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CC-LA JOLLA, INC., CC-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

**DECLARATION OF JOHN
WERNER FILED WITH
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

Judge: Hon. Yuri Hofmann
Dept: C-60

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

1 I, John Werner, declare as follows:

2 1. I am a resident at La Jolla Village Towers, a Classic Residence by Hyatt, where I have
3 lived for over four years, since June 2003. I have personal knowledge of the facts set forth below and
4 if called upon, could and would competently attest to them.

5 2. I first became interested in Classic Residence by Hyatt at La Jolla Village Towers (the
6 "Community") in the beginning of 2003. At that time, my wife and I visited a mutual friend of ours,
7 who had recently moved to the Community, for lunch in the Community's dining room. She was very
8 positive about her experiences at the Community and encouraged us to investigate it further. Being
9 favorably impressed with the Community, the very next day we submitted our deposit for residency in
10 the Community. We were not in the market for a continuing care retirement facility at the time of
11 making our deposit, but we were very impressed by La Jolla Village Towers.

12 3. At the time that we submitted our deposit, there was a 6-12 month wait list for an
13 apartment meeting our specifications. However, our current apartment (#1807) became available
14 approximately one month after we made our deposit. During that period of time, we compared several
15 other San Diego retirement communities including White Sands, the Remington, Casa de Campanas,
16 Pacific Regents, and La Costa Glenn. The comparison of the other properties confirmed our decision
17 to move to La Jolla Village Towers.

18 4. Kelly Parkins was our sales representative at La Jolla Village Towers. I spoke with
19 her several times prior to moving in to the Community. At that time, my concern involved the sale of
20 our home prior to moving into the Community. I also had other general questions regarding the
21 Community including costs, apartment modifications we desired, the monthly maintenance fee, and
22 available amenities. Ms. Parkins answered my questions for me and provided me with information
23 tailored to my concerns.

24 5. When I decided to become a resident of the Community, I did not make that decision
25 based on any representations contained in brochures or other marketing materials or on any
26 representations made to me by the sales department that I later determined to be false. In fact, I do not
27 believe I was given any written materials prior to entering the Community other than a standard
28 marketing brochure of which I do not recall the specifics. I absolutely do not believe that I was misled

1 in any manner by marketing, or any other representative of Classic Residence by Hyatt, when
2 deciding to come to the Community.

3 6. I understood that the payment of my entrance fee entitled me and my spouse to reside
4 in the Independent Living Towers as long as we are physically able to do so. If either or both of us
5 had to move to the Care Center, we would only pay our monthly maintenance fee plus one extra meal
6 per day and any required medication and related supplies. In other words, I understood that payment
7 of my entrance fee gave me a lovely apartment and secured my interest in receiving long term health
8 care in the Care Center at the same monthly fee I paid for my apartment, along with associated yearly
9 increases in that monthly fee.

10 7. I understood that my monthly fees could be raised by Classic Residence by Hyatt upon
11 30 days notice. The monthly fee increases have occurred only one time per year during my residency.
12 I also understood that operating expenses of the total Community, which includes Tower I and the
13 Care Center, are funded by the residents' monthly fees.

14 8. I understood when I signed my contract that my entrance fee would be placed into a
15 Master Trust, and then subsequently loaned to CCW-La Jolla, LLC by the trustee of the Trust. In
16 exchange for this loan, I was provided with a promissory note and mortgage as security. I also
17 understood that after living for 50 months in the Community, I would not be entitled to the repayment
18 of any of my entrance fee.

19 9. When I first joined the Community, I was told about a service offering residents 24-
20 hour emergency medical response. I am aware that a modified 24-hour emergency response service is
21 now in place.

22 10. I was admitted to the Care Center from Sharp Hospital in June 2006 following knee
23 replacement surgery. My experiences in the Care Center were very positive and I believe that the
24 quality of care I received in the Care Center was satisfactory. I received my knee replacement at
25 Sharp Hospital in San Diego, a very well respected hospital. I stayed at Sharp Hospital for five or six
26 days following my surgery and then was transferred to the Care Center for an additional eight or nine
27 days for treatment and therapy. The treatment that I received at the Care Center was equal to the
28 treatment I received at Sharp Hospital. Actually, the food in the Care Center was better than the

1 hospital food. I have no complaints regarding the quality of care provided to me at the Care Center.
2 During my stay at the Care Center I did not hire a private duty aide to assist me and no one told me
3 that I would need to hire a private duty aide to assist me.

4 11. Even though certain facilities at the Community have been impacted by construction,
5 my experience is that management has gone out of their way to minimize any associated
6 inconveniences. For example, all residents have been offered complimentary memberships to the
7 Sporting Club next to the Hyatt Hotel, which has a swimming pool and an outstanding exercise
8 facility including a steam room, sauna and whirlpool. This offer has been given to us during the
9 construction phase. I know of one resident who uses the Community Lincoln town car to take her to
10 and from the swimming pool at the Hyatt each morning.

11 12. It is offensive to me, as a veteran, to read Plaintiffs' allegations in paragraph 63 of the
12 Third Amended Complaint that the Community is a "construction war zone." Our Community is
13 nothing like a war zone. No artillery, or wounded people or anyone killed. I have never had a
14 problem with noise or dirt during construction. We have continued to use our balcony during the
15 construction. All associated interruptions to our plumbing services have been infrequent and have
16 been considerably scheduled to take place during the evening hours (usually between 10:00 p.m. and
17 4:00 a.m.) and I have never been adversely affected by those interruptions. The overall construction
18 project has fascinated me and I have enjoyed watching its progression immensely.

19 13. I have been satisfied with the yearly increases in the monthly maintenance fee. I am
20 under the impression that any increases in monthly fees have been warranted and necessary. Since I
21 have moved into the Community, fee increases have averaged approximately 5-6% per year. I feel
22 that this amount is reasonable when taking into account the increases because of the costs of food,
23 water, electricity, labor and gasoline for four buses and two Lincoln town cars. It costs me less to live
24 here than it did to live in and maintain my previous home in Rancho Bernardo.

25 14. Since becoming a resident of the Community in June 2003, I have been very involved
26 in the Community. I was elected for a two-year term on the Resident Council in 2006. I have also
27 served on and/or chaired several committees and groups (including the Expansion Team, the Resident
28

1 Marketing Committee, the Fire Safety Committee) and I have visited the meetings of most of the
2 other committees in the Community at one time or another.

3 15. I have no knowledge of allegations in the Third Amended Complaint that transpired
4 between 1998 and 2003, when we moved to the Community. Exhibits 1, 2, 3, 4, 5, 6 and 13 all pre-
5 date my residency at the Community, and I do not recall ever having seen them prior to the lawsuit.


6 16. I have received communications regarding the deductibility of a portion of my
7 entrance fee and monthly fees that are associated with medical expenses. I understood those letters to
8 reference tax deductions only and forwarded those letters on to my tax advisor. I have taken
9 deductions according to those communications.

10 17. Prior to reviewing the Third Amended Complaint, I do not recall seeing or receiving
11 the marketing documents attached as Exhibits 7 and 9 to the Third Amended Complaint.

12 18. Prior to reviewing the Third Amended Complaint, I do not recall seeing or receiving
13 the Resident Handbook Addendum attached as Exhibit 8 to the Third Amended Complaint, but I am
14 aware that we have a wellness center.

15 19. Prior to reviewing the Third Amended Complaint, I had never seen the website print
16 outs attached as Exhibit 10, 11 and 12 to the Third Amended Complaint. In fact, I never visited the
17 Classic Residence by Hyatt website prior to moving to the Community in June 2003. Upon reading
18 the exhibits now, I find them a bit verbose as in most advertising, but the general content is consistent
19 with what I have experienced here.

20 I declare under penalty of perjury under the laws of the State of California that the above is
21 true and correct, and that this Declaration was executed at San Diego, California, on this 26 day of
22 November, 2007.

23
24
25 By: 
26 John Werner
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