proof; and
- 13 8. For such other and further relief as this Court may deem just and proper against
- 14 all Defendants.

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Dated: November 26, 2018



Andrew C. Schwartz
CASPER, MEADOWS, SCHWARTZ & COOK
Attorneys for Plaintiffs