

1 **MICHAEL A. CONGER, ESQUIRE (State Bar #147882)**
2 **LAW OFFICE OF MICHAEL A. CONGER**
3 16236 San Dieguito Road, Suite 4-14
4 **Mailing:** P.O. Box 9374
Rancho Santa Fe, California 92067
Telephone: (858) 759-0200
Facsimile: (858) 759-1906

5 Attorney for all Plaintiffs, individually, and
6 on behalf of all others similarly situated

F I L E D
CIVIL BUSINESS OFFICE
CENTRAL DIVISION
AUG - 2 2007

CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

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

14 Plaintiffs,)

15 v.)

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

19 Defendants.)
20

CASE NO: GIC877707

Date: August 17, 2007

Time: 10:30 a.m.

Judge: Hon. Yuri Hofmann

Dept: 60

Action Filed: December 29, 2006

Trial Date: Not yet set

**PLAINTIFFS' REQUEST FOR
TRIAL PREFERENCE**

[C.C.P. § 36(a)]

21 Pursuant to Code of Civil Procedure section 36, subdivision (a),¹ plaintiffs Donald R.
22 Short and James F. Gleason respectfully request that this Court set this case for trial within 120
23 days of the case management conference, or no later than December 17, 2007. In support of this
24 request, plaintiffs state:

25 1. Section 36, subdivision (a) provides:

26 "A party to a civil action who is over the age of 70 years may
27

28 ¹ All further statutory references will be to the Code of Civil Procedure unless
otherwise stated.

petition the court for a preference, which the court shall grant if the court makes all of the following findings:

- (1) The party has a substantial interest in the action as a whole.
- (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation."

Here, plaintiffs Donald R. Short (age 85) and James F. Gleason (age 80) each have a substantial interest in the litigation and each suffers from medical conditions that will increasingly prevent their full participation and attendance at trial the longer it takes to commence trial.²

2. Section 36.5 provides:

"An affidavit submitted in support of a motion for preference under subdivision (a) of Section 36 may be signed by the attorney for the party seeking preference based upon information and belief as to the medical diagnosis and prognosis of any party. The affidavit is not admissible for any purpose other than a motion for preference under subdivision (a) of Section 36."

3. In their leading treatise, Judges Weil and Brown state:

"The attorney's declaration can consist entirely of hearsay and conclusions! The attorney's declaration cannot be used for any other purpose. . . . [I]t is a one-of-a-kind exception to the normal rule that declarations must contain *admissible evidence*, not hearsay or conclusions []." (Weil & Brown, Cal. Prac. Guide: Civil Proc. Before Trial (The Rutter Group 2007) ["Weil & Brown"], at pp. 12(I)-40, 41, ¶¶ 12:247.1-12:247.2, italics in original.)

4. The request for a preference need not be made by noticed motion, and is typically made at the case management conference.

"Procedure for claiming preference: The preference issue can be raised at the case management conference (CRC 2.727(12)) In setting the trial date, the court must take into account a party's right to a preference. (CRC 3.729(2))." (Weil & Brown, *supra*, p. 12(I)-40 at ¶ 12:246.4.)

In fact, the "Case Management Statement" promulgated in a form adopted for mandatory use by the Judicial Council of California, form number CM-110, includes at question number 9, page 2,

² See the accompanying Declaration of Michael A. Conger, at paragraphs 2 and 3.