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September 22, 2009

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FOR IMMEDIATE RELEASE

STATEMENT OF:

BRIAN R. MILDENBERG, ESQUIRE

DAVID S. MILDENBERG, ESQUIRE

RE: The Valley Club/Swimming Pool Discrimination Case

- **PENNSYLVANIA HUMAN RELATIONS COMMISSION (“PHRC”) ISSUES 33 PAGE DECISION AGAINST VALLEY CLUB [ATTACHED HERETO IN REDACTED FORM]**
 - **PHRC FINDS PROBABLE CAUSE FOR RACE DISCRIMINATION**
 - **PHRC ORDERS TERMS OF ADJUSTMENT INCLUDING MONETARY DAMAGES FOR CHILD’S HUMILIATION AND EMBARRASSMENT AND A CIVIL PENALTY OF NOT MORE THAN \$50,000.00 (\$FIFTY THOUSAND) FOR CLIENT OF LAW FIRM**
 - **LAW FIRM HANDLES CASE PRO-BONO**
- **PRESS CONFERENCE: 9:00 P.M., 9/22/09 OUTDOORS AT STREET LEVEL IN FRONT OF 123 S. BROAD ST., PHILA., PA 19109**

Today, the Pennsylvania Human Relations Commission (“PHRC”) issued Terms of Adjustment and a formal finding of Probable Cause against the Valley Club and in favor of our clients, an African American mother and her minor child, whose names are being withheld to protect the child’s identity. The decision is a formal finding by the Pennsylvania Human Relations Commission “that probable cause exists to credit the Complainant’s allegations that the Respondent [the Valley Club] refused and denied the Complainant’s child the accommodations, advantages, facilities or privileges of its public accommodation and commercial property, including the use of its swimming pool, due to the child’s race, Black/African American in violation of Section 5 of the Pennsylvania Human Relations Act, 43 P.S. 955.” [PHRC Decision at 32].

In addition, the PHRC decision specifically notes that “in 2009, the Respondent [the Valley Club] had a total if 155 paid memberships, none of whom were African American.” In 2008, according to the decision, there were “179 paid memberships, none of whom were African American.” [PHRC Decision at 5].

In addition, the PHRC decision specifically notes that “in 2009, the Respondent [the Valley Club] made a concerted effort to expand the geographic range of its membership by engaging in a marketing campaign.... The Respondent efforts were mainly directed at areas with overwhelmingly Caucasian populations.... The Respondent made no effort to direct such marketing efforts at areas with significant African American populations....” [PHRC Decision at 31].

A copy of the PHRC Decision follows, attached.

#

*REDACTED TO PROTECT IDENTITY
OF MINOR CHILD AND PARENTS

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*THESE HEADERS NOT PART OF THE
OFFICIAL FINDING OF THE
COMMISSION

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

██████████ O/B/O, :
OF HER MINOR CHILD, ██████████ :
██████████ :
Complainant :
: Docket No. 200900165
: 200900167
v. :
VALLEY CLUB OF :
HUNTINGDON VALLEY :
Respondent :

FINDING OF PROBABLE CAUSE

SUMMARY OF COMPLAINT:

The Complainant alleges that the Respondent refused and denied her child the accommodations, advantages, facilities or privileges of its public accommodation and commercial property, including the use of its swimming pool, due to the child's race, Black/African American, in violation of Section 5 of the Pennsylvania Human Relations Act, 43 P.S. 955.

SUMMARY OF RESPONSE:

The Respondent asserts that it discontinued its relationship with Complainant because of financial concerns from members requesting the return of their membership fees and for the safety concerns attendant with overcrowding of the shallow end of the pool by a large number of non-swimmers.

FINDINGS OF FACT IN SUPPORT OF PROBABLE CAUSE

Whereas the facts of the investigation have disclosed the following:

1. [REDACTED] (hereinafter "Complainant") is an adult, Black/African American and she has a minor child named [REDACTED] who is Black/African American.

2. According to its By-Laws, Valley Club of Huntingdon Valley (hereinafter "Respondent") is a non-profit Corporation that was formed to promote, finance, own, operate, and maintain recreational and educational facilities of all kinds, including a swimming pool, and to maintain a Corporation for social activities.

3. The Respondent's facility is located at 22 Tomlinson Road, Huntingdon Valley, Lower Moreland Township, Pennsylvania, 19006.

4. The Respondent solicits members from the public and sets forth no admissions standards or criteria for membership other than the payment of a membership fee and completion of a one page membership application form.

5. The Respondent's membership application form requires a prospective member to provide the following information: name, home phone, address, city, state, zip, e-mail address, and total membership amount due.

6. The Respondent's membership application does not require an applicant to have the sponsorship of a current Respondent member or provide any type of references.

7. The Respondent offers full memberships, weekday part-time memberships, weekend part-time memberships, and youth memberships at various costs.

8. The Respondent maintains a web site that allows for on-line completion of Respondent's membership application and payment of membership fees.

9. The Respondent allows non-members to use its facilities as guests provided they pay a fee or use a pre-paid guest card issued to a Respondent member and are accompanied by a sponsoring Respondent member.

10. The Respondent has made its facilities open to the public with open house time periods that provide non-members an opportunity to view its facilities and ask questions about membership.

11. The Respondent's facility may be rented by non-member groups for various events such as birthday parties, graduation parties, school events, and corporate events.

12. The Respondent offers swimming lessons to members and to members of the general public who are not members of Respondent.

13. The Respondent is open to, accepts and solicits the patronage of the general public and is a public accommodation within the meaning of the Pennsylvania Human Relations Act.

14. The Respondent is a facility that is used, occupied or is intended, arranged or designed to be used or occupied for the purpose of operating a public accommodation and is a commercial property within the meaning of the Pennsylvania Human Relations Act.

15. The Respondent maintains a number of recreational facilities on its ten (10) acre complex, including: a 110,000 gallon swimming pool, a children's swimming pool, a basketball court, a volleyball court, a playground area, a sand box, a horse shoe pit, and a paved play area. The Respondent also operates a concession stand at the facility.

16. The Respondent's main swimming pool is an "L" shape and it consists of the following three distinct areas: a deep-end section of the pool with a depth of greater than 5 feet consisting of a surface area of 2310 feet; a deep end section of the pool with a depth of 5 feet or less consisting of a surface area of 1302 feet; and a shallow section of the pool with a depth of 5 feet or less that measures forty-two by twenty-nine feet consisting of a surface area of 1218 feet.

17. The Respondent's main swimming pool has a diving board in the deep end section of the pool and two fixed life guard stands.

18. According to the formula provided by the Montgomery County, Pennsylvania Health Department, the Respondent's swimming pool has a total maximum bather load capacity of two hundred and sixty (260) persons.

19. According to the formula provided by the Montgomery County, Pennsylvania Health Department, the deep-end section of the pool with a depth of greater than 5 feet has a bather load capacity of ninety-two (92) persons; the deep-end section of the pool with a depth of less than 5 feet has a bather load capacity of eighty-seven (87) persons; and in the shallow end portion of the swimming pool has a total bather load capacity of eighty-one (81).

20. In accordance with American Red Cross safety recommendations, the Respondent maintains a life guard to swimmer ratio policy of 25:1 for its main swimming pool.

21. In the event that the number of swimmers in the Respondent's main swimming pool is under fifty, the Respondent deploys one life guard in each of the two life guard stations.

22. In the event that the number of swimmers in the Respondent's main swimming pool exceeds fifty, the Respondent deploys an additional life guard stationed on a temporary stand.

23. In the event that an additional influx of people is expected or occurs, the Respondent may deploy an additional life guard as a walking life guard on the deck of the swimming pool.

24. The Respondent life guards do not supervise the Respondent's children swimming pool.

25. The Respondent's operation is seasonal in nature and it operates from Memorial Day through Labor Day.

26. In 2009, the Respondent opened on May 23, 2009 and closed for the season on September 7, 2009.

27. According to Respondent's By-Laws, it is governed by fourteen (14) Directors of who nine (9) are elected to such a position.

28. In 2009, John Duesler (race, Caucasian) was the President of the Respondent's Board of Directors.

29. Mr. Duesler has been a member of the Respondent for ten years, a member of its Board of Directors for nine years, and President of the Board of Directors for seven years.

30. In 2009, the Respondent's Board of Directors consisting of the following persons: John Duesler, Bernice Duesler, Pamela Giberson, Ken Gioffies, Bert Westcott, George Whitehill, Bill Dymowski, Amanda Spaeder, Ann Spaeder, Diane Gallagher, Mary Jane Gormly, Wayne Laundenslager, and Fred Helbig. All of the Respondent Board of Directors are race, Caucasian.

31. In 2009, the Respondent employed eight persons as life guards and seven persons as grounds crew. All of the life guards and grounds crew employees are race, Caucasian.

32. In 2009, the Respondent employed Ed Rios (race, Hispanic) as a Manager and Colleen Toner (race, Caucasian) as an Assistant Manager.

33. In 2009, the Respondent had a total of 155 paid memberships of whom none were African American.

34. In 2008, the Respondent had a total of 179 paid memberships of whom none were African American.

35. A paid membership may have multiple persons associated with it, including: other family members and children.

36. Alethea Wright is Executive Director of Creative Steps, Inc. (hereinafter "Creative Steps"), a corporation that administers Before and After-Care Programs, Youth Programs, Summer Day Camp, Family Services, Workshops, and Classes.

37. As of June 2009, Creative Steps had sixty-six (66) children enrolled in its Summer Day Camp. Of the sixty-six (66) children, fifty-six (56) were race, Black/African American and ten (10) were race, Hispanic.

38. In 2009, the Creative Steps Summer Day Camp was based at Laura H. Carnell Elementary School, 1100 Deveraux Avenue, Philadelphia, PA.

39. In 2009, Complainant's child was enrolled in Creative Steps Summer Day Camp.

40. In 2009, Creative Steps employed twelve (12) persons as counselors for its Summer Day Camp. Of the twelve persons employed as counselors, ten (10) were Black/African American and two (2) were Hispanic.

41. Creative Steps divided its Summer Day Camp into two classes based upon the enrolled camper's age. Any campers in kindergarten, first grade and second grade were assigned to the Little School House class and any campers above second grade are assigned to a second class for older children.

42. In 2007 and 2008, the Creative Steps Summer Day Camp, as part of its program activities, swam at the New Frankford Community YMCA's swimming pool several days a week.

43. In 2009, Ms. Wright planned to again utilize the New Frankford Community YMCA for Creative Steps Summer Day Camp.

44. Prior to the commencement of the Creative Steps Summer Day Camp, Ms. Wright advised the camper's parents that their children would be going to swimming pools as part of its program activities and informed the parents that if their child could not swim they would need to get a life jacket. She also informed the parents that life jackets were available at Modell's Sporting Goods for \$24.99.

45. Shortly before the commencement of the Creative Steps Summer Day Camp, the New Frankford Community YMCA closed its facility.

46. Ms. Wright immediately sought to locate another facility with a swimming pool for Creative Steps Summer Day Camp to utilize in 2009.

47. On or about May 28, 2009, Ms. Wright contacted the Jewish Community Center Klein Branch which has an indoor swimming pool and an indoor children's swimming pool.

48. Subsequently, Ms. Wright arranged for the Creative Steps Summer Day Camp to utilize the indoor pool at the Jewish Community Center Klein Branch on Tuesday and Thursday from 3:30 p.m. to 5:00 p.m.

49. Ms. Wright also sought to find another facility, preferably with an outdoor swimming pool, to provide for a third day of swimming for Creative Steps Summer Day Camp. Pursuant to such efforts, she contacted several additional facilities with swimming pools.

50. On or about June 2009, Ms. Wright visited the Respondent's web site and attempted to register each member of the Creative Steps Summer Day Camp for a youth membership with the Respondent.

51. After her registration efforts were unsuccessful, on or about June 8, 2009 at 3:22 p.m., Ms. Wright sent an e-mail with a subject line of "Group Swimming for 60 youth" to the Respondent that stated the following:

I would like group swimming every Monday (June 29, 2009 thru August 10, 2009) from 3:30 pm to 5:00 pm. My question is: Do just (sic) pay the \$30.00 per youth membership?

52. On or about June 9, 2009 at 12:06 p.m., Mr. Duesler replied to Ms. Wright's e-mail with a subject line of Group Swimming for 60 youth Every Monday 6/29/09 thru 8/10/2009, stating as follows:

I welcome your proposal to bring 60 kids to the pool for 90 minutes a week! I like that idea, but am going to have to gain Board approval for this. One question already asked is how many adults will be accompanying the 60 children. Since our lifeguard to swimmer ratio is 25:1, we may have to add as many as three guards during this time. Let me know. Just give me until next week to gain approval for this. I'll keep you posted.

53. On or about June 10, 2009 at 1:31 p.m., Ms. Wright replied to Mr. Duesler's e-mail with a subject line of Group Swimming for 60 youth Every Monday 6/29/09 thru 8/10/2009, stating as follows:

Thank you sir for the consideration of having us at the Valley Swim Club. I think this would be a wonderful opportunity for the youth and also this will lend our organization the corridor to partnership with our Huntingdon Valley community. We do have our own million dollar liability policy to cover swim time. In addition, we are prepared to pay the \$30.00 per youth for membership to the club for the youth to swim on Mondays. Again, thank you for your time and consideration in this matter.

54. On or about June 12, 2009 at 9:43 a.m., Ms. Wright sent Mr. Duesler's e-mail with a subject line of Group Swimming for 60 youth, stating as follows: "There will be about (6) adults for each swim Monday session if granted. A friendly reminder, we have million dollar liability policy for program."

55. On or about June 17, 2009, Ms. Wright wrote a check to the Respondent in the amount of \$1,950.00. She calculated the amount by

multiplying the number of possible Creative Steps campers - 65 - by the cost of a Respondent youth membership \$30.00.

56. On or about June 17, 2009, [REDACTED], [REDACTED] son, who was visiting the Respondent facility as part of his school picnic, provided Mr. Duesler a check in the amount of \$1,950.00.

57. On or about June 19, 2009 at 8:51 a.m., Mr. Duesler sent Ms. Wright an e-mail with a subject line of Group Swimming for 60 youth, stating as follows:

I am pleased to tell you that our Board has approved our programming for bringing your Creative Steps community into the club. And we did receive your check from [REDACTED] on Wednesday (though we didn't deposit it yet).

Mondays from 3:30 pm to 5:00 pm through August 10th are great.

The one concern that was registered was the adult to child ration (sic) being 1:10, since we are talking about the kids being around our pretty big pool. I asked the Board to take a wait-and-see approach to this, as I trust that the group will be chaperoned just fine.

If you have any questions or other concerns, I remain available at the 215-xxx-xxxx phone number.

Thanks for your interest in the club, and we look forward to sharing a great summer together.

58. On or about June 25, 2009 at 9:33 a.m., Ms Wright sent Mr. Duesler a reply e-mail with a subject line of Group Swimming for 60 youth, stating as follows:

Thank, Thnak (sic) you, Thank you! And the CSI staff will be supervising youth ratio 1:10. Again, thank you for the time and consideration in our proposal. We are looking forward to a wonderful experience at your lovely facility.

59. On or about June 2009, Pastor Joseph Shon (race, Asian) from the Pennsylvania Korean Seventh-day Adventist Church contacted Mr. Duesler and

inquired as to the availability of Respondent's swimming pool for use by its Summer Bible Camp.

60. Pastor Shon indicated that he was interested in utilizing Respondent's swimming pool for a one week period for approximately two hours a day for approximately 35 children and 20 staff members.

61. After he visited the Respondent facility, Pastor Shon and Mr. Duesler agreed that the Summer Bible Camp would use the Respondent's facility from June 29-July 3, 2009 for two hours each day for the total amount of \$300.00.

62. Mr. Duesler and Pastor Shon both understood the arrangement to be for a single week from June 29-July 3, 2009.

63. In May 2009, Monica Scanlon from the Storybook Children's Center (hereinafter "Storybook") attempted to contact Respondent via telephone on several occasions to inquire as to the availability of Respondent's swimming pool for use by participants in its Summer Day Camp.

64. On or about May 22, 2009, Mr. Duesler called Ms. Scanlon in response to her telephone messages.

65. Ms. Scanlon asked Mr. Duesler if Storybook's Summer Day Camp, consisting of approximately 20 children, could utilize Respondent's swimming pool for a fee.

66. Mr. Duesler stated that he had never previously received such a request from a summer camp and told her to stop in to view Respondent's facility.

67. On or about June 7, 2009, Ms. Scanlon visited Respondent's facility and spoke with Mr. Duesler.

68. During the course of the conversation, Ms. Scanlon stated that she was interested in using the Respondent's swimming pool on Monday, Wednesday, and Friday for a seven week period from 12:30 p.m. to 3:30 p.m.

69. Mr. Duesler stated that two other camps had also contacted him about using Respondent's swimming pool and that he would have to present the summer camps requests to the Respondent Board of Directors.

70. Subsequently, Mr. Duesler spoke to the members of Respondent Board of Directors and he was authorized by the Respondent's Board to invite the summer camps to Respondent's facility.

71. On or about June 19, 2009, Mr. Duesler contacted Ms. Scanlon and informed her that the Respondent's Board of Directors had approved Storybook's request for one day a week - Wednesday - as opposed to the requested three days.

72. Mr. Duesler and Ms. Scanlon agree upon a fee of \$5.00 per child per week or approximately \$100.00 a week for a total of \$700.00

73. Ms. Scanlon requested to pay week-by-week and Mr. Duesler responded that would be fine for the first week but after that he would need the full payment.

74. On or about June 28, 2009, the Respondent Board of Directors convened a meeting to discuss the arrival of the three summer camps at Respondent's facility.

75. In attendance at the meeting on June 28, 2009 were the following members of the Respondent Board of Directors: John Duesler, Bernice Duesler, Pamela Giberson, Diane Gallagher, Ken Gioffies, Ann Spaeder, George Whitehill and Fred Helbig. Also, in attendance was Ed Rios, Respondent manager.

76. During the course of the meeting, Mr. Duesler explained the three summer camp's proposed schedule, the fees charged to each camp, and the number of children expected from each camp.

77. Ed Rios expressed concern about having the staff to handle the summer campers, especially life guards.

78. John Duesler addressed Mr. Rios concern by explaining that the Respondent's staffing would need to be increased to four life guards to accommodate the summer camps.

79. Ann Spaeder and Ken Gioffies questioned the ratio of Respondent staff to campers and asked if the camps would be providing counselors.

80. Such a concern had previously been brought to Ms. Wright's attention in an e-mail message from Mr. Duesler dated June 19, 2009. Ms. Wright had advised Mr. Duesler that the ratio of Creative Steps counselors to campers would be 10:1.

81. At the conclusion of the discussion, the Respondent's Board of Directors agreed to allow the summer camps as long as they could manage them.

82. On or about June 29, 2009, Pastor Shon and the members of his Summer Bible Camp, consisting of approximately 35 children and 20 staff members, arrived at Respondent's facility at approximately 1:30 p.m.

83. Pastor Shon's Summer Bible Camp participants were predominantly race, Asian (Korean) and ranged in age from four to fifteen.

84. Mr. Duesler greeted Pastor Shon's Summer Bible Camp and explained the Respondent's basic rules. He stated no running; any camper that wanted to swim in the deep end must pass a deep water test consisting of treading water for one minute and swimming one lap; and the final rule was to have fun.

85. Pastor Shon's campers proceeded to enter the Respondent's swimming pools and approximately 7-8 campers were in the deep end of the swimming pool, 13-14 in the shallow end, and 6-8 were in the children's pool. Also, approximately 5-10 staff members were in the Respondent swimming pool.

86. After Pastor Shon's Summer Day Camp had been at the Respondent's swimming pool for approximately one hour, Dr. Duesler left the Respondent's facility.

87. At approximately 3:30 p.m., Pastor Shon's Summer Day Camp departed the Respondent's facility.

88. Shortly after Pastor Shon's Summer Day Camp left, Dr. Duesler returned to the Respondent's facility.

89. At approximately 3:45 p.m., Creative Steps Summer Day Camp arrived at Respondent's facility in a yellow school bus.

90. Creative Steps Summer Day Camp arrived with a total of fifty-six (56) campers, including: Complainant's child. Of the fifty-six campers, forty-six (46) were African American and ten (10) were Hispanic.

91. Ms. Wright and six Creative Steps Summer Day Camp counselors also arrived with the campers, including: [REDACTED]. All of whom are African American.

92. Upon their arrival, Glen DeGeorge (race, Caucasian), a Respondent life guard, boarded the Creative Steps Summer Day Camp school bus to address the campers in the Respondent parking lot.

93. Mr. DeGeorge explained the Respondent's basic safety rules, including: no running, no diving in the shallow end, and that the campers must take and pass a deep water test in order to swim in the deep end of the Respondent swimming pool.

94. Ms. Wright informed Mr. DeGeorge that she had divided the Creative Steps Summer Day campers into two groups: those who could swim and those who could not swim as a safety precaution.

95. Following Mr. DeGeorge, Mr. Duesler boarded the school bus and greeted the Creative Steps campers. He explained the Respondent's basic rules, including: no running; any camper that wanted to swim in the deep end must pass a deep water test consisting of treading water for one minute and swimming one lap; and the final rule was to have fun.

96. Mr. Duesler proceeded to leave the parking lot area, enter the Respondent facility, and take a seat at a picnic table near the Respondent's concession stand with a view of the Respondent's swimming pools.

97. The Creative Steps Summer Day Camp campers proceeded to disembark from the school bus in groups, entered the Respondent premises, and placed their belongings on a covered picnic table.

98. After the arrival of Creative Steps Summer Day Camp, the Respondent deployed a total of four life guards - Glen DeGeorge, Courtney Barrett, Gabriel Gioffre, and Evan Wescott - and Ms. Toner was also walking the swimming pool deck and was capable of performing life guard duties if necessary.

99. Courtney Barrett, a Respondent life guard, proceeded to enter the deep end section of the Respondent swimming pool and administered the Respondent's deep water test to approximately ten Creative Steps campers.

100. Approximately two or three of the Creative Steps campers passed the test or met the minimum age requirement allowing them to swim in the deep end and use the diving board.

101. At the time of the arrival of the Creative Steps Summer Day Camp, approximately 30-40 Respondent members were at the facility with approximately 15-25 Respondent members in the main swimming pool. Of the Respondent members in the swimming pool, approximately 10 were children in the shallow end.

102. The Creative Steps campers proceeded to enter both the children's swimming pool and the shallow end of the main swimming pool which was roped off from the deep end section.

103. Of the fifty-six (56) Creative Steps campers, approximately twenty (20) campers, who could not swim, went in the Respondent's children swimming pool.

104. Approximately thirty (30) to thirty-five (35) Creative Steps, Summer Day Camp campers entered the shallow end of the Respondent's swimming pool.

105. Two Creative Steps campers, [REDACTED] and [REDACTED] did not enter either Respondent swimming pool. [REDACTED] forgot his swimming suit and [REDACTED] had a broken arm.

106. The majority of the Creative Steps campers had life jackets on when they went in the shallow end of the Respondent's swimming pool.

107. Ms. Wright and [REDACTED] monitored the Creative Steps campers in the Respondent's children's pool.

108. [REDACTED]
[REDACTED] went into the water in the shallow end of the Respondent's main swimming pool to monitor the Creative Steps campers.

109. Approximately 30-45 minutes after their arrival, [REDACTED] and [REDACTED], Creative Steps campers, left the swimming pool area and walked to the Respondent's concession stand to get a snack.

110. As they returned to the swimming pool area, [REDACTED] heard Michelle Flynn (race, Caucasian), a Respondent member and a teacher at Laura H. Carnell Elementary School, state the following: "What are all of these black kids doing here?" and "I am scared they might do something to my child."

111. [REDACTED] proceeded to the swimming pool area and told [REDACTED], a Creative Steps camper, about the comment and pointed to the women who made the comment.

112. [REDACTED] was able to identify the women as Michelle Flynn because she was one of his teachers at Laura H. Carnell Elementary School.

113. [REDACTED] and [REDACTED] then told [REDACTED], a Creative Steps camper, about the comment.

114. Subsequently, [REDACTED], [REDACTED], and [REDACTED] approached Ms. Wright, who was located at the Respondent's children swimming pool, and told her of the Ms. Flynn's comments that were heard by [REDACTED] and pointed her out to Ms. Wright.

115. [REDACTED], [REDACTED], and [REDACTED] did not enter the Respondent's swimming pool for the remainder of time they were at the facility.

116. Ms. Wright immediately approached Mr. Duesler, who was seated at a picnic table, and told him that one of the Creative Steps campers had heard a Respondent member state: "What are all of these black kids doing here?"

117. Mr. Duesler replied to Ms. Wright: "I'll take care of it" and explained that he was embarrassed by the comment.

118. As Ms. Wright and Mr. Duesler were speaking, Ms. Flynn approached them and a heated conversation ensued between Ms. Flynn and Ms. Wright.

119. Ms. Wright stated that she was surprised that someone who teaches these kids would make such a comment.

120. Ms. Flynn denied the comment and explained that she was concerned because one of the children was a known thief and that she knew that he had stolen a cell phone.

121. Subsequently, Ms. Wright returned to the Respondent's children swimming pool.

122. [REDACTED], a Creative Steps camper, was sitting by the main swimming pool and heard Ms. Flynn state: "Why are these black kids here? I am afraid they might do something to my child and they might steal some of my stuff."

123. Collen Toner, Respondent's Assistant Manager, heard Ms. Flynn state as follows: "I am pissed that they are here, this is my swim club" and explained that one of the boys was known for stealing a teacher's cell phone.

124. [REDACTED], a Creative Steps counselor, was approached by Deborah Mindel, a Respondent member and also a teacher at Laura H. Carnell Elementary School, and she stated: "What time won't I be going to the Valley Club on Mondays?"

125. [REDACTED] jokingly responded that she should really come next week as the children would love to splash her. Ms. Mindel responded that she could not because "[REDACTED] steals."

126. Kevin Trahey, a Respondent member, stated to Mr. Duesler: "You just don't get it."

127. Of the approximately 15-25 Respondent members in the swimming pool at the time of the arrival of Creative Steps campers, the majority left the swimming pool when the Creative Steps campers entered the swimming pool.

128. Of the 15-25 Respondent members swimming in the pool upon the arrival of Creative Steps Summer Day Camp, approximately three (3) Respondent members remained in the swimming pool with the Creative Steps campers.

129. The Creative Steps campers continued to swim until the end of their session and, at approximately 5:15 p.m., Mr. Duesler escorted them back to their school bus and stated to Ms. Wright that he hoped everybody had a good time and that he would see them next time.

130. Immediately after the Creative Steps campers departed, Mr. Duesler stated that Meg Wescott, a Respondent member, spoke to him on behalf of 5 or 6 women who were in favor of the summer day camps, including: Creative Steps. Mr. Duesler also stated that Yasmin Adib, Amy Goldman, Walter Poukish, Respondent members, spoke to him in favor of Creative Steps.

131. On or about June 29, 2009 in the early evening, Mr. Duesler received a telephone call from Mary Beth DeGeorge, a Respondent member, who indicated that she was at the pool earlier in the day. She told Mr. Duesler that she felt that the Respondent was not prepared to host the camps due to the volume of children in the shallow end of the swimming pool and that it was beyond the Respondent's capacity.

132. On or about June 29, 2009 at 9:45 p.m., Ms. Flynn sent an e-mail to the Respondent members explaining that she was "very upset" that when she arrived at the swim club at 4:00, there was a bus emptying off a group of kids. She explained that while it is a community pool, "this is not the community where these kids live." She also noted that she was especially annoyed "because there was no notice ahead of time like there is for the swim team."

133. Ms. Flynn also stated: "...since I personally know some of these kids because I teach at their school and I have seen first hand what at least one of these children is capable of I don't feel comfortable with my children even going to the bathroom during this time." She also stated: "Thank you for your time and I needed to write something because I felt I was being treated as if because the kids were African American it was an issue. That could not be further than the truth."

134. On or about June 29, 2009, at 10:08 p.m., Mr. Duesler replied to Ms. Flynn's e-mail stating that he again apologized for the lack of notice and explained that he would be "posting signs around the pool to let our members know the Summer Camp schedule." He stated her feedback was important and that he would share her concerns with the Board. He concluded by stating that her family was a "valuable member of our pool" and that he would see her "at the top of the hill."

135. On or about June 29, 2009, at 10:22 p.m., Mr. Duesler sent an e-mail to the Respondent members with a subject line of "Feedback from our Summer Camps Program" in response to Ms. Flynn's e-mail.

136. Mr. Duesler stated he would take the blame for not alerting the membership about the camps that were coming to the club. He also explained to the membership that he called Ms. Flynn personally as soon as he came home from the pool and left a message apologizing for the lack of notice. He explained that he would have signs printed and laminated explaining the camps schedules and that they would be hanging on Tuesday, June 30.

137. Mr. Duesler concluded as follows: "All-in-all, I must say that I think the day went fine. And that I did receive plenty of supportive comments from our members, who were pleased to see us growing our treasury through these camp programs."

138. On or about June 29, 2009 at 11:17 p.m., Walt Slowinski, a Respondent member, sent an e-mail to the Respondent members with a subject line of "bussing." Mr. Slowinski stated that he was a "little upset" at the news "about the bussing of kid (sic) to the pool every Monday." He explained that "[w]hen we joined we assumed that this was a private club not a club for hire or some sort of social program." He concluded that "[w]e like Valley and would love to stay but after hearing what transpired today I guess we will be looking for somewhere else to go next year."

139. On or about June 29, 2009 at 11:38 p.m., Mr. Duesler replied to Mr. Slowinski's e-mail. He apologized for not notifying the members about the "club being used by day campers this year." He concluded by stating that "I would still recommend the same thing to our Board, as I did in this case with their approval."

140. On or about June 30, 2009 at 8:44 a.m., Bert Wescott, a Respondent Board of Directors member, sent an e-mail to Mr. Duesler with a subject line of "negative feedback." Mr. Wescott stated that he was sorry that Mr. Duesler had become "the lightning rod for the negative feedback" regarding the camps. He explained "[t]his was a joint decision by the board and hopefully others will stand with you." He also commented that "[t]he narrow-mindedness of at least one of the commenters (sic) is, in hind-sight, to be expected. I am naïve enough, I guess, to have thought that this wasn't going to happen. I thought that all our membership would be above this. Silly me."

141. On or about June 30, 2009 at 9:28 p.m., Mr. Duesler replied to Mr. Wescott's e-mail thanking him for his support.

142. On or about June 30, 2009 at 10:35 a.m. Mary Jane Gormly, a Respondent Board Member, sent an e-mail to Mr. Duesler and the other members of the Respondent Board of Directors. Ms. Gormly stated that while she was not at the pool when the camp came, the feedback that was expressed to her was not good. She stated: "After talking to teachers who taught some of the children, many of them were removed from school do (sic) to stealing and severe behavioral problems." She also stated that at least one member asked if she could get her money back. She stated: "I feel we were mislead with the type of camp this was. This camp is a city camp and is run with tax payers money. This is not the type of camp that is going to bring any new members into the club." She strongly suggested to the Board that it refund the money and cut ties with the camps in order to avoid the loss of members. In the alternative, she stated that if the Board "votes against that, maybe we should bring them in at a time where it is less crowded around maybe around 12:30 - 2:00 and maybe bringing half the campers one week and the other half the following week. 60 campers at one time is to many campers!" She concluded by stating that "[t]his has nothing to do with the children being African American."

143. On or about June 30, 2009 at 10:46 p.m., Mr. Duesler replied to Ms. Gormly's e-mail stating that he appreciated her honest feedback. He concluded by stating: "It looks like our Board is going to have to make a quick decision on this (as well as the other groups)."

144. Just over twelve hours after Mr. Duesler defended his decision to invite the campers in an e-mail to Mr. Slowinski, on or about June 30, 2009 at 12:40 p.m., Mr. Duesler sent an e-mail to the members of the Respondent's Board of Directors with a subject line of "Feedback from our Summer Camp Program" recommending the cancellation of Creative Steps.

145. Mr. Duesler explained that "[w]hat ultimately is holding sway with me is the tension that will linger throughout every hour of the club, essentially pitting member against member, as we are forced to take sides in this debate. This is no way to spend the summer for anyone, and, believe me, its all people are talking about at the club." With that in mind, Mr. Duesler recommended to the Respondent Board of Directors the following: "we refund out Monday summer campers' money, and inform Wednesday's camp that things are not going to work out this summer. Our Summer Bible Camp will conclude this week." Mr. Duesler concluded by explaining he welcomed feedback from the members of the Respondent Board of Directors but requested such feedback be quick as he needed to contact the campers to let them know.

146. On or about June 30, 2009 at 12:41 p.m., George Whitehill, a Respondent Board of Directors member, responded to Mr. Duesler's e-mail dated June 30, 2009 at 12:40 p.m. He stated as follows: "Without looking at hindsight, I am not sure we can do anything other than a mea culpa to the membership (sic). I want to point out that I do not feel there is a basis for us to deny this camp [Creative Steps], or others. My impression is that these kids are considered guests of some member and they are paying our rate as such. As far as I know, we have never put a limit on the number of guests a member may bring to the pool." He concluded by explaining that the only course of action was "to explain to our members, apologize, codify our rules and restrictions and then restrict this type of event in the future."

147. On or about June 30, 2009 at 1:37 p.m., Amanda Spaeder, a Respondent Board of Directors member, responded to Mr. Duesler's e-mail dated June 30, 2009 at 12:40 p.m. She stated that she understood the concerns of the membership and staff because she knew the "distress of big, unbehaved groups such as this." She explained that while she was not at the pool, she felt it was best to cut ties with "this particular camp." She equivocated on her position by stating that "perhaps we should wait to see how smoothly the second camp runs. As I remember it was smaller and had more group supervision."

148. On or about June 30, 2009 at 2:59 p.m., Ken Gioffre, a Respondent Board of Directors member, responded to Mr. Duesler's e-mail dated June 30, 2009 at 12:40 p.m. He stated that he agreed with "bringing it to an end and refunding money. Nothing ventured nothing gained."

149. On or about June 30, 2009 at 2:53 p.m., Bill Dymowski, a Respondent Board of Directors member responded to Ms. Gormley's e-mail dated June 20, 2009 at 10:34 a.m. He explained that "[i]f we refund there money we might have a legal issue. They could say that we are discriminating against them even know (sic) we are not. i think we are stuck with this problem. We should try to change the time when less of our members are there."

150. On or about June 30, 2009 at 3:54 p.m., Steve Korolyk, a Respondent member, e-mailed the Respondent members with a subject line of "LET THE MEMBERS KNOW." He stated: "I hear the Valley Swim Club is becoming a day camp pool, I see nothing posted on your website or at the board at the bottom of the fill." He also voiced complaints regarding the Wexler Plumbing party and asked when the party would be occurring this year. He concluded by stating that it was not right not letting members know when the pool was rented out and that he might have to rethink his membership.

151. On or about June 30, 2009 at 4:01 p.m., Mr. Duesler responded to Mr. Korolyk's e-mail stating that it was a mistake on his part not telling the club about the summer camps. He also stated: "I will also tell you that after this week, we are pulling the plug on the camps, since I have been receiving many emails similar to yours."

152. On or about June 30, 2009 in the late afternoon, Mr. Duesler called Ms. Wright and informed her that the Respondent was discontinuing its relationship with Creative Steps Summer Day Camp and that it would refund the \$1,950.00 payment.

153. Ms. Wright inquired as to whether there was any way they could work something out to maintain the relationship and Mr. Duesler replied that he would think about it.

154. After speaking with Mr. Duesler, Ms. Wright informed the parents of the campers that the Respondent had discontinued its relationship with Creative Steps Summer Day Camp.

155. The parents of the Creative Steps campers were outraged by the Respondent's decision to cancel the relationship and demanded that the Respondent provide their children with membership cards. Several of the parents suggested calling the NAACP and the media in protest of Respondent's cancellation.

156. On or about July 1, 2009 at 7:23 a.m., Mr. Duesler sent an e-mail to the entire Respondent membership with a subject line of "Valley club Update- EARLY SUMMER."

157. Mr. Duesler stated "[a]fter listening to a number of concerns from our Membership, our Board of Directors has decided to discontinue the use of the pool by outside Summer Camps. We will finish this week with the camps, but, after Friday, no more camps will be coming to the pool."

158. On or about July 1, 2009, at approximately 9:00 a.m., Ms. Wright left a message with Mr. Duesler explaining that she was calling with bad news. She explained that Respondent's action did not go over well with the parents. She stated that they wanted their membership cards as they felt they had paid the \$30.00 fee for a Respondent youth membership. She also explained that several of the parents suggested calling the NAACP and the media in protest of Respondent's cancellation. Ms. Wright stated that she did not want this to turn

into a "big fat mess" and repeatedly pleaded with Mr. Duesler that they needed to immediately put their "heads together to come up with a solution."

159. Shortly after listening to the message, on or about July 1, 2009, Mr. Duesler returned Ms. Wright's call. She reiterated her message and he stated: "Let me see what I can do here."

160. Mr. Duesler proceeded to mediate on the subject but nothing came to him as a possible solution. He did not have any further conversations with any members of the Respondent Board of Directors or any Respondent members, including: Ms. Flynn.

161. On or about July 1, 2009 at 3:41 p.m., George Whitehill sent an e-mail to the members of Respondent Board of Directors. He stated:

Here are my final comments on this subject. Since an email has been sent to our membership announcing the cancellation of all camps, I want to be clear as to our reasoning for initially accepting the proposals and then later changing our mind. I did not hear of anything that changed other than member discontent. The issue of discrimination has been raised previously and this should not be dismissed in a cavalier (sic) fashion. We are a predominately 'white' club and the camp attendees are predominately 'African American'. Race is an issue since every email of complaint mentioned race, although stating that race had nothing to do with the complaint. It only takes one out of the 120 parents to make this an issue, and at no cost to them. I think the reason(s) given to the camp concerning our decision to cancel should be disclosed. All board members need to be clear why we cancelled. The only explanation I can give is that it annoyed a portion of our membership (not withstanding that other board decisions have as well).

162. On or about July 2, 2009, at 12:50 p.m., Mr. Duesler left a message with Ms. Wright stating that he was "sorry to say that there was basically no movement by the board or the members." He continued by stating: "We are just going to have to let the chips fall where they may." He further stated: "I hope the parents are more reasonable than you say."

163. On or about July 2, 2009, Mr. Duesler, on behalf of the Respondent, wrote a check in the amount of \$1,950.00 payable to Creative Steps.

164. On or about July 1, 2009, Monica Scanlon and the members of Storybook's Summer Camp, consisting of approximately twenty-three (23) campers and five (5) staff members, arrived at Respondent's facility at approximately 12:30 p.m. In addition, five additional children (race, Caucasian), the grandchildren of James McFadden, Storybook's owner, accompanied Ms. Scanlon and the other campers to the Respondent's facility.

165. Of the twenty-three Storybook's Summer Camp participants, eleven (11) were Black/African American, ten (10) were Caucasian and two (2) were other races.

166. Mr. Duesler greeted the Storybook's campers and explained the Respondent's basic rules. He stated no running; any camper that wanted to swim in the deep end must pass a deep water test consisting of treading water for one minute and swimming one lap; and the final rule was to have a good time.

167. Following their arrival, Ms. Scanlon attempted to give Mr. Duesler the first payment for the use of Respondent's facility. Mr. Duesler pulled her aside and told her it was not going to work as he was unable to fulfill their prior agreement. He stated he could not accept the check and that the day was on him. Ms. Scanlon replied that she understood his position.

168. On or about June 30-July 3, 2009, Pastor Shon's Summer Bible Camp utilized the Respondent's facility pursuant to the terms of its one week agreement.

169. Mr. Duesler and the Respondent assert that the relationship with Creative Steps was terminated for the safety concerns attendant with overcrowding of the shallow end of the pool by a large number of non-swimmers and because of financial concerns from members requesting the return of their membership fees.

170. The Respondent routinely has members at the facility in numbers that are equal in size or exceed the number of Creative Steps campers that came to the Respondent's facility.

171. During the summer weekends, approximately 100-150 Respondent members will routinely be at the facility with approximately 30-40 persons swimming in the main pool at any given time.

172. During the summer holiday weekends, approximately 125-175 Respondent members will routinely be at the facility with approximately 50 or more persons swimming in the main pool at any given time.

173. The Respondent hosts an Annual Fourth of July Pig Roast party for its membership. The party is attended by approximately 150-200 Respondent members.

174. During the course of the Respondent's Annual Fourth of July Pig Roast party, approximately 60-70 persons swim in Respondent's main pool at any given time.

175. The Respondent hosts other events such as Adult Night, Kids Night, Teen Night, Bingo Night, Family Fun Day, Battle of the Bands that result in numbers that are equal in size or exceed the number of Creative Steps campers that came to the Respondent's facility.

176. The Respondent has an adult lap swim three times during the course of each day. During the adult lap swim, any child in the deep end section of the pool must move to the shallow end of the pool.

177. During the course of the adult lap swim, approximately 25-30 Respondent member children are in the shallow end of the swimming pool.

178. The Respondent has adult volleyball games in the shallow end of the main swimming pool. During the volleyball games, approximately 20-25 Respondent members are in the shallow end of the swimming pool.

179. At no time did the Respondent express any safety or overcrowding concerns regarding such membership volume despite the fact that the number of people that attend such events at Respondent's facility was equal in size or exceeded the number of Creative Steps campers that came to the Respondent's facility

180. The Respondent routinely rents its facility to non-member groups that are equal in size or exceed the number of Creative Steps campers that came to the Respondent's facility.

181. On or about June 17, 2009, the Respondent rented its facility to the sixth grade of Rydal Elementary School for a graduation picnic. The Respondent charged a fee of \$200.00 for use of its facility.

182. Rydal Elementary has three sixth grade classes with seventeen (17) students in each class. In addition, Rydal Elementary has approximately nine special education students in the sixth grade. As a result, Rydal Elementary sixth grade has a total of sixty students.

183. Approximately 50-55 students from Rydal Elementary attended the sixth grade picnic at Respondent's facility. In addition three Rydal Elementary teachers and several members of the Rydal PTO attended the picnic.

184. Of the 50-55 students that attended the Rydal Elementary picnic at Respondent's facility, approximately 2-3 were African American, including: [REDACTED], Ms. [REDACTED] son.

185. Approximately 25-30 Rydal Elementary students were swimming in Respondent's main pool at any given time. Several Rydal Elementary students took and passed the swim test and were allowed in the deep section of the swimming pool.

186. Respondent members were also swimming at the pool at the same time as the Respondent remained open to its membership during the course of the Rydal Elementary picnic.

187. At no time did the Respondent express any safety or overcrowding concerns regarding the Rydal Elementary picnic despite the fact that the number of children it brought to Respondent's facility was similar to the number of Creative Steps campers that came to the Respondent's facility.

188. At no time did any Respondent member voice any complaints regarding the Rydal Elementary picnic despite the fact that the number of children it brought to Respondent's facility numbers was similar to the number of Creative Steps campers that came to the Respondent's facility.

189. At no time did any Respondent member threaten to quit the Respondent due to the Rydal Elementary picnic despite the fact that the number of children it brought to Respondent's facility was similar to the number of Creative Steps campers that came to the Respondent's facility.

190. At no time did any students from Rydal Elementary hear any inappropriate or rude comments from Respondent members.

191. For the past five years, William Wexler, President and Owner of Wexler Plumbing, Inc., has rented the Respondent's facility for a company picnic.

192. The Annual Wexler Plumbing party was held on a Saturday each year and was attended by approximately 100-125 persons, including: employees, customers, vendors, friends, family members, and children.

193. Of the approximately 100-125 persons, approximately 5-10 were Black/African American.

194. Approximately 35-40 members of the Wexler Plumbing party swim in Respondent's main pool at any given time.

195. The Respondent members were also swimming at the pool at the same time as the Respondent remained open to its membership during the Wexler Plumbing party.

196. At no time did the Respondent express any safety or overcrowding concerns regarding the Wexler Plumbing party despite the fact that the number of people it brought to Respondent's facility far exceeded the number of Creative Steps campers that came to the Respondent's facility.

197. At no time did any Respondent member threaten to quit the Respondent due to the Wexler Plumbing party despite the fact that the number of children it brought to Respondent's facility far exceeded the number of Creative Steps campers that came to the Respondent's facility.

198. At no time did any persons associated with Wexler Plumbing picnic hear any inappropriate or rude comments from Respondent members.

199. In the same e-mail dated July 1, 2009 that Mr. Duesler sent to the Respondent membership announcing the cancellation of the Summer Camps Program, he stated that following: "Please note: The Annual Wexler Plumbing Party will be coming to the club Saturday, July 11th. This is a big group, so please plan accordingly."

200. Subsequently, Wexler Plumbing cancelled its annual party at the Respondent scheduled for July 11, 2009.

201. Creative Steps brought 56 campers, 6 counselors, and Ms. Wright, for total of 62 persons, to the Respondent facility on June 29, 2009. Of which 30 to 35 campers and 5 counselors were in the shallow end of Respondent's swimming pool.

202. Approximately 30-40 Respondent members were at the Respondent's facility and 3 persons remained in the swimming pool with the Creative Steps campers.

203. The total number of persons at Respondent's facility on June 29, 2009 ranged from approximately 92 to 102. Such a volume of people at Respondent's facility was routinely exceeded on weekends and was greatly exceeded on holiday weekends and on other occasions such as the Wexler Plumbing party.

204. The total number of persons in the Respondent's main swimming pool on June 29 ranged from 38 to 43. Such a volume was routinely exceeded on holiday weekends and on other occasions such as the Wexler Plumbing party.

205. The Creative Steps campers also did not exceed the maximum bather loader of 81 for the shallow end of the Respondent's swimming pool.

206. In her first inquiry, Ms. Wright informed Mr. Duesler that she intended to bring 60 Creative Steps campers to the Respondent facility.

207. Mr. Duesler and the Respondent Board of Directors were aware of the number of Creative Steps campers that would be using the Respondent's facility prior to its decision to approve the relationship.

208. Ms. Toner stated that any overcrowding situation in the shallow end could have been easily rectified by simply breaking the Creative Steps campers up into groups with half in the swimming pool and half out of the swimming pool using the other Respondent facilities.

209. At the time Respondent made the decision to terminate its relationship with Creative Steps, Mr. Duesler stated that he did not have any safety concerns.

210. In Mr. Duesler's various e-mails, he never raised the issue of safety as a reason for the Respondent decision to terminate its relationship with Creative Steps.

211. Neither Mr. Duesler's e-mail to the Board of Directors recommending termination of the relationship nor Mr. Duesler's e-mail to the entire Respondent membership announcing the termination of the relationship made any mention of any safety concerns.

212. At the time of the Respondent decision to terminate its relationship with Creative Steps, only Mary Beth DeGeorge and Ms. Flynn, had expressed any issue regarding safety to Mr. Duesler or Respondent Board of Directors.

213. Mr. Duesler stated that he deferred to the Respondent's life guards on the issue of safety.

214. Gabriel Gioffre, a Respondent life guard, stated that she did not remember any safety issues with the Creative Steps campers other than it was crowded. She stated that the Creative Steps campers were good and she did not have to blow her whistle for any reason.

215. Ms. Toner stated that she did not remember any safety issue other than it was crowded. She stated that the Creative Steps campers were "pretty well-behaved."

216. Glen DeGeorge, a Respondent life guard stated that there were no behavior issues with the Creative Steps campers. He stated that his main concern was that the Respondent only had three deep water buoys and that it should have had one for each of the four life guards. He stated such buoys cost \$40.00.

217. Mr. DeGeorge requested that Mr. Duesler provide another deep water buoy and Mr. Duesler responded that he would take care of it.

218. The Respondent life guard to swimmer ratio with Creative Steps was well within Respondent's policy of 25:1. In particular, Respondent had four lifeguards on duty and approximately 38-43 persons in the main swimming pool.

219. Mr. Duesler stated that immediately after the Creative Steps campers left he asked the Respondent lifeguards "how did it go?" The Respondent life guards replied that it went okay and they did not report anything unusual.

220. Ms. Toner stated that she did not have any conversations with Mr. Duesler and he did not express any safety concerns to her prior to the Respondent's decision to terminate the camps.

221. Mr. Duesler stated that Ms. DeGeorge was the only person that raised any safety concerns prior to the Respondent's decision to terminate the camps. He explained that her safety issue related solely to the volume of children in the shallow end.

222. Ms Toner, in an e-mail dated July 1, 2009 did express concerns regarding Pastor Shon's Summer Bible Camp stating:

I felt that the church group's councilors (sic) were too young. I observed that some of them were into their own cliques more so than the safety of the children they were responsible for. I had to tell the councilors (sic) they weren't allowed in the baby pool because they were running back and forth [REDACTED] (sic) was afraid to go in because of the splashing. Glen had to get off of his chair and pick up a 2 year old who was climbing on the diving blocks and headed for the roof of the pump room.

223. Despite such safety concerns expressed regarding Pastor Shon's camp, it was the only camp that Respondent chose not cancel.

224. Creative Steps took a number of steps to ensure the safety of its campers, including: the majority of the campers had life jackets; the campers were divided into swimmers and non-swimmers; and five counselors were in the swimming pool monitoring the safety of the campers.

225. Gina Rudick, an employee of Jewish Community Center Klein Branch, stated that she had no safety concerns whatsoever or problems with the Creative Steps campers when they used its swimming pool during 2009.

226. Terry Tobin, Executive Director, New Frankford Community YMCA, stated that it had no safety issues at all with the Creative Steps campers in 2007 and 2008. Mr. Tobin stated that the campers were well-behaved and well-supervised and that no one complained about them.

227. At the time Mr. Duesler recommended the cancellation of the Creative Steps Summer Day Camp to the Respondent Board of Directors in an e-mail dated June 30, 2009 at 12:40 p.m., no Respondent member had canceled their membership.

228. At the time Mr. Duesler recommended the cancellation of the Creative Steps Summer Day Camp to the Respondent Board of Directors in an e-mail dated June 30, 2009 at 12:40 p.m., only one Respondent member – Walt Slowinski - had threatened to not renew his membership next year and one Respondent member had told Ms. Gormley that she wanted to know if she would be able to get her money back.

229. At the time Mr. Duesler recommended the cancellation of the Creative Steps Summer Day Camp to the Respondent's Board of Directors in an e-mail dated June 30, 2009 at 12:40 p.m., three Respondent members – Ms. Flynn, Mr. Slowinski, and Ms. DeGeorge – and one member of the Respondent Board of Directors – Mary Jane Gormley - had complained or raised any issue regarding the Creative Steps campers use of Respondent's facility.

230. At the time Mr. Duesler recommended the cancellation of the Creative Steps Summer Day Camp to the Respondent's Board of Directors in an e-mail dated June 30, 2009 at 12:40 p.m., at least four Respondent members – Meg Wescott, Yasmin Adib, Amy Goldman, Walter Poukish and one member of the Respondent's Board of Directors – Bert Wescott provided positive feed back or otherwise supported Creative Steps.

231. Mr. Duesler stated that Ms. Wescott spoke to him on behalf of an additional group of 5 or 6 women who were in favor of the summer day camps, including: Creative Steps.

232. Mr. Duesler stated that the Respondent members were split fifty-fifty on the summer day camps, including Creative Steps, and their use of the Respondent's facility.

233. From the time that Mr. Duesler recommended the cancellation of the Creative Steps Summer Day Camp to the Respondent's Board of Directors in an e-mail dated June 30, 2009 at 12:40 p.m. until he confirmed the cancellation of the camps for in the first time in an e-mail dated June 30, 2009 at 4:01 pm., four other members of the Respondent Board of Directors offered their opinions on Mr. Duesler's recommendation to cancel. Mr. Whitehill and Mr. Dymowski stated that they were opposed to the cancellation. Mr. Gioffre stated he was in favor of the cancellation. Ms. Spaeder stated she was in favor of the cancellation but also stated that perhaps the Respondent should wait to "see how smoothly the second camp runs."

234. At the time Mr. Duesler announced the cancellation of the Creative Steps Summer Day Camp to the entire Respondent membership in an e-mail dated July 1, 2009 at 7:23 p.m., no Respondent member had canceled their membership.

235. At the time Mr. Duesler recommended the cancellation of the Creative Steps Summer Day Camp to the Respondent membership in an in an e-mail dated July 1, 2009 at 7:23 p.m., only one additional Respondent member - Steve Korolyk - had threatened to rethink his membership for next year.

236. According to Mr. Duesler, Ms. Flynn was a leader in recruiting new members to join the Respondent and was responsible for 20-30 families, including Walt Slowinski and his family, joining the Respondent from her church, Saint Cecilia Roman Catholic Church.

237. Based upon Ms. Flynn's e-mail and actions, Mr. Duesler feared that she and a large number of the people she recruited would cancel their memberships with the Respondent.

238. Mr. Duesler acting on the racial animus expressed by Ms. Flynn and the racially coded comments by other Respondent members recommend that the Respondent should cancel its relationship with Creative Steps Summer Day Camp.

239. The Respondent acting on the racial animus expressed by Ms. Flynn and the racially coded comments by other Respondent members canceled its relationship with Creative Steps Summer Day Camp and denied Complainant's child the accommodations, advantages, facilities or privileges of its public accommodation and commercial property, including the use of its swimming pool.

240. [REDACTED] has never been charged, disciplined, suspended or expelled for stealing at Laura H. Carnell Elementary School.

241. In 2008 and 2009, the Respondent did not have a single African American member out of a total of 334 paid memberships.

242. The Respondent is located in Lower Moreland Township which, according to the 2000 Census, has an African American population of 60 persons or 0.8 percent.

243. In 2009, the Respondent made a concerted effort to expand the geographic range of its membership by engaging in a marketing campaign. The Respondent utilized the Northeast Times and Valu-Pack mailers to advertise itself.

244. The Respondent efforts were mainly directed at areas with overwhelmingly Caucasian populations such as Rhawnhurst section of Philadelphia County, Fox Chase section of Philadelphia County, and the Churchville section of Bucks County.

245. The Respondent made no effort to direct such marketing efforts at areas with significant African American populations directly to the southwest of Respondent such as Cheltenham Township (9,074 African Americans according to the 2000 Census) and Abington Township (6,072 African Americans in Montgomery county according to the 2000 Census). In addition, the Respondent did not direct any marketing efforts to other areas of Philadelphia and Bucks County within a 5 mile radius of the Respondent that have significant African American populations.

246. The Respondent's By-Laws contain a Non-Discrimination clause that states: "The Valley Corporation admits members of any race, sex, creed, color or national ethnic origin to all the rights, privileges, programs and activities generally conducted or made available to members. It does not discriminate on the basis of race, sex, creed, color, or nation or ethnic origin in the administration of its policies, admissions or employee hiring."

247. Despite its non-discrimination policy and knowledge of the comments, the Respondent made no effort whatsoever to determine whether Ms. Flynn or any other Respondent member made any type of comment directed toward any Creative Steps camper reflecting a racial animus.

248. The Respondent failed to promptly and effectively investigate the allegations of comments of a racial nature and Mr. Duesler dismissed Ms. Flynn's comments by stating he had a "tough time believing it."

249. Subsequently, Mr. Duesler stated in a media interview that the agreement with Creative Steps, Inc. was rescinded because "there was a concern that a lot of kids would change the complexion" and "the atmosphere" of the Respondent.

*REDACTED TO PROTECT IDENTITY
OF MINOR CHILD AND PARENTS

*ATTORNEYS FOR COMPLAINANT:
MILDENBERG & STALBAUM, P.C.
123 S. BROAD ST., STE. 1610
PHILADELPHIA, PA 19109
215-545-4870 www.MilAndStal.com

*THESE HEADERS NOT PART OF THE
OFFICIAL FINDING OF THE
COMMISSION

WHEREFORE, probable cause exists to credit the Complainant's allegations that the Respondent refused and denied Complainant's child the accommodations, advantages, facilities or privileges of its public accommodation and commercial property, including the use of its swimming pool, due to the child's race, Black/African American in violation of Section 5 of the Pennsylvania Human Relations Act, 43 P.S. 955.

*REDACTED TO PROTECT IDENTITY
OF MINOR CHILD AND PARENTS

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COMMISSION

TERMS OF ADJUSTMENT

1. Respondent shall cease and desist from discriminating against persons because of race.
2. Respondent shall pay actual damages, including damages caused by humiliation and embarrassment.
3. Respondent shall pay a civil penalty in an amount not exceeding fifty thousand dollars (\$50,000.00).
4. Respondent shall reimburse the Complainant for any certifiable travel expenses incurred in matters involving the complaint; compensate the Complainant for any loss of work incurred in matters involving the complaint; and reimburse the Complainant for any other verifiable, reasonable out-of-pocket expenses caused by the allegedly unlawful discriminatory practices for which probable cause has been found to exist.
5. Respondent shall provide training to all of its Board of Directors and members that is designed to educate them regarding the right of all persons to be free from discrimination based upon race.