

1 At the close of Plaintiffs' case in chief on July 18, 2000, remaining Defendants Affinity Group,
2 Inc. ("Affinity") and Camp Coast to Coast, Inc. ("Coast")¹ moved for (1) nonsuit as to all
3 remaining legal causes of action, and (2) judgment as to all remaining matters triable by
4 the Court, including Plaintiffs' allegations of alter ego liability and Defendants'
5 affirmative defense that Plaintiffs had unclean hands (collectively, the "Motions").² The
6 Motions for Nonsuit were brought on the grounds that: (1) Plaintiffs failed to prove
7 elements of their *prima facie* case as to each remaining cause of action;³ and (2) as to all
8 of their causes of action, Plaintiffs failed to prove that Coast's conduct caused Plaintiffs'
9 alleged injuries. The Motion for Judgment sought an order under California Code of Civil
0 Procedure section 631.8 that: (1) Affinity is entitled to judgment on Plaintiffs' claim that
1 Coast is the alter ego of Affinity; and (2) the evidence presented during Plaintiffs' case-in-
2 chief established that Plaintiffs have unclean hands barring them from obtaining any
3 relief from this Court.

4 After considering the oral and written arguments of the parties, good cause
5 appearing therefor, and for the reasons set forth herein and in Defendants' moving
6 papers, the Motions are granted as specifically set forth herein. Plaintiffs are to take
7 nothing by any of their causes of action, and the Clerk is directed to enter judgment in
8 favor of Defendants and against Plaintiffs, and each of them, jointly and severally.⁴

¹ Plaintiffs originally named as Defendants Stephen Adams, James Patrick Butler, Roger Ryman and James Randall. However, at various times prior to the ruling of this Court on the Motions, Plaintiffs voluntarily dismissed those individually named Defendants.

² Plaintiffs' Amended Complaint had contained causes of action for, among other things, Unfair Competition, Defamation, Accounting, Conspiracy and Injunctive Relief. However, Plaintiffs voluntarily dismissed those causes of action at various times during trial prior to the Court's consideration of the Motions.

³ Defendants' Motion for Nonsuit addressed Plaintiffs' causes of action for breach of contract, interference with contract and with prospective economic advantage, misappropriation of trade secrets, and fraud. However, when the Court granted the Motion for Nonsuit on the grounds that Plaintiffs failed to establish causation, it became unnecessary to consider all the grounds for nonsuit asserted by Defendants.

⁴ Because of Plaintiffs' decision just before the Court's consideration of the Motions to dismiss their equitable claims for unfair competition, accounting, and injunctive relief, the portion of the Motions seeking judgment as to those claims is moot.

1 Plaintiffs proceeded to trial on the amended complaint (“Amended Complaint”),
2 which had been filed on February 7, 2000. Plaintiffs alleged that they are owners or
3 operators of recreational vehicle (“RV”) membership campgrounds.⁵ The evidence
4 established that Raymond Novelli, although not named as a party to this action,
5 effectively controlled all aspects of the Novelli Organization, including Plaintiffs.
6 Defendant Coast is the facilitator of a network of private membership campground
7 resorts, often referred to as a “reciprocal use network.” From no later than the mid-
8 1980's through August, 1997, when the Novelli Organization removed its campgrounds
9 from the Coast reciprocal use network, campgrounds in the Novelli Organization were
0 affiliated by contract with Coast. Defendant Affinity owns all of the outstanding stock of
1 Coast.

2 To become a member of Coast’s reciprocal use network, an owner of a recreational
3 vehicle (an “RV Owner”) must first purchase a membership in a Coast-affiliated private
4 membership campground (such as one owned or operated by some of the Plaintiffs). Upon
5 becoming a member of a membership campground, the RV Owner could also elect to
6 become a member of Coast’s reciprocal use network. Both by design and practice, all
7 members of Coast are required to maintain memberships in good standing with a Coast-
8 affiliated private membership campground (such as one of the campgrounds owned and
9 operated by the Novelli Organization) in order to maintain their Coast membership, but
0 not all members of private membership campgrounds are members of Coast. Therefore,
1 there are two separate and distinct memberships: An RV Owner’s membership in a
2 membership campground; and, that RV Owner’s

⁵ Throughout the trial, the parties (including Plaintiffs) and witnesses made reference to the “Novelli Organization” as denoting all of the various Plaintiff organizations and affiliates, whether named as Plaintiffs or not and whether formally in existence today or not. The Court adopts that shorthand reference as well, and from time to time unless otherwise indicated by the context, will refer to Plaintiffs and the Novelli Organization interchangeably. Plaintiffs may not be heard to complain now that they object to that short-hand (and accurate) phrase, when their own counsel and their own witnesses used that phrase, or similar phrases, throughout trial. Throughout the course of the trial and in pre-trial submissions Plaintiffs routinely lumped themselves all together – all as companies controlled by Raymond Novelli.

1 membership (if the RV owner chooses) in Coast’s reciprocal use network. The affiliation
2 of private membership campgrounds in the Coast reciprocal use network then provides to
3 the individual Coast member the opportunity to stay in any of the hundreds of other
4 Coast affiliated campgrounds located throughout the United States, as well as some
5 locations in Canada and Mexico.

6 Following the Plaintiffs’ withdrawal of their campgrounds from the Coast network
7 in August, 1997, Coast sent letters to its members beginning in the fall of 1997 (the
8 “Coast letter”). As discussed more fully herein, Plaintiffs claimed that all the recipients
9 of these letters were also members of Plaintiffs’ campgrounds. Plaintiffs also claimed, by
0 this lawsuit, that Coast’s sending of the Coast letter was wrongful.

1 On the Court’s own motion during trial, issues of liability and damages were
2 bifurcated. Evidence of the amount of damages would be admissible in the second phase
3 of the trial only if liability and causation were found in the first phase. Pursuant to a pre-
4 trial order, issues of punitive damages had previously been bifurcated.

5 **MOTION FOR JUDGMENT**

7 The legal principles applicable to deciding Defendants’ affirmative defense of
8 unclean hands and Plaintiffs’ alter ego claims are governed by California Code of Civil
9 Procedure Section 631.8. Defendants contend, and the Court agrees, that pursuant to
0 section 631.8, the Court may decide some or all of the non-jury issues at the conclusion of
1 Plaintiffs’ case-in-chief. Furthermore, section 631.8 expressly authorizes the Court to
2 weigh the evidence, including credibility of witnesses, when considering a motion for
3 judgment under section 631.8.⁶

4 Applying the law governing motions for judgment to the facts and circumstances of
5 this case, and as of the close of Plaintiffs’ case-in-chief, the Court finds as follows: (1) The

6 The Court is mindful of the rule that it may not consider evidence proffered during Defendants’ case-in-chief, and has not considered any such evidence in ruling on the Motions. The Court notes, however, that the findings made by the Court herein are supported by (and in no respect contradicted by) the evidence offered during the time the Motions were under submission.

1 evidence offered during Plaintiffs’ case-in-chief established Defendants’ affirmative
2 defense of unclean hands; and (2) Plaintiffs failed to sustain their burden of proof on their
3 alter ego claims. Further, the timing of the Court’s granting of the Motions for Judgment
4 was appropriate, in light of the following facts, among others: Plaintiffs took nearly ten
5 weeks to put on their case-in-chief, a period of time that was overly generous for a case of
6 this nature; the duration of Plaintiffs’ case-in-chief even exceeded Plaintiffs’ own pre-trial
7 estimates; Plaintiffs were not limited in their ability to call or recall witnesses (including
8 if they chose Mr. Novelli) to rehabilitate Mr. Novelli’s credibility; Plaintiffs chose to call
9 as witnesses fewer than 25% of the witnesses listed on their witness list; and, Plaintiffs
0 never sought to present additional evidence to rebut evidence received or to rehabilitate
1 the testimony of witness’ whose credibility has been attacked, including after the Court
2 announced its decision. For all these reasons, and based on the evidence presented and
3 considered by the Court, it was appropriate to rule upon the Motion for Judgment on July
4 25, 2000.

5 The Court has taken into consideration, and rejects, Plaintiffs’ argument that it was
6 premature for the Court to grant the Motion for Judgment as respects the alter ego
7 claims because Plaintiffs had not completed presenting their evidence as respects alter
8 ego, or because Plaintiffs had not rested. These arguments ignore the following: (1) At
9 the outset of the trial, the Court had made an in limine ruling that there would not be
0 any bifurcation of alter ego issues from other issues, notwithstanding the fact that alter
1 ego was an issue to be tried to the Court and not the jury; (2) Plaintiffs were given broad
2 latitude in calling witnesses during their case in chief on alter ego issues and never
3 identified any witness whom they desired to call to testify on alter ego issues other than
4 (a) witnesses who in fact testified, or (b) witnesses whose deposition transcripts were
5 provided to and considered by the Court; (3) On July 17, 2000 Plaintiffs’ counsel informed
6 the Court that they were prepared to rest after concluding the examinations of Mr.
7 Ryman and Dr. Bierly (as well as the examination of a witness Plaintiffs’ counsel
8 characterized as a “five minute”, “two question” witness, attorney Marshack, on issues
9 having nothing to do with alter ego), and Plaintiffs later rested; and (4) Plaintiffs’ counsel
0 made various offers of proof as to what Plaintiffs asserted were additional facts the Court
1 should take into

1 consideration in deciding alter ego claims, and none of those offers of proof - taken as true
2 - would prove either the “unity of interest” or the “promoting injustice” prongs of the test
3 for imposing alter ego liability, which tests are discussed below.

4
5 **Summary of Ruling on Motion for Judgment**

6 The Court finds that Raymond Novelli is not a credible witness. As a result, the
7 Court chooses to disregard all of Mr. Novelli’s controverted testimony in ruling on
8 Defendants’ Motion for Judgment. The Court’s conclusion that Mr. Novelli is not a
9 credible witness is supported by substantial and indeed overwhelming evidence, including
0 (1) the numerous and material inconsistencies between Mr. Novelli’s trial testimony and
1 his deposition testimony; (2) the pattern by Mr. Novelli of giving incredible testimony and
2 of engaging in deceptive practices (both personally and on behalf of the Novelli
3 Organization), and (3) Mr. Novelli’s demeanor while testifying at trial. Weighing the
4 evidence before the Court, the inescapable conclusion is that Plaintiffs’ own witnesses
5 have enabled Defendants to meet their burden of proving their
6 affirmative defense of Plaintiffs’ unclean hands, even before Defendants opened their
7 case-in-chief. Further, Plaintiffs fall far short of meeting their burden of proving their
8 alter ego claim against Affinity.

9
0 **Unclean Hands**

1 The doctrine of unclean hands is applied when a plaintiff has engaged in
2 misconduct that relates to the same subject matter as the claims before the court.
3 Unilogic v. Burroughs Corp., 10 Cal. App. 4th 612, 620-21 (1992). The application of the
4 unclean hands defense is not limited to suits in equity, and is applied to defeat actions at
5 law. Blaine v. Doctor’s Co., 222 Cal. App. 3d 1048 (1990). The egregiousness of Plaintiffs’
6 misconduct and the close relationship between that misconduct and Plaintiffs’ claimed
7 injuries impels this Court to apply the unclean hands defense to defeat all of Plaintiffs’
8 claims.

9 Evidence of Plaintiffs’ unclean hands, in transactions that bear a close relationship between
0 Plaintiffs’ own misconduct and Plaintiffs’ claimed injuries - from a transactional

1 standpoint, a subject matter standpoint, and a timeliness standpoint - are found and described below. In
2 undertaking this analysis, the Court emphasizes that this case revolved around Plaintiffs' assertion of
3 damages they suffered following and in response to their disaffiliation from Coast in the summer of
4 1997. Plaintiffs' unclean hands are best evidenced by the unfair business practices surrounding that
5 disaffiliation, all as described further below:

6 Plaintiff Travel America, Inc. ("Travel America") was formed in 1997 by the Novelli
7 Organization and others to take over membership campground servicing for members of (1) All
8 Seasons Resorts ("ASR"), one of the Novelli Organization companies that was not a Plaintiff but was
9 central to the facts that led to this lawsuit; (2) Plaintiff First Nationwide Resort Management
0 ("FNRM"); (3) non-Plaintiff TAI and its subsidiaries, two of which were Plaintiffs in this Action; (4)
1 Plaintiff Adventure Resorts of America, Inc.; and (5) the other Plaintiffs, all companies within the
2 Novelli Organization. While not denominated formally, for all practical purposes Travel America
3 became the flagship of the entire Novelli Organization. The founders of Travel America intended that
4 virtually all of the contractual relationships with RV Owners
5 that had pre-dated Travel America's formation -- whether with TAI or companies within the Novelli
6 Organization -- would be automatically placed or poured into Travel America.

7 The uncontradicted evidence established, however, that the purported transfer of these
8 membership relationships into Travel America, coupled with Travel America's concurrent
9 announcement of a new "exclusive" reciprocal provider relationship with Resort Parks International
0 ("RPI", a competitor of Coast's), was engineered by Plaintiffs and others (1) without regard to the
1 interests of the members themselves; (2) without regard to whether the members in fact wanted or
2 agreed to become members of Travel America, and indeed without prior notice to the members; (3)
3 without regard to whether RV park members who were also Coast members valued their Coast
4 membership and wanted to maintain their Coast membership; (4) without regard to and in derogation of
5 the rights of various bankruptcy estates and their trustees and creditors, all of whom had an interest in
6 membership contracts that Travel America effectively stripped out of bankruptcy estates without
7 compensation to the bankruptcy estates and without advance orders from bankruptcy courts; (5)
8 without regard to either the spirit or effect of

1 various State Attorney General actions that had been taken against TAI; (6) without regard to the rights
2 of secured and unsecured creditors of the Novelli Organization who were owed substantial sums of
3 money -- some of whom even had rights to the membership contracts themselves; and (7) without
4 regard to Coast's interest in maintaining existing and prospective relationships with its own members.

5 The evidence further established, without contradiction, that Plaintiffs attempted to deprive RV
6 Owners of the choice of whether to become part of Travel America by (1) concealing from the
7 predecessors' members the absence of any obligation to pay Travel America; (2) improperly billing
8 members as if there was an existing and enforceable obligation between the member and Travel
9 America (*e.g.*, Ex. 1888); and (3) notifying Travel America's alleged members that their membership
0 contracts were "automatically assumed" by Travel America. As of the time those notifications were
1 sent to members, membership contracts of
2 ASR, FNRM and TAI were the property of their respective bankruptcy estates, and Travel America had
3 neither sought nor received permission from their respective Bankruptcy Courts to substitute itself for
4 the original provider of membership camping services.

5 Moreover, as noted by one of Plaintiffs' witnesses -- FNRM bankruptcy trustee James Joseph --
6 Travel America could not call an individual a "member" unless and until that person manifested his or
7 her consent to become a member of Travel America. Travel America ignored that fundamental precept
8 and simply treated all of those people as its members for the improper purpose of trying to collect from
9 them money to which Travel America had no legal right. The nexus of that misconduct to this lawsuit
0 could not be clearer, because Travel America is relying upon the RV Owners' legitimate decision *not* to
1 succumb to Travel America's improper tactics by not paying Travel America any money -- for
2 whatever reason, and whether or not related to the Coast letter -- as the very basis of its claim that it has
3 been damaged.

4 During the same time period that Coast was allegedly improperly communicating with its own
5 members (who Plaintiffs allege were also members of the Novelli Organization), Plaintiffs engaged in
6 deceptive and misleading communications with those same individuals. Such communications
7 included debt collection activities directed to individuals who were not justly

1 indebted to the Novelli Organization, misinformation provided to individuals about why Travel
2 America was formed and why RPI (but not Coast) was now providing reciprocal network services as an
3 exclusive provider, and misinformation provided to individuals about their membership terms and
4 conditions.

5 Plaintiffs' unclean hands in connection with the formation and operation of Travel America are
6 simply the latest in a series of improper tactics by the Novelli Organization to acquire and retain
7 campground members – many of whom they unjustifiably claim to have lost due to the actions of
8 Coast.⁷ The record is replete with examples of the Novelli Organization's pattern of (1) acquiring
9 membership campgrounds and treating the existing members as if they, too, had been acquired; (2) then
10 attempting to sell services such as so-called upgraded memberships to the recently "acquired"
11 members; (3) on occasion closing many of the campgrounds; (4) transferring the members to other
12 campgrounds, most often without providing the members with advance notice or meaningful options;
13 (5) defaulting on the debt to the campground sellers; and (6) placing the campground purchaser into
14 bankruptcy to avoid the obligations to the sellers, after having stripped the campground of its members.

15 There was substantial evidence that Plaintiffs' disaffiliation from Coast was consistent with and
16 part of Plaintiffs' improper business strategy described above, and that this misconduct encompassed
17 the same subject matter as the claims before the Court. Plaintiffs themselves engaged in unfair
18 competition within the meaning of Business and Professions Code section 17200 et seq. by using the
19 disaffiliation (1) as a vehicle to attempt to disrupt Coast's existing contractual relationships with
20 Coast's members; (2) to preclude Coast from protecting its relationships with Coast's members, by
21 threatening Coast with litigation if Coast did not acquiesce in Plaintiffs' tactics; and (3) to facilitate a
22 resurgence of Plaintiffs' flagging sales of memberships in Presidents' Travel Club ("PTC"), an internal
23 Novelli reciprocal use network (far more expensive and less extensive than a membership in Coast),
24 which the Novelli

⁷ In this regard, the Court finds that there is nothing other than speculation which links the Coast Letter or any other alleged conduct of Coast to any loss of membership claimed by Plaintiffs, whereas there is a mountain of evidence of other causes unrelated to Coast.

1 Organization hoped to sell to the members being “acquired” by Travel America. When Plaintiffs’
2 scheme failed, Plaintiffs then turned to this lawsuit in an improper attempt to derive financial gain from
3 purported losses of alleged members, most of whom had neither an existing relationship with Plaintiffs
4 nor the promise of a future relationship, including the RV Owners allegedly “poured into” Travel
5 America. While the issue of Plaintiffs’ alleged damages was bifurcated from other issues in this case,
6 and while the issue of causation was dealt with in Defendants’ Motion for Nonsuit, it is nonetheless
7 clear to the Court in ruling on Plaintiffs’ unclean hands that the alleged losses Plaintiffs’ claimed were
8 caused by Plaintiffs’ own pattern of misconduct detailed herein, in transactions that bear a close
9 relationship between Plaintiffs’ own misconduct and Plaintiffs’ alleged losses. The maxim that
0 Plaintiffs “have no one to blame but themselves”, is particularly apt in describing both Plaintiffs’
1 unclean hands as well as the consequences of those unclean hands.

2 All of the above activities by Plaintiffs, along with other misconduct by Plaintiffs identified
3 during Plaintiffs’ case-in-chief, operate to estop Plaintiffs from asserting claims against Coast related to
4 the failure of Plaintiffs’ alleged members to make payments to Plaintiffs. Such actions by Plaintiffs
5 also illustrate the pattern of conduct leading the Court to conclude that Plaintiffs come before this Court
6 with unclean hands.

7 Plaintiffs’ unclean hands are also evidenced by Plaintiffs’ repeated failure to comply with their
8 obligation to disclose this lawsuit to Plaintiffs’ creditors and other courts, including the United States
9 Bankruptcy Courts in the bankruptcies of Plaintiffs Apollo Group, Inc., Thousand Adventures of Ohio,
0 Inc., and Thousand Adventures of Alabama, Inc. By not disclosing this lawsuit as required, those
1 Plaintiffs engaged in affirmative misrepresentations to the courts supervising their bankruptcies (which
2 the Court finds to have been for the improper purpose of taking an estate asset without payment to the
3 estate or its creditors). Those Plaintiffs also took positions in their bankruptcy cases diametrically
4 inconsistent with those asserted before this Court, namely that Plaintiffs’ financial failure is somehow
5 causally linked to Defendants’ actions. To the contrary, when asked to explain the reasons for financial
6 failure in the above-referenced bankruptcies, neither the facts giving rise to this litigation nor any
7 conduct of

1 Defendants were cited.

2 The lack of bona fides of the various Plaintiff entities, and the sham nature of the Plaintiffs, is
3 another factor that the Court takes into account in finding that Plaintiffs' claims fail because of their
4 unclean hands. The import of this finding bears emphasis in light of Plaintiffs' argument that each
5 Plaintiff needs to be dealt with separately, for purposes of an unclean hands analysis as well as for other
6 purposes. The Court reaches this conclusion based on the following findings:

7 Without undertaking a Plaintiff-by-Plaintiff analysis, there is substantial evidence supporting the
8 conclusion that some of the named Plaintiffs have no purpose other than to have been named as
9 Plaintiffs in this action. For example, the evidence showed that for a period of years Plaintiff
0 Adventure Resorts of America, Inc. was not even validly authorized to conduct business in the State of
1 Florida (the only state where it had ever conducted business) until the eve of trial in this case, in
2 December, 1999, when altered, forged or unauthorized documents were presented to Florida State
3 authorities. FNRM and Thousand Adventures, Inc. Alabama were, by Mr. Novelli's own admission,
4 not even engaged in any business enterprise other than to serve as vehicles for this lawsuit.

5 The evidence showed that while Travel America (as contrasted with other named Plaintiffs) was
6 at least an operating entity at the time the complaint was filed, Travel America's presence as a Plaintiff
7 asserting contract breach claims was premised on its improper and unjustified effort to step into the
8 shoes of other entities within the Novelli Organization that had contracted with Coast (such as All
9 Seasons Resorts), in violation of anti-assignment clauses. In so doing, Travel America trampled on
0 Coast's right to choose whom it wished to contract with, and this misconduct further evidences
1 Plaintiffs' unclean hands in both purporting to transfer the benefits under contracts, and in purporting to
2 receive such benefits.

3 The evidence further proved that Mr. Novelli moved individuals into and out of official
4 capacities of these Plaintiffs on a recurrent basis without any legitimate business purpose, that Mr.
5 Novelli has repeatedly and excessively misused the bankruptcy laws and the judicial system to frustrate
6 creditors, business partners, and the Government (such as by regularly failing to

1 deposit payroll taxes withheld from employees' paychecks), that the Novelli Organization has
2 repeatedly ignored its responsibilities to federal and local taxing authorities through the use of these
3 various Plaintiff entities and other entities within the Novelli Organization, that the record keeping and
4 books and records within the Novelli Organization were unreliable (with unexplained instances of one
5 entity controlled by Mr. Novelli paying the debts of another named entity), and that for all practical and
6 legal purposes the conduct of one entity within the Novelli Organization (and among the Plaintiffs
7 themselves) should be charged to all others, and specifically to Mr. Novelli, as well. Other than the
8 formalistic recitation in pleadings of various separate Plaintiff entities, neither Plaintiffs nor their
9 counsel ever supplied evidence showing actual separateness among the different Plaintiff entities, or the
0 reason for the jumble of different Plaintiffs, or their separate business purposes, functions or existence.
1 Particularly because this trial progressed for as long as it did with Plaintiff and their counsel making
2 such a jumble of the different named Plaintiff entities, the Court finds it disingenuous for Plaintiffs to
3 now claim that there is a reason or necessity for either Defendants or the Court to treat the Plaintiffs as
4 separate entities. For these reasons, therefore, the Court finds that the sham nature of all these Plaintiff
5 entities goes to the core of the transactions on which Plaintiffs predicate their claims in this action and
6 further establishes Plaintiffs' unclean hands.

7 In finding that there was a close relationship - a nexus - between Plaintiffs'
8 misconduct and Plaintiffs' claimed injuries, the Court is mindful of Plaintiffs' counsel's
9 opening statement, which demonstrates why and how Plaintiffs' clean, or unclean, hands
0 are relevant to the disposition of these claims.⁸ For example, the plain meaning of
1 Plaintiffs' opening statement reveals that Plaintiffs voluntarily chose to take the
2 following positions and make the following offers of proof:
3

⁸ In summarizing portions of Plaintiffs' counsel's opening statement, the Court is mindful that an opening statement is not evidence. That being said, the Court does not refer to counsel's opening statement as evidence of the truth of the assertions therein. Quite the contrary, it merely defines Plaintiffs' theory of the case and Plaintiffs have not directed the Court to any rule of law to the effect that the opening statement cannot be referenced for that limited purpose. Taken at their word, Plaintiffs' theory of their case, as espoused in Plaintiffs' counsel's opening statement, reinforced the conclusion that the issue of clean hands was to be decided during this trial.

1 1. That over the years, the Novelli Organization spent millions of dollars honestly building a
2 business and developing or acquiring valuable membership contracts with RV Owners;

3
4 2. That over the years, the Novelli Organization has dealt with and treated members of its
5 various campgrounds as “family,” to such a level of respect and trust that the head of the Novelli
6 Organization - Mr. Novelli - has earned and deserves the moniker of “Good Times Ray”;

7
8 3. That over the years, the Novelli Organization entrusted their members - their “family” -
9 to Defendants for limited purposes, for safekeeping;

0
1 4. That Defendants’ allegedly wrongful actions included taking the Novelli Organization
2 “family” members against their will and through the use of deception, and were tantamount to telling
3 members of the Novelli Organization “family” that their “parents were dead”;

4
5 5. That the Novelli Organization’s numerous bankruptcy filings over the years were
6 designed primarily to reorganize financially troubled businesses, to pay creditors, and to “save”
7 members’ valuable contracts and investments;

8
9 6. That Mr. Novelli’s personal experiences in these bankruptcies have earned him the
0 designation of a bankruptcy work-out specialist, such that he is known in the campground industry as
1 someone who can be entrusted to successfully save businesses, pay the legitimate debts of a troubled
2 business and protect members’ contracts and investments;

3
4 7. That the Novelli Organization’s numerous bankruptcies and litigation over the years
5 resulted from Mr. Novelli’s interest in “saving” members’ contracts and investments, for the benefit of
6 members;

1 8. That over the years the Novelli Organization bucked industry trends, and honestly grew
2 its business;

3
4 9. That the Novelli Organization’s interest in participating in transactions in 1997 with
5 Thousand Adventures, Inc. (“TAI”) was motivated by Mr. Novelli’s desire to “save” TAI members’
6 contracts and investments;

7
8 10. That over the years, Plaintiffs played by the rules and conducted their business in a legal,
9 moral, ethical, scrupulous and trusting fashion, while Defendants did not;

0
1 11. That Defendants are part of a group that exists in part to destroy weaker businesses,
2 which is what Defendants attempted to do to Plaintiffs;

3
4 In short, Plaintiffs chose to place their business ethics and business practices in issue, claimed
5 that they held the moral, as well as the legal, high ground with respect to their business dealings within
6 the industry, with their members, and especially in contrast to Coast, and further claimed that Plaintiffs’
7 business ethics and practices were relevant to a determination of the issues in this case. While as a
8 general principle the Court agrees that a determination that Plaintiffs come into Court with unclean
9 hands would not necessarily turn on whether (1) Plaintiffs dealt honestly or dishonestly within the
0 industry, or with their members, or (2) Plaintiffs’ prior alleged misconduct *indirectly* affected the
1 claims that Plaintiffs were asserting against Coast, or (3) there was a general lack, or conversely a
2 presence, of morals within the Novelli Organization or Mr. Novelli himself, Plaintiffs obviously
3 believed that such issues were relevant to the determination of the issues in this case, given their entire
4 framing of the issues for the Court and jury. Plaintiffs’ claim of “clean hands”, therefore, precludes
5 Plaintiffs from now asserting that this issue is irrelevant.

6 The evidence adduced through Plaintiffs’ case-in-chief shows overwhelmingly, however, that
7 contrary to their own assertions, Plaintiffs come into Court with unclean hands. The Court

1 finds that each of those eleven assertions in opening statement was false, with the facts in each instance
2 completely different than as represented in Plaintiffs' opening statement.⁹ Not only does the Court
3 conclude that the falsity is relevant, but Plaintiffs' opening statement also acknowledges that nexus.

4 Plaintiffs argue that a determination of Plaintiffs' unclean hands must take into consideration the
5 alleged misconduct of Coast and Affinity, and further the Court must balance the equities between
6 Plaintiffs and Defendants. Without acknowledging that those findings are required for purposes of
7 deciding that Plaintiffs should take nothing because of their unclean hands, the Court does find that the
8 equitable relations between Plaintiffs and Defendants are such that Defendants did not engage in any
9 wrongdoing as alleged by Plaintiffs. Specifically, there was no evidence of any conduct by Coast
10 having a purpose other than the preservation of Coast's existing contractual relationships with its
11 members. To the extent that the Court is required to rule on this issue, the Court finds that there is no
12 substantial evidence either (1) that Defendants made any untrue statements, or (2) that Coast's conduct
13 was anything other than a lawful and justifiable effort to mitigate the potential adverse impact of
14 Plaintiffs' sharp practices.

5 **Alter Ego**

7 Plaintiffs allege that Affinity and Coast were "sham corporations", that those two Defendants, as
8 "sham corporations", were utilized to commit the allegedly wrongful acts sued upon, and that Affinity
9 and Coast had their assets commingled for the purpose of defrauding the Plaintiffs. (Amended
10 Complaint paragraph 6). For these and other reasons, Plaintiffs contend that Affinity should be liable
11 for Coast's wrongful conduct as the alter ego of Coast.

2 The alter ego doctrine permits the Court to "pierce the corporate veil" where both: (1) there is
3 such a unity of interest and ownership between the corporation and the individual

9 Plaintiffs argue that the doctrine of unclean hands only applies where the alleged misconduct violates conscience, good faith or other equitable principles, or where the alleged misconduct infects the causes of action before the Court. While not agreeing that those are the exclusive tests for determining unclean hands, for the reasons discussed in the main text, those standards have also been met in this case.

1 or organization controlling it that their separate personalities no longer exist, and (2) a failure to
2 disregard the corporate entity would sanction a fraud or promote injustice.” Robbins v. Blecher, 52
3 Cal. App. 4th 886, 892 (1997). The fraud or injustice must be something other than an inability to
4 collect from a corporate defendant:

5 Certainly it is not sufficient to merely show that a creditor will remain unsatisfied if the
6 corporate veil is not pierced, and then set up such an unhappy circumstance as proof of
7 an “inequitable result.” In almost every instance where a plaintiff has attempted to
8 invoke the doctrine he is an unsatisfied creditor. Associated Vendors v. Oakland Meat
9 Co., 210 Cal. App. 2d 825, 842 (1962).

0 Rather, there must be some misconduct in the use of the corporate form that makes it unfair in that
1 particular case to shield the shareholders or parent from liability. United States Fire Ins. Co. v.
2 National Union Fire. Ins. Co. of Pittsburgh, Pa., 107 Cal. App. 3d 456, 469 (1980). California case law
3 identifies a multitude of factors which bear upon whether alter ego liability should be found. See, e.g.,
4 Associated Vendors, 210 Cal. App. 2d at 838-40 (listing factors).

5 Plaintiffs have failed to establish facts sufficient to satisfy either of the prongs of the Robbins
6 test. The fact that Affinity owns all the outstanding stock of Coast is insufficient, because that would
7 make every parent the alter ego of its wholly owned subsidiary, but that is virtually all that Plaintiffs
8 have shown. The evidence established that Coast has its own management team. In 1997, when the
9 Coast letters were initiated, Roger Ryman was President, and Affinity had no involvement in the
0 decision to send the letters. Plaintiffs’ efforts to show that certain employees of Affinity assisted Coast
1 employees in certain administrative tasks, or that computer databases containing names of Coast
2 members were stored on Affinity-owned equipment, is insufficient to establish either prong of alter ego
3 liability. Moreover, Mr. Novelli admitted that he never dealt with Affinity, and he never entered into
4 any agreements with Affinity.

5 In addition to Plaintiffs’ failure to meet their burden of proof of establishing an inappropriate
6 unity of interest between Affinity and Coast, Plaintiffs produced no evidence tending to prove that a
7 failure to disregard the corporate form would create a fraud or injustice. As noted earlier, the Court’s
8 duty in deciding claims of alter ego is to determine whether it would be unfair in that particular case to
9 shield the shareholders or parent from liability. In reaching its

1 decision that Plaintiffs have failed to sustain their burden of proving the fraud or injustice prong of the
2 alter ego claims, the Court finds that the only fraud or injustice presented by this case would have been
3 the injustice of permitting Plaintiffs to continue the prosecution of these claims against Affinity. This
4 finding is supported by all of the same findings that support the Court's determination that Plaintiffs
5 come into this Court with unclean hands.

6 As noted earlier, Plaintiffs made various offers of proof in opposition to the Motion for Judgment
7 of alter ego claims (and sought the admission of various publicly filed documents such as SEC filings),
8 which, even true, would not defeat the Motion for Judgment. Among other things, there is no evidence
9 that any of the conduct alleged in the offers of proof operated to Plaintiffs' detriment. These offers of
0 proof may be summarized as follows, with the Court's finding following after the hyphen "--":

1 1. That there was cross collateralization among Affinity, its affiliated companies, and Coast, and
2 Coast has even guaranteed certain loans to Affinity - The existence of cross collateralization and cross-
3 guarantees is a rather unremarkable assertion, and indeed a fact that is commonplace in American
4 business; this assertion meets neither prong;

5 2. Because Coast's financial statements are consolidated for financial reporting purposes with
6 other companies affiliated with Affinity, that somehow that demonstrates that Coast's value has been
7 stripped away - Again, consolidated financial statements of affiliated companies is rather commonplace
8 among American businesses; this assertion meets neither prong;

9 3. Affinity has taken all the profits from Coast, thereby also demonstrating that Coast's value has
0 been stripped away - The fact that Coast has been in business since 1971, is (even by Plaintiffs' own
1 admission) one of the best known names in the membership campground industry, and pays its bills
2 does not make its sole shareholder (Affinity) engaged in misconduct by receiving the benefit of all of
3 Coast's profits; this assertion meets neither prong;

4 4. There have been references to Coast as an operating division of Affinity, and some

1 employees of Affinity have some involvement in Coast's business operations - What Coast and Affinity
2 choose to do and say internally, without more, meets neither prong;

3
4 Accordingly, Defendants' Motion for Judgment on the alter ego claims is granted.¹⁰

5 **MOTION FOR NONSUIT**

6 Preliminarily, the Court observes that a Statement of Decision is not required for orders granting
7 nonsuits, because the grounds for granting a nonsuit are limited to those set forth in the motion. John
8 Norton Farms, Inc. v. Todagco, 124 Cal. App. 3d 149, 163 (1981). Although a detailed discussion is
9 not required, the Court believes that setting forth its analysis of the causation issue, which is
10 determinative of all of Plaintiffs' causes of action, may be useful if an appeal is filed. No such detail is
11 necessary with respect to the other claimed defects in Plaintiffs' proof of their specific causes of action,
12 other than to put the Court's decision in context. The Motions were argued on the afternoon of July 24,
13 2000 and the morning of July 25, 2000. During the argument on July 24, the Court stated its intention
14 to grant the Motion for Nonsuit with respect to Plaintiffs' cause of action for fraud, and did so upon the
15 grounds and for the reasons set forth in Defendants' moving papers. The Court also granted Affinity's
16 Motion for Judgment on Plaintiffs' alter ego claims. When the hearing resumed on July 25, the Court
17 directed the focus of argument to the issues of causation and unclean hands because those issues were
18 the only issues which cut across all of Plaintiffs' claims and thus are determinative of the entire action.
19 As a result of the Court's decision to grant the Motions as to unclean hands and

20 ¹⁰ Plaintiffs' argument that Affinity is liable under a theory of respondeat superior is similarly
21 rejected. Plaintiffs failed to offer any evidence that Coast was the appointed agent of Affinity for the
22 purpose of sending letters to Coast's members. Moreover, there is no evidence to support a reasonable
23 inference of agency from the facts of this case. Plaintiffs offered no evidence to support the claim that
24 Affinity was aware that Coast was sending letters in the Fall of 1997, and there is no evidence that
25 Affinity participated in any decisions related to the sending of those letters. There simply is no
26 evidence that Coast was acting -- either actually or ostensibly -- on Affinity's behalf in engaging in any
27 of the action relevant in this suit. In addition, the fact that Plaintiffs' claims against Coast cannot
28 survive a motion for nonsuit also precludes a claim against Affinity, however denominated, based on
29 Coast's conduct.

1 causation, it has become unnecessary for the Court to consider the other grounds for nonsuit asserted by
2 Defendants.¹¹ The Court notes, however, that had it been necessary to rule upon the Motion for
3 Nonsuit as to the various causes of action other than the cause of action for fraud, the Court believes
4 that the Motion for Nonsuit was well taken in its entirety, and the Court would have granted the Motion
5 on all grounds asserted by Defendants for the reasons set forth in their moving papers.

7 **The Legal Standard**

8 For the reasons set forth below, the Court determines that Plaintiffs have failed to prove
9 causation, an element of their *prima facie* case for each cause of action for damages, and the Court
10 therefore grants Defendants' Motion for Nonsuit. In making this determination, the Court has taken as
11 established all facts determined by the Court in ruling on Defendants' related Motion for Judgment,
12 because any factual determinations made by the Court in connection with matters tried to the Court are
13 binding on the jury and thus on the Court as well for purposes of the Motion for Nonsuit. Dills v.
14 Delira Corp., 145 Cal. App. 3d 124m 129 (1956); Raedeke v. Gibraltar Savings & Loan Association, 10
15 Cal. 3d 665, 671 (1974) ("in a case involving both legal and equitable issues the trial court may proceed
16 to try the equitable issues first [and] if the court's determination of these issues is also dispositive of the
17 legal issues, nothing further remains to be tried by a jury").

18 In ruling on Defendants' Motion for Nonsuit, and except with respect to facts determined by the
19 Court on Defendants' Motion for Judgment,¹² the Court has disregarded all conflicting evidence, and
20 has given Plaintiffs' evidence all the value to which it is legally entitled, including every reasonable
21 inference therefrom that may be drawn in Plaintiffs' favor. Carson v. Facilities Development Corp., 36
22 Cal. 3d 830, 839 (1984). Viewing the evidence most favorably to

11 Contrary to Plaintiffs' assertion, under CCP section 631.8(b) the Court is not precluded from simultaneously considering a Motion for Judgment and a Motion for Nonsuit.

12 Even if the Court were to ignore all of the factual determinations it has made on the Motion for Judgment, Plaintiffs have still failed to introduce substantial evidence sufficient to defeat the Motions for Nonsuit.

1 Plaintiffs, Plaintiffs failed to adduce substantial evidence that any conduct of Defendants caused the
2 damages or losses claimed by Plaintiffs.

3 **Summary of Causation Ruling**

4 Causation is central to all of Plaintiffs' claims. At the time this case was bifurcated, the Court
5 determined that liability and causation were to be dealt with in the first phase of this bifurcated trial. In
6 order to defeat Defendants' Motion for Nonsuit, Plaintiffs must provide substantial evidence that Coast
7 caused Plaintiffs' losses, regardless of whether the applicable standard is "but for" causation as
8 Defendants contend, or "substantial factor" causation as Plaintiffs contend. Plaintiffs have not
9 proffered substantial evidence of causation under either standard.

1 Plaintiffs did not provide evidence that Coast caused Plaintiffs' losses, only speculation. While
2 precision is not required in determining the exact *amount* of damage (and indeed damages proof was
3 not required in the first phase of this bifurcated trial), no such indulgence exists as to whether
4 Defendants *caused* damage, a fact which must be clearly established.¹³ Not only did Plaintiffs fail to
5 provide such evidence linking Defendants' alleged conduct to Plaintiffs' alleged damages, there is
6 uncontroverted evidence of numerous acts and events unrelated to Defendants' actions, causing
7 Plaintiffs' claimed loss of members and loss of dues payments. These other, unrelated causes include:
8 (1) the deteriorating condition of the Novelli Organization beginning long prior to any purported
9 wrongful actions by Defendants; (2) the closure of many of the Plaintiffs' parks and ensuing
0 involuntary member transfers; (3) the numerous bankruptcies of Plaintiffs and their predecessors; (4)
1 the receivership over ASR imposed by the United States District Court in Arizona; (5) the letter to ASR
2 members from Charles Daff (the trustee in ASR's final bankruptcy), advising thousands of ASR
3 members of the impending termination of their memberships and closure of ASR parks; (6) the
4 attempted unilateral transfer of ASR, FNRM and

¹³ Thus, for example, Plaintiffs' interference claims required that they provide evidence of each relationship with which Coast interfered, including evidence that Coast's conduct caused the disruption. Plaintiffs did not produce any evidence of even one interference by Coast with one contract between Plaintiffs and one of their alleged members.

1 TAI members to Travel America; (7) the poor reputation of the entire Novelli Organization and the
2 TAI organization; and, perhaps most importantly, (8) Plaintiffs’ decision to withdraw their parks from
3 the Coast reciprocal use network. Having acknowledged that there were numerous other reasons why
4 Plaintiffs lost members and income, Plaintiffs offered nothing other than suspicion and speculation to
5 support their contention that Defendants’ conduct caused Plaintiffs’ alleged damages, regardless of
6 whether a “but for” or “substantial factor” test is employed.

7 Plaintiffs relied on the testimony of five witnesses to attempt to establish causation: Raymond
8 Novelli, Robert Mitchell, T. Edward Malpass, James Randall and Roger Ryman. None of this
9 testimony (and nothing else in the record regardless of whether cited to the Court in connection with
0 argument on the Motions) is sufficient to defeat Defendants’ Motion for Nonsuit.

1 Before reviewing the testimony of these five witnesses, it should be noted that Plaintiffs have
2 repeatedly asked the Court to infer causation from the alleged wrongful conduct and damage. Plaintiffs
3 have urged the Court to accept the proposition that proof of damages is the equivalent of proof of
4 causation of those alleged damages. Even assuming Plaintiffs proved a *prima facie* case of wrongful
5 conduct and damage, the requested inference would be speculative and not supported by any evidence,
6 and the Court declines to engage in such bootstrapping. Plaintiffs’ argument ultimately comes down to
7 conjecture: Plaintiffs say that the Novelli Organization survived over many years notwithstanding
8 repeated involvement in bankruptcies and lawsuits, and the resulting financial and operational
9 misfortunes. Plaintiffs argue that because Plaintiffs endured for years in the face of such obstacles,
0 their alleged inability to survive on this occasion must be because of the timing and content of the
1 Coast Letters, the proverbial “straw that broke the camel’s back.”

2 Plaintiffs’ argument proves both too much and too little. The argument proves too much in that
3 the Court agrees that there is substantial, uncontroverted evidence that the Novelli Organization was
4 repeatedly involved in bankruptcies and lawsuits over the years, that the Plaintiffs’ financial condition
5 was desperate (as distinct from Mr. Novelli himself or other entities which may have for a time made
6 up parts of the Novelli Organization), and that the

1 operations of the Novelli Organization and the campgrounds themselves were chaotic. However,
2 Plaintiffs' efforts to find a "silver lining" in other causes of member losses does not support an
3 inference that the Coast letters caused Plaintiffs' claimed damages. Plaintiffs' argument proves too
4 little because it offers nothing other than rank speculation, and is therefore disingenuous.
5 Consequently, the Court concludes that it would be unreasonable to draw the requested inference, and
6 declines to do so.

7 8 Mr. Novelli's Testimony

9 Plaintiffs cited the following portions of Mr. Novelli's testimony as proof of causation: (1)
10 although sales of new memberships decreased in the mid-1990's, sales declined sharply in the years
11 following Coast's sending of its letter; (2) Mr. Novelli relied upon the terms of Plaintiffs' contracts
12 with Coast; (3) members of TAI were "deeded" to Travel America; (4) Mr. Novelli has personal
13 knowledge that 65% of the 34,000 members who received letters from Coast stopped paying dues, and
14 this resulted in Plaintiffs losing both income and resorts.

15 Even assuming that Mr. Novelli's statements are true, these statements do not provide substantial
16 evidence that Coast caused Plaintiffs' losses -- for the following reasons:

17 First, Mr. Novelli's assertion that sales decreased dramatically following Coast's letter is
18 insufficient to prove causation. Although the record contains ample evidence that Plaintiffs' sales
19 decreased, there is no evidence to tie this decrease to Coast. In fact, the record reflects that sales had
20 almost ceased prior to the Coast letter. The record also contains ample evidence of factors having
21 nothing to do with Coast's actions that are likely to have caused the declines prior to the time the Coast
22 letters were sent. Additionally, Mr. Novelli himself negated the requested inference when he testified
23 that the entire industry, not just the Plaintiffs, had been experiencing downward trends in sales.

24 Second, Plaintiffs' claimed reliance on the terms of an alleged oral contract, whether or not true,
25 does not establish causation; at most, it may establish certain aspects of reliance, a completely different
26 element of Plaintiffs' claims.

27 Third, the claim that TAI may have "deeded" members to Travel America does not have

1 anything to do with whether Coast caused damage to Plaintiffs.

2 Finally, Mr. Novelli's assertion that 65% of all recipients of Coast's letter stopped paying
3 Plaintiffs because of the letters is conclusory, conjectural and speculative. The uncontradicted evidence
4 is that about 34,000 letters were sent by Coast, and that sometime later about 22,000, or about 65%, of
5 the recipients remained Coast members. This evidence lacks a causal link to any losses claimed by
6 Plaintiffs. As Mr. Novelli himself admitted, there is nothing in *Coast's* records that even provides data
7 on whether or not Plaintiffs' alleged members continued paying Plaintiffs. In short, there is no
8 evidence in the record to support Mr. Novelli's assertion that these 22,000 people -- *or anyone at all* --
9 stopped paying Plaintiffs because of any improper actions by Coast.¹⁴ All that this testimony
0 establishes is that 65% of Coast's members who received the Coast letter (whom Plaintiffs also claim
1 as members) stayed with Coast as of some later date; it does not establish either that Plaintiffs sustained
2 losses (a conclusion which does not necessarily follow), or that Coast caused the losses.

3 Mr. Mitchell's Testimony

4 Plaintiffs tendered Mr. Mitchell as an expert on the membership campground industry. Plaintiffs
5 cited the following portions of Mr. Mitchell's testimony as proof of causation: (1) the conclusory and
6 unsupported claim that the actions and conduct of the Defendants caused damage to the Plaintiffs; (2) a
7 Coast document showed that Coast sent letters to 34,000 of its members who were also Plaintiffs'
8 members, and that later-prepared Coast internal records allegedly showed that 23,000 of those 34,000
9 individuals showed changed resort relationships (i.e., their Coast home resort of record was no longer
0 shown as one of Plaintiffs' campgrounds, but rather a different Coast-affiliated campground); (3)
1 Coast's process of transferring members in this instance was different than in previous instances,
2 violated the contract, and was in Coast's self-

14 Indeed, Mr. Novelli acknowledged that the Novelli Organization's records were so disorganized and incomplete that one could not determine from Plaintiffs' records how many members actually stopped paying dues, when they stopped paying, or why they stopped paying. Without such evidence, Plaintiffs are unable even to prove that the timing of their alleged loss of members coincides with the Coast letters, much less that the letters were the cause of those losses.

1 interest; (4) the Coast letter was inaccurate; (5) memberships are treated with confidentiality, it is the
2 custom and practice in the industry to keep membership lists confidential, and Mr. Mitchell spoke with
3 employees of Coast about the confidentiality of membership lists.

4 Again, even assuming that Mr. Mitchell's statements are true, these statements do not provide
5 substantial evidence that Coast caused Plaintiffs' claimed losses.

6 First, Mr. Mitchell's assertion that Coast caused Plaintiffs damages is conclusory, conjectural
7 and speculative. Mr. Mitchell provided no testimony, and there is nothing in the record, to link Coast's
8 actions with Plaintiffs' claimed damages. As Mr. Mitchell repeatedly admitted, his first-hand
9 involvement with Plaintiffs had ceased prior to the Coast letter in the
10 fall of 1997. His efforts as an expert witness to find and opine on the presence of causation without any
11 factual basis for doing so highlight the legal inadequacy of his testimony as proof of causation.

12 Second, the fact that the Coast home resort of record was changed by Coast for 34,000
13 individuals, and that some time later Coast's own internal records showed that of those 34,000 record
14 changes, a material number of those individuals had continued on as members of Coast, is not evidence
15 that Coast caused members of Plaintiffs to quit Plaintiffs' membership campgrounds or not make
16 payments to Plaintiffs. Neither Mr. Mitchell, nor any other witness called by Plaintiffs, nor any
17 document moved into evidence, provided admissible, competent evidence that any particular member
18 actually stopped paying Plaintiffs or quit Plaintiffs as a member as a result of Coast's letters to Coast's
19 members in the fall of 1997 or any other actions of Coast.

20 Third, Mr. Mitchell's assertions with respect to Coast's process of transferring members
21 concerns conduct, not the effect or consequence of that conduct. Coast's transfer of the Coast home
22 resort of a Coast member, and its process of doing so, whether wrongful or proper, does not provide
23 evidence of causation.

24 Similarly, whether the Coast letter was accurate or inaccurate, or truthful or untruthful does not
25 provide any proof of causation. It arguably might constitute wrongful conduct, but misconduct and
26 causation are separate elements of Plaintiffs' *prima facie* case.

1 Finally, Mr. Mitchell's statements about the confidentiality of membership lists is insufficient
2 evidence to defeat a Motion for Nonsuit. Again, these statements bear on Coast's conduct, rather than
3 causation-- they are missing the crucial link between wrongful conduct and damages.
4

5 Mr. Malpass' Testimony

6 Plaintiffs tendered Mr. Malpass, an attorney who had represented various entities within the
7 Novelli Organization in bankruptcy cases, as an expert witness in bankruptcy law. Plaintiffs cited the
8 following testimony by Mr. Malpass' as purported proof of causation: (1) the bankruptcy automatic
9 stays that were in place in the ASR, FNRM, Revcon Motorcoach, Inc., and TAI bankruptcies protected
0 the membership contracts, were in place when the Coast letter was sent, and were violated by Coast;
1 and (2) the bankruptcy automatic stays were designed to protect the assets of the debtor estates in
2 bankruptcy. These statements by Mr. Malpass are not sufficient to defeat Defendants' Motion for
3 Nonsuit. If correct, Mr. Malpass's testimony could prove that Defendants' conduct was wrongful. But
4 testimony of wrongful conduct does not prove causation.
5

6 Mr. Randall's Testimony

7 _____Mr. Randall is the director of Coast's operations. Plaintiffs cited Mr. Randall's testimony as
8 proof of causation, i.e., if 34,000 members quit Plaintiffs' membership campgrounds, then there is the
9 potential for damage to occur.

0 Like the other testimony on which Plaintiffs rely, this statement by Mr. Randall is not substantial
1 evidence that Coast caused any damages to the Plaintiffs. In fact, it does not provide any evidence that
2 Coast caused any damages to the Plaintiffs. This is a speculative statement made by Mr. Randall in
3 response to a line of questioning that was properly objected to as constituting an incomplete
4 hypothetical, and a question that called for speculation. Even if Mr. Randall's statement was not
5 speculative, there is simply no evidence of a causal link. Losing members may cause the Plaintiffs
6 financial loss, but that does not prove that any conduct of

1 Coast caused that loss.

2
3 Mr. Ryman's Testimony

4 Mr. Ryman was the president of Coast during the period 1993 through 1997. Plaintiffs argue
5 that because Mr. Ryman: (1) when asked if any recipient of the Coast letter *might* believe that his or her
6 membership in a Plaintiff campground had been transferred to another campground, testified that
7 “thousands believed it;” and (2) in the same line of questioning responded that the members were told
8 that their “Coast designation had been moved” (RT, 6/1 pp. 2541-2542), that this exchange establishes
9 the *prima facie* element of causation. Again, Plaintiffs attempt to show causation through conclusory,
0 conjectural and speculative testimony. Here, even viewing the testimony most favorably to Plaintiffs, it
1 is apparent that Mr. Ryman was addressing Coast’s efforts to clearly communicate to Coast’s
2 “thousands” of members that “their Coast designation had been moved.” That passage proves nothing
3 as respects causation.

4 Plaintiffs are entitled to the benefit of *reasonable* inferences, not speculative ones. Indeed, not a
5 single member witness testified that he or she stopped paying Plaintiffs because of anything having to
6 do with the Coast letters. The only member witnesses for Plaintiffs were four individuals who
7 remained members of Plaintiffs despite the Coast letters. Given that these members all continued
8 making payments to Plaintiffs, all that Plaintiffs proved through these witnesses was the *absence* of any
9 losses caused by Coast.

0 Likewise, Plaintiffs introduced into evidence several letters written by Plaintiffs' members to
1 support their theory that Coast's letters caused Plaintiffs losses. Although the letters seem to indicate
2 that the particular member was not interested in accepting Coast's offer to maintain his or her Coast
3 membership, the letters from members give no indication of whether the author stopped or continued
4 paying dues at any time. In fact, at least one of the letters refers to a check for dues that was sent with
5 the letter, demonstrating that there was no loss as to that member. (RT 6/22, 4507:10 - 4508:12; Exh.
6 1618, Bates No. 84487.)

7 Plaintiffs also attempted to prove causation through the proffered testimony of (1) expert witness
8 Calvin Bierly, an individual who supposedly reviewed certain records produced by the

1 Plaintiffs and by the Defendants, as well as (2) Leo Novelli, the son of Raymond Novelli and an alleged
2 custodian of records of Plaintiffs, who allegedly had knowledge of purported membership and payment
3 records. An Evidence Code section 802 examination of Dr. Bierly and an Evidence Code section 402
4 examination of Leo Novelli outside of the presence of the jury revealed that neither Dr. Bierly nor Leo
5 Novelli had a proper foundational basis to testify on the issue of causation. As such, the Court
6 precluded them from testifying during the liability and causation phase of the trial.

7 In the case of Dr. Bierly, it was established that: (1) he had not been asked to form opinions
8 concerning causation as of the time of his deposition; (2) he had, to the contrary, *assumed* the existence
9 of causation in reaching conclusions on damages; and (3) any so-called scientific opinions he sought to
0 offer concerning causation were improper as he had neither conducted a survey nor taken any other
1 steps to eliminate the numerous other causative factors as the reasons for the observed losses.

2 In the case of Leo Novelli, it was established that: (1) he lacked personal knowledge of the
3 reliability and accuracy of the database Plaintiffs were seeking to move into evidence; (2) contrary to
4 representations by Plaintiffs' counsel, he was not a qualified custodian of records of Plaintiffs' data; (3)
5 Plaintiffs were unable to offer any assurances as to the reliability and credibility of their data; and (4)
6 his testimony was unrelated to causation.

7 In sum, the record does not contain sufficient evidence of causation to defeat Defendants'
8 Motion for Nonsuit. All of the testimony proffered by Plaintiffs fails the "substantial evidence" test, as
9 does the rest of the evidence on the record.¹⁵ Notably, the record

¹⁵ Throughout the course of the trial up through the time that Plaintiffs filed objections to the Court's proposed Statement of Decision, Plaintiffs made a variety of offers of proof - some offers of proof made timely, and others not made timely. Giving Plaintiffs every benefit of the doubt (and accepting every offer of proof as true), none of the offers bear upon the issue of lack of causation. For example, Plaintiffs have argued that testimony of Messrs. Dawson, Ryman and Adams should have been admitted to prove that in 1988 a system of resorts unrelated to Plaintiffs withdrew from the Coast system (the so-called NACO chain), and that Coast treated its members who were also members of the NACO resorts different than the way Coast treated its members in 1997 who were also members of Plaintiffs' resorts. Despite inquiry by the Court on this issue, Plaintiffs have never offered any cogent explanation as to why or how that alleged activity engaged in between Coast and a third party in 1988 *caused* Plaintiffs' losses nine years later. These offers of proof fail the substantial evidence test.

1 is devoid of (1) testimony from a single former member that he or she received the Coast letter and
2 stopped paying because of some action by Coast which was false, misleading, or otherwise wrongful;
3 (2) any analysis of a statistically significant number of former members (or indeed any analysis --
4 statistically significant or not -- of former members in the form of a survey, or otherwise) showing why
5 those members stopped paying; or (3) any evidence of Plaintiffs' members who actually stopped paying
6 during the relevant time period *because* of the Coast letters or any other conduct of Coast. Nor does
7 any other evidence offered by Plaintiffs permit the Court to draw the inference of causation. Equally
8 important, Plaintiffs cannot cure this defect because there is substantial, uncontroverted evidence that
9 Plaintiffs' records are generally not reliable, and more specifically, not reliable on the subject of if,
0 when or why members stopped paying dues.

Plaintiffs' Right to Reopen

1 Although Plaintiffs had the right, in response to the Motion for Nonsuit, to request to reopen
2 their case to remedy defects raised by the motion, and indicated in their opposition papers an intention
3 to seek to reopen if the Court were inclined to grant a nonsuit, they failed to pursue that right during
4 oral argument on the Motions held on July 24 and July 25, 2000. Further, despite a request from
5 opposing counsel for an offer of proof of evidence to be adduced upon reopening, and a directive from
6 the Court to Plaintiffs' counsel requesting same, Plaintiffs' counsel never presented the Court with any
7 offer of proof of admissible evidence that Plaintiffs

1 would seek to introduce if Plaintiffs were to reopen their case. The Court finds Plaintiffs' conduct,
2 under these circumstances, to constitute an abandonment and waiver of their right to request to reopen
3 their case.¹⁶
4
5
6
7

3 Date: OCT 10 2000
9

//s//
Hon. John H. Smith, Jr.

¹⁶ Plaintiffs' untimely offers of proof contained in opposition papers filed to the original Statement of Decision are further rejected as not relevant to issues of causation.