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Attorneys for Defendants  
CC-LA JOLLA, INC., CCW-LA JOLLA, L.L.C.,  
CC-DEVELOPMENT GROUP, INC.,  
CLASSIC RESIDENCE MANAGEMENT  
LIMITED PARTNERSHIP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

DONALD R. SHORT, JAMES F. GLEASON,  
CASEY MEEHAN, MARILYN SHORT,  
PATTY WESTERVELT, AND DOTTIE  
YELLE, individually, and on behalf of all others  
similarly situated,

Plaintiff,

v.

CC-LA JOLLA, Inc., a Delaware Corporation,  
CC-LA JOLLA, L.L.C., a Delaware limited  
liability company, CC-DEVELOPMENT  
GROUP, INC., CLASSIC RESIDENCE  
MANAGEMENT LIMITED PARTNERSHIP, an  
Illinois Limited Partnership, and DOES 1 to 110,  
inclusive,

Defendants.

Case No. GIC877707

**DEFENDANTS' ANSWER TO  
PLAINTIFFS' THIRD AMENDED  
CLASS ACTION COMPLAINT**

Judge: Hon. Yuri Hofmann  
Dept: C-60

Date Action Filed: December 29, 2006  
Trial Date: Not yet set

1 Defendants CC-LA JOLLA, INC., CCW-LA JOLLA, L.L.C., CC-DEVELOPMENT  
2 GROUP, INC., CLASSIC RESIDENCE MANAGEMENT LIMITED PARTNERSHIP (hereinafter  
3 "Defendants"), answer Plaintiffs' Complaint as follows:

4 **GENERAL DENIAL**

5 Pursuant to Code of Civil Procedure Section 431.30, Defendants deny, both generally and  
6 specifically, each, every and all allegations of Plaintiffs' Third Amended Class Action Complaint  
7 ("TAC"), and the whole thereof, and deny that Plaintiffs, the putative class, or any of its alleged  
8 members are entitled to any recovery or relief sought or alleged by reason of any act or omission on  
9 the part of any Defendant.

10 **SEPARATE AFFIRMATIVE DEFENSES**

11 Defendants also hereby assert the following separate defenses to the TAC without assuming  
12 the burden of proof on such defenses that would otherwise rest on Plaintiffs.

13 **FIRST AFFIRMATIVE DEFENSE**

14 **(Failure to State a Claim – All Causes of Action)**

15 Plaintiffs' TAC, and each cause of action therein, fails to state a cause of action for  
16 affirmative relief against Defendants individually or collectively.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(Statute of Limitations – All Causes of Action)**

19 Each and every claim in the TAC is barred in whole or in part by the applicable statute of  
20 limitations. Plaintiffs have been aware of the facts alleged in the TAC for a period of time beyond  
21 the applicable statute of limitations for each cause of action in the TAC.

22 **THIRD AFFIRMATIVE DEFENSE**

23 **(Laches – All Causes of Action)**

24 As a result of Plaintiffs' unreasonable delay in asserting the claims that are the subject of the  
25 TAC, the TAC is barred in whole or in part on the ground of laches. The Plaintiffs have been aware  
26 of the facts alleged in the TAC for multiple years prior to the filing of the original complaint in  
27 December 2006.  
28

1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Lack of Justifiable Reliance – First, Second, Third and Ninth Causes of Action)**

3 Each of the fraud claims of Plaintiffs and the putative class is barred in whole or in part  
4 because Plaintiffs, and each member of the putative class, did not justifiably rely on Defendants'  
5 alleged fraudulent representations or alleged material omissions. The Continuing Care Residency  
6 Agreement ("CCRA") between the Defendants and each Plaintiff, and each putative class member,  
7 sets forth all the parties' respective rights and obligations concerning Plaintiffs' and putative class  
8 members' residency in the La Jolla Community and continuing care in the Care Center. Accordingly,  
9 Plaintiffs and the putative class members could not have justifiably relied on any representations that  
10 are not contained in their CCRAs.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 **(Good Faith – Fifth Cause of Action)**

13 Plaintiffs' claims, and those of the putative class, are barred, in whole or in part, because  
14 Defendants at all times acted in good faith and did not directly or indirectly perform any act  
15 whatsoever that would constitute a violation of any right of Plaintiff or the putative class or any duty  
16 owed to Plaintiff or the putative class.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 **(Bona Fide Error – Fifth Cause of Action)**

19 The claims of Plaintiffs and the putative class are barred because, although Defendants deny  
20 each and every claim of the TAC and deny that Defendants engaged in wrongdoing or error of any  
21 kind, any alleged error on Defendants' part was a bona fide error notwithstanding Defendants' use of  
22 reasonable procedures adopted to avoid any such error.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 **(Adequate Remedy at Law – Fifth and Seventh Causes of Action)**

25 Plaintiffs, and any member of a putative class, are not entitled to any injunctive or equitable  
26 relief because they have an adequate remedy at law.  
27  
28

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 **(Conduct Not Unfair – Seventh Cause of Action)**

3 To the extent Plaintiffs prove that Defendants conducted any of the activities alleged in the  
4 TAC, those activities are not unfair within the meaning of Business & Professions Code Section  
5 17200.

6 **NINTH AFFIRMATIVE DEFENSE**

7 **(Privilege – Seventh Cause of Action)**

8 The claims of Plaintiffs and the putative class are barred in whole or in part on the ground that  
9 Defendants' actions were privileged and justified in that Defendants were acting in furtherance of  
10 their legitimate economic interests.

11 **TENTH AFFIRMATIVE DEFENSE**

12 **(Justification – Seventh Cause of Action)**

13 Defendants' alleged conduct as part of their business practices is not unfair within the  
14 meaning of Business & Professions Code Section 17200 because the business justifications for, and  
15 the benefits to consumers from, the practice outweighs any potential injury.

16 **ELEVENTH AFFIRMATIVE DEFENSE**

17 **(Abstention – Seventh Cause of Action)**

18 The allegations of the TAC are barred, in whole or in part, by the doctrine of abstention by  
19 virtue of the fact that the challenged conduct is regulated by a detailed and comprehensive  
20 enforcement scheme established under Chapter 10 of the California Health and Safety Code  
21 regulating continuing care communities in the State of California.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 **(Reasonably Available Alternatives Defense – Seventh Cause of Action)**

24 Plaintiffs and members of the putative class had a reasonably available alternative source  
25 from where to obtain continuing care services in that numerous communities, other than Defendants,  
26 provide such services and, as such, the TAC fails to state a claim for an unfair business practice  
27 within the meaning of Business & Professions Code Section 17200.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Frustration of Purpose – Eighth Cause of Action)**

3 Plaintiffs' eighth cause of action is barred in whole or in part by the doctrine of frustration of  
4 purpose and impracticability.

5 **FOURTEENTH AFFIRMATIVE DEFENSE**

6 **(Mistake of Fact – Eighth Cause of Action)**

7 Plaintiffs' eighth cause of action is barred in whole or in part by the doctrine of mistake of  
8 fact.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 **(Mitigation – Eighth Cause of Action)**

11 Plaintiffs' eighth cause of action is barred in whole or in part because Plaintiffs failed to  
12 mitigate their alleged damages.

13 **SIXTEENTH AFFIRMATIVE DEFENSE**

14 **(Statute of Frauds – Eighth Cause of Action)**

15 The claims of Plaintiffs and the putative class are barred in whole or in part by the Statute of  
16 Frauds.

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 **(Waiver – All Causes of Action)**

19 Each and every claim in the TAC is barred in whole or in part on the ground that Plaintiffs,  
20 and any member of a putative class, through their actions and inactions, waived their right to  
21 complain about the alleged acts, alleged misrepresentations and alleged omissions at issue in this  
22 matter.

23 **EIGHTEENTH AFFIRMATIVE DEFENSE**

24 **(Estoppel – All Causes of Action)**

25 Plaintiffs, and any member of a putative class, through their actions and inactions and  
26 Defendants' reliance on the same, are estopped from complaining about the alleged acts, alleged  
27 misrepresentations and alleged omissions at issue in the TAC.

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 **(Lack of Standing – All Causes of Action)**

3 Plaintiffs and the members of the putative class lack standing to assert any or all of the causes  
4 of action alleged in the TAC either individually or in a representative capacity.

5 **TWENTIETH AFFIRMATIVE DEFENSE**

6 **(No Injury or Damage – All Causes of Action)**

7 Defendants deny that Plaintiffs and/or any member of the putative class have suffered any  
8 injury or damage whatsoever, and further deny that they are liable to Plaintiffs and/or to any member  
9 of the putative class for any of the injuries or damage claimed or for any injury or damage  
10 whatsoever.

11 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

12 **(No Punitive Damages – All Causes of Action)**

13 The claims of Plaintiffs and the putative class for punitive damages are in contravention of  
14 Defendants' rights under the due process and other applicable clauses of the United States and  
15 California constitutions.

16 **PRAYER**

17  
18 WHEREFORE, Defendants pray as follows:

19 1. That Plaintiffs take nothing from Defendants by their TAC;  
20 2. That the Court enter judgment dismissing with prejudice the TAC and each of its causes  
21 of action;

22 3. That the Court award Defendants their attorneys' fees, expert witness fees, and court  
23 hearing fees; and

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27 ///

28 ///

1 4. That this Court award such other and further relief as the Court deems just and proper.

2  
3 Dated: September 27, 2007

ERIC M. ACKER  
LINDA L. LANE  
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5  
6 By: 

Eric M. Acker

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GROUP, INC., and CLASSIC  
RESIDENCE MANAGEMENT  
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