ERIC M. ACKER (BAR NO. 135805)
Email: EAcker@mofo.com
LINDA L. LANE (BAR NO. 211206)
Email: LLane@mofo.com
MORRISON & FOERSTER LLP
12531 High Bluff Drive, Suite 100
San Diego, California 92130-2040
Telephone: 858.720.5100
Facsimile: 858.720.5125

Attorneys for Defendants
CC-LA JOLLA, INC., CC-LA JOLLA, L.L.C.
(d/b/a 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' OPPOSITION TO MOTION FOR CLASS CERTIFICATION

[Filed Concurrently With Supporting Evidence]

Date: December 14, 2007
Time: 10:30
Dept. 60

Judge: Hon. Yuri Hofmann

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES

Page

STATUTES

I. INTRODUCTION

Plaintiffs' Motion for Class Certification ("Motion") makes clear Plaintiffs' flawed strategy – Plaintiffs assert, without any factual support, that class certification is warranted because the claims in their Third Amended Complaint ("TAC") allegedly are "based on *identical written communications from the defendants to the entire class.*" (Motion at 1:7-8 (emphasis in original); *see also* Motion at 1:13; 16-19; 22.) Under this theory, however, Plaintiffs must establish that every member of the putative class was privy to the same communications before a class can be certified. Absent such proof, there can be no inference of class-wide reliance. And without that inference, individual issues will predominate as Plaintiffs will be required to prove at trial what alleged misstatements or omissions, if any, each putative class member was privy to and relied on in deciding to move to or remain in the Community.[1]

In support of their strategy, Plaintiffs attach 42 documents to a Notice of Lodgment ("NOL"), yet they provide absolutely no evidence to support their assertion that a common set of materials was provided to the entire putative class. It is Plaintiffs' burden to prove this assertion by "substantial evidence." *Lockheed Martin Corp. v. Super. Ct.*, 29 Cal. 4th 1096, 1108 (2003). In fact, *Plaintiffs provide no evidence that any putative class member, including the named Plaintiffs, received and relied on the documents on which their motion is based.* Instead, Plaintiffs rely entirely on pleading allegations and lawyer argument. But simply providing the Court with a stack of documents, without any evidence regarding which, if any, putative class member ever saw or relied on any of them (and, if so, when), is not sufficient. *See Hamwi v. CitiNational Buckeye Inv. Co.*, 72 Cal. App. 3d 462, 472

[1] Plaintiffs reliance on *Vasquez v. Super. Ct.*, 4 Cal. 3d 800 (1971), *Occidental Land, Inc. v. Super. Ct.*, 18 Cal. 3d 355 (1976) and *Massachusetts Mut. Life Ins. Co. v. Super. Ct.*, 97 Cal. App. 4th 1282 (2002), is misplaced. (Motion at 4:1-16.) In each of these cases, a rebuttable inference of reliance existed only because the *exact same material representations were made uniformly to plaintiffs*. *See Vasquez*, 4 Cal. 3d at 814; *Occidental Land*, 18 Cal. 3d at 363; *Massachusetts Mut.*, 97 Cal. App. 4th at 1292. Such an inference cannot be made here, because the evidence is clear that identical material representations were not made to the putative class. *See Mirkin v. Wasserman*, 5 Cal. 4th 1082, 1095 (1993) (only "when the same material representations have actually been communicated to each member of a class" would the inference of reliance arise as to the entire class).

(1977) ("the issue of community of interest is determined on the merits and the plaintiff must establish the community as a matter of fact").[2]

Moreover, even though the Defendants have no burden to produce any evidence, the Defendants have provided overwhelming evidence that: (1) there were no common marketing presentations or documents given to the hundreds of putative class members who moved to the Community before August 2005; (2) the putative class members, including the named Plaintiffs, moved to the Community for a myriad of different reasons; and (3) putative class members, including the named Plaintiffs, did not rely on the Defendants' written materials in deciding to move to the Community or remain as residents. Given these established facts, case law is clear that individual issues predominate and class certification should be denied.

II. FACTUAL BACKGROUND

A. The Factual Record Belies Plaintiffs' Substantive Allegations.

Although Plaintiffs cite to the law holding that at the class certification juncture the Court should not address the merits (Motion at 3:5-15), they ignore it by arguing the merits over pages of their Motion. These efforts are belied by the facts. Multiple residents' sworn declarations, and each resident's Continuing Care Residency Agreement ("CCRA"), establish that: residents were not promised that their entrance fees would be set aside in a separate account for pre-paid long term care, but rather that those entrance fees would be loaned to the Defendants to pay development and other costs of the Community (Declaration of Linda Lane ("Lane Decl.") at Ex. NN, ¶ VII. E. 5 ("Your Entrance Fee is intended to be a loan" to the Defendants and Defendants "will use the funds to repay existing secured indebtedness relating to the loan that financed construction of the Community, and

[2] Plaintiffs rely on identical unsworn statements by residents stating that they are familiar with the lawsuit and have claims "similar to" the Plaintiffs' claims. (Plaintiffs' Notice of Lodgment ("NOL") Ex. 1.) First, these statements are not admissible as they have not been sworn under penalty of perjury (see Defendants' Objections to Evidence filed concurrently herewith). Perhaps most importantly, not a single statement asserts that any resident received and/or relied on any document provided by the Defendants. Rather, they merely state that residents have reviewed the Second Amended Complaint (which is not the operative complaint) and that they think they possess "similar" claims. What is dispositive here, however, is not whether residents think they have "similar claims," it is whether or not every member of the putative class was privy to the exact same alleged misrepresentations and omissions.

other related liabilities")); residents were told, and their CCRAs make clear, that monthly fees could be increased and residents feel that the increases have been reasonable (*id.* at ¶ II.B.2 (Defendants "may increase or decrease Your Monthly Fee upon thirty (30) days' advance notice.")); residents were told, and their CCRAs make clear, that their monthly fees fund, in part, the operating cost of the entire Community, including the Care Center (*id.* ("All operating expenses of the Community, as well as . . . a profit to Classic Residence by Hyatt, are intended to be paid with operating revenue from monthly fees.")); residents have received the emergency response provided for in their CCRAs[3]; residents have received excellent care in the Care Center; residents feel that they live in a luxurious Community and that Defendants have attempted to minimize normal inconveniences associated with ongoing construction; and residents knew about the future construction when they moved to the Community. (Declaration of John Werner ("Werner Decl.") ¶¶ 7-13; Declaration of General H.M. Darmstandler ("Darmstandler Decl.") ¶¶ 5, 10-15; Declaration of Richard Wright ("Wright Decl.") ¶¶ 6-13; Declaration of Mary Fujimoto ("Fujimoto Decl.") ¶¶ 6, 10-16; Declaration of Joseph Lesser ("Lesser Decl.) ¶¶ 3, 11-18.))

B. The Marketing Of The Community.

The marketing of the Community to the putative class members was conducted by numerous different sales counselors and dictated by the specific inquiries made by each individual prospective resident. (Declaration of Kelly Parkins Aguirre ("Parkins Decl.") at ¶¶ 3,4,8.) No salesperson at the Community ever memorized, read or otherwise repeated a scripted sales-pitch aimed at potential residents. (*Id.* at ¶ 5.) Nor was there ever any recorded sales presentation shown to potential residents. (*Id.*) During the relevant time period there were at least fifteen salespersons employed by the Community, each of whom interacted with different sets of residents. (*Id.* at ¶ 8.) The substance of every sales discussion between a prospective resident and a salesperson at the Community was

[3] To be clear, there is no question, and Defendants do not contest, that prior to 2005 there was 24-hour nursing available at the Community Wellness Center. However, the point of contention lies in Plaintiffs' argument that these services could not be changed by the Defendants. Currently there is still a 24-hour emergency response system in place at the Community, approved by the San Diego Fire Department, but it no longer involves 24-hour on-site nursing response. The CCRA signed by all residents, however, provides only for 24-hour "emergency call response", not 24-hour emergency response from a nurse. (Lane Decl. at Ex. NN, ¶ III. A.6.)

shaped and guided by the potential resident's specific questions and concerns. (*Id.* at ¶ 3.) For example, some prospective residents would inquire (and be given information) regarding the details of the Care Center, while others requested precise information regarding the exact measurements of the physical living space and/or their ability to redesign the space. (*Id.*) There were as many inquiries as there were individuals who inquired about the Community. (*Id.* at ¶ 4.) It is very likely that no two prospective families discussed the exact same issues with any one salesperson. (*Id.*)

Similarly, there were no uniform written materials given to putative class members other than the written contract and application materials (none of which the Plaintiffs argue contain misrepresentations). (*Id.* at ¶ 6.) Instead, prospective residents were given written materials to address their specific concerns or questions, including different versions of marketing brochures. (*Id.* at ¶ 7.) Of the 31 exhibits attached to Plaintiffs' NOL which allegedly contain misrepresentations:[4] eight are dated after August 2005 and, therefore, could not have been relied on by any of the putative class members in deciding to enter the Community[5] (NOL Exs. 5, 16-18, 30, 34-35, 38) (Parkins Decl. at ¶ 17); three are income tax deduction letters which are only given to current residents and not shared with prospects (NOL Exs. 21-23) (Parkins Decl. at ¶ 18); nine are letters or mailings which were sent on a single date to current residents and were not re-circulated after that date to prospective residents (NOL Exs. 7, 19-20, 24-25, 28-29, 39, 42) (Parkins Decl. at ¶ 19); nine are marketing documents that were used at different times, given to different prospective residents, and not uniformly distributed to all putative class members (NOL Exs. 8-15, and 31) (Parkins Decl. at ¶ 20); and the remaining two were not given to all residents or prospective residents (NOL Exs. 27 and 32) (Parkins Decl. at ¶ 21).[6] Not a single one of these documents submitted to this Court by Plaintiffs

[4] Plaintiffs attach 42 exhibits to their NOL, but 11 of these exhibits are not alleged to have been distributed to Plaintiffs, including discovery responses, deposition transcripts, photographs, and personal letters. (*See* NOL at Exs. 1-4, 6, 26, 33, 36-37, 40-41) (Parkins Decl. ¶ 16.)

[5] Plaintiffs' definition of the putative class includes only residents entering the Community prior to August 2005. (Plaintiffs' Notice of Motion at 2.)

[6] This discussion presumes that any of the 31 exhibits actually contain misrepresentations. In fact, the named Plaintiffs' own testimony confirms the accuracy of the alleged "misrepresentations." For example, Plaintiffs point to the statement that "should the need for these services arise, residents can move to the care center and continue to pay the same monthly fee they would have paid for their independent living home, plus charges for extra meals and ancillary items" as an alleged

(Footnote continues on next page.)

was distributed to each and every member of the putative class. (*Id.* at ¶ 22.)

Of the approximately 267 current residents who entered into CCRAs prior to August 1, 2005,[7] 34 of those residents entered the Community prior to its purchase by Classic Residence by Hyatt in 1998. (*Id.* at ¶ 12.) Accordingly, this subset of residents came to the Community through absolutely no efforts of the Defendants. There are two versions of the CCRAs signed by the various putative class members: one dated February 2000 and one dated July 2005. (*Id.* at ¶ 13.) The versions are different in that one employs the use of a Master Trust and a trustee in the payment of the entrance fees and one does not. (*Id.)* Moreover, the two versions of the CCRAs signed by the putative class members were signed on at least 138 different days between February 2000 and August 2005. (*Id.* at ¶ 14.) The execution of these application documents by various members of the putative class were attended by different members of the sales staff. (*Id.*) Therefore, if questions arose during this process, responses by the various salespersons would have been tailored to that individual's questions. (*Id.*)

C. Putative Class Members.

1. The Werners.

John and Carol Werner have been residents at the Community since June 2003. (Werner Decl. at ¶ 1.) Mr. Werner currently is a member of the seven-member Resident Council and has served on many committees during his residency. (*Id.* at ¶ 14.) The Werners worked with marketing employee Kelly Parkins in making the decision to enter the Community. (*Id.* at ¶ 4.) The Werners' specific inquiries involved the sale of their home, costs, their ability to modify their prospective apartment, and available amenities. (*Id.*) Mr. Werner stated that, "[w]hen I decided to become a

---

(Footnote continued from previous page.)

misstatement. (NOL Ex. 12.) Multiple named Plaintiffs, however, testified that they understand that they will be able to move to the Care Center, if necessary, and pay the same monthly fee they pay in their current residences. (Lane Decl. Ex. D (D. Short Depo.) at 161:8-24.; *id.* Ex. F (Gleason Depo.) at 151:9-15; *id.* Ex. C (Meehan Depo.) at 94:22-95:7.) Moreover, each Plaintiffs' CCRA makes this clear. (Lane Decl. at Ex. NN, ¶ F.)

[7] Plaintiffs state that there are 349 putative class members. Under their own definition, this is incorrect. (Parkins Decl. at ¶ 11.)

resident of the Community, I did not make that decision based on any representation contained in brochures or other marketing materials or on any representations made to me by the sales department that I later determined to be false." (*Id.* at ¶ 5.) Mr. Werner does not believe he was given any written materials prior to entering the Community, other than standard marketing brochures of which he does not recall any specifics. (*Id.*) Moreover, Mr. Werner confirms that, prior to the litigation, he never saw documents or mailings that pre-dated his residency, he never visited the Classic Residence by Hyatt website prior to becoming a resident, and he does not recall receiving any of the undated marketing brochures attached as exhibits to Plaintiffs' Third Amended Complaint. (*Id.* at ¶ 15, 17, 19.)

2. The Wrights.

Richard and Arlene Wright entered the Community in July 2003. (Wright Decl. at ¶ 1.) They worked with Kelly Parkins when deciding to enter the Community. (*Id.* at ¶ 4.) Their specific questions for Ms. Parkins involved their desire to move into a two-bedroom apartment and to bring their dog to the Community. (*Id.* at ¶ 4.) Mr. Wright does not recall relying on any specific written materials in deciding to enter the Community. (*Id.* at ¶ 5.) Instead, he and his wife relied on their more generalized impressions of the Community: "I believe that my wife and I relied on being at the Community, seeing the Community and our positive feelings about the Community during our visits." (*Id.*) Mr. Wright does not recall even seeing, let alone relying on, any documents that pre-dated his residency, he never visited the Classic Residence by Hyatt website, and he does not recall the specifics of any of the marketing brochures that he received. (*Id.* at ¶¶ 15, 17, 19.)

3. The Lessers.

Joseph and Sonja Lesser entered the Community in June 2004. (Lesser Decl. at ¶ 1.) They first came to the Community in 2000 having heard and seen positive things about the Classic Residence by Hyatt facility in Florida, Bentley Village. (*Id.* at ¶ 2.) They submitted their deposit in 2000 and then traveled until they moved to the Community in 2004. (*Id.* at ¶ 4.) In making their decision to move in, they did not rely on written materials. (*Id.* at ¶ 9.) Instead, they moved to the Community to be closer to their children, to be close to shopping and restaurants, and to have the peace of mind of living in a retirement community. (*Id.* at ¶ 7.) The Lessers believe that all of the

services and luxuries mentioned in the marketing brochures that they saw prior to moving in to the Community have been available, and they feel that moving to the Community was one of the best decisions they have ever made. (*Id.* at ¶¶ 8, 21.)

4. The Darmstandlers.

General H.M. Darmstandler and his wife entered the Community in April 2001. (Darmstandler Decl. ¶ 1.) They began looking into continuing care retirement communities because they wanted to simplify their lives. (*Id.* at ¶ 3.) They worked with marketing employee Linda McGrath and, during their decision-making process, they made inquiries regarding the types of available apartments and whether modifications could be made to those apartments. (*Id.* at ¶ 6.) They recall receiving some brochures from Linda McGrath, but their decision to move to the Community was not based on them. (*Id.* at ¶¶ 7-8.)

D. The Named Plaintiffs.

1. Patty Westervelt.

Patty Westervelt moved into the Community in June 1996 – two years prior to its purchase by the Defendants. (Lane Decl. Ex. A (Westervelt Depo.) at 15:24-25.) After first learning about the Community through a newspaper advertisement, she visited it on four or five occasions in 1996. (*Id.* at 18:5-15; 20:8-16.) Mrs. Westervelt decided to move in because her husband was ill and she did not want to be a burden on her children; in making her decision, she relied on "a lot of different kinds of brochures, and postcards and invitations" she received in 1996 from the prior owners. (*Id.* at 16:5-10; 19:1-19.)

Mrs. Westervelt, and all residents at that time, were offered an immediate refund of their entrance fees in 1996 when the prior owners went bankrupt. (*Id.* at 40:20-42:24.) She, however, elected to stay in the Community because she was involved in various residential committees, and she "wanted to give it a good go and try and stick it out" because "it was a place that [she] wanted to live and contribute." (*Id.* at 42:25-43:19; 57:14-18.) In explaining her decision to stay, Mrs. Westervelt emphasized the consideration of her husband's health and not wanting to burden her children. (*Id.* at 59:6-11.) Mrs. Westervelt made her decision to remain in the Community before the Defendants purchased it. (*Id.* at 56:12-14.) She has no specific recollection regarding any of the

circumstances surrounding her execution of various documents after the Defendants took over the Community in 1998 (*id.* at 91:2-17; 92:12-15; 105:9-16), and could only recall that an unidentified marketing person and her husband were present when she signed her CCRA in March 2000. (*Id.* at 128:8-129:5.)

Mrs. Westervelt did not rely on any of the documents on which Plaintiffs base their claims in deciding to remain in the Community or sign her CCRA. She either did not recall seeing or else did not rely on Exhibits 1, 2, 4, 5, 7, 9 and 13 to the TAC prior to moving in. (*Id.* at 156:19-157:16; 161:25-163:17; 165:24-166:5; 166:6-167:4.)[8] When asked about various additional resident communications, brochures, and tax-related documents, Mrs. Westervelt testified that she cannot recall seeing or relying on them. (*Id.* at 158:4-24; 163:18-24; 164:3-12; 165:15-23.) She also has never visited the Community's website. (*Id.* at 158:25-159:2.)

2. Dottie Yelle.

Dottie Yelle began visiting the Community in 1996 or 1997, and she first inquired about becoming a resident before the property was purchased by the Defendants. (Lane Decl. Ex. B (Yelle Depo.) at 53:18-54:6; 57:13-18.) She spoke with sales agent Kristin Cram and can only recall being told by Ms. Cram that the Community was "a nice place to live." (*Id.* at 59:3-60:7.) Ms. Yelle does not recall speaking with anyone else at the Community prior to moving in. (*Id.* at 63:3-8; 72:25-73:2.) She based her decision to move to the Community on its convenient location and because: "I was tired of putting roofs on houses. I was tired of hiring maintenance people for the yard. I was tired of being concerned about the home when we went off in the motor home." (*Id.* at 60:10-61:4.) In contrast to her earlier testimony, Ms. Yelle also testified that Ms. Cram told her a portion of her entrance fee would be set aside for long-term care, but she cannot recall anything specific that Ms. Cram allegedly said. (*Id.* at 116:17-117:12.) Ms. Yelle relied on her conversations with Ms. Cram and with other residents in deciding to move in. (*Id.* at 70:19-71:8). The only written materials she relied on prior to moving in were the CCRA itself and some marketing brochures – but she cannot

[8] The other documents attached to the TAC are dated years after Westervelt executed her CCRA in March 2000.

recall the specifics of any such brochures. (*Id.* at 71:15-72:19.) Ms. Yelle testified that she did not rely on (and did not even see most of) the documents Plaintiffs attach to their TAC. (*Id.* at 192:11-17; 194:2-12; 195:10-12; 195:10-15; 196:8-10; 196: 23-25; 197:13-18; 198:11-14.)

3. Mary Katherine Meehan.

Mary Katherine Meehan became a resident of the Community on April 26, 1999. (Lane Decl. Ex. C (Meehan Depo.) at 16:9-14.) Her decision to buy into the Community was based on the atmosphere and location, in addition to the appeal of "having somebody else take care of landscaping, plumbing problems, and providing me with a swimming pool, a dining facility, the community life, the other amenities of living in a community." (*Id.* at 24:11-25:11.) Prior to buying, she spoke with Kristin Cram of the marketing department and only generally recalls being told the same information that was in the brochures about the Community. (*Id.* at 28:3-29:19.) Ms. Meehan testified that she already knew a great deal about the property, "having been there many, many times." (*Id.*)

Ms. Meehan testified that oral statements by Ms. Cram, as well as various, unidentified marketing brochures, led her to believe that a portion of her entrance fee was to be set aside for long-term care, but she was unable to recall any specific representations or brochures. (*Id.* at 136:2-137:24; 179:6-180:3.) She also testified that her understanding of the 24-hour emergency response program came only from brochures (though she cannot recall any specific documents that mentioned the program). (*Id.* at 52:24-55:19; 56:22-57:5; 166:20-167:8.) Ms. Meehan did not rely on the documents Plaintiffs attach to their TAC (nor did she recall most of those documents) in deciding to move to the Community. (*Id.* at 205:24-210:6; 210:11-211:10; 239:11-242:4; 247:2-9; 250:6-10; 258:4-259:3; 265:1-12; 266:12-25; 267:10-14; 273:10-22; 274:9-19; 275:6-277:3.)

4. Donald and Marilyn Short.

Donald Short first began investigating continuing care facilities in late 2000. (Lane Decl. Ex. D. (D. Short Depo.) at 31:9-13.) His decision to choose a facility in San Diego was based on a desire to be near family because the Community was located near his wife's daughter. (*Id.* at 32:14-25.) He visited the Community several times before moving in, but he cannot recall the specifics of any conversations he had with any sale representatives or what materials he may have received. (*Id.* at 39:5-40:6; 40:18-43:9; 45:11-23; 46:22-48:15.)

Mr. Short either did not recall seeing or did not rely on the documents attached as Exhibits 1-3 to the TAC before moving in. (*Id.* at 164:2-165:3; 166:11-25; 167:5-19.) He also did not recall ever seeing the tax-related documents attached to the TAC as Exhibits 4 and 6 prior to signing the CCRA, and thus did not rely on them. (*Id.* at 172:19-173:17; 185:12-187:6.) The March 2003 letter attached as Exhibit 13 to the TAC had no influence on his decision to move into the Community. (*Id.* at 169:17-21.) Upon being shown various additional brochures and documents, including Exhibits 7 and 9 to the TAC, Mr. Short testified that he either does not recall seeing them or else did not rely on them prior to moving into the Community. (*Id.* at 151:11-23; 166:11-25; 169:17-170:10; 171:25-172:10; 174:1-175:3; 180:17-20; 181:12-183:6; 159:25-161:6; 161:25-162:14.)[9]

5. James Gleason.

James Gleason began looking at retirement communities in 1999 or 2000. (Lane Decl. Ex. F (Gleason Depo.) at 69:17-23.) Although he does not recall the year that he first visited La Jolla Village Towers, Mr. Gleason distinctly recalls the "friendliness," "action," and "vibrance" of the Community compared to others he had visited, and it was because of this feeling and because its residents were "genuinely happy" that he decided to move in. (*Id.* at 73:10-75:20; 126:24-127:16.) While he recalls speaking with several different sales agents, Mr. Gleason's primary communications were with Kelly Parkins. (*Id.* at 77:14-25; 303:5-9.) He recalls Ms. Parkins telling him that the Community was "a wonderful place" and that she discussed the 24-hour emergency nursing care and costs of long-term care with him, while also giving a tour of the various facilities and amenities. (*Id.*

[9] Mr. Short's wife, Marilyn, testified that: she recalls Linda McGrath gave them brochures during their visit, but she does not recall how many or which brochures. (Lane Decl. Ex. E (M. Short Depo.) at 19:8-13.) She claims that Ms. McGrath made oral representations that they would be paying for long-term care for the rest of their lives, and that a portion of their entrance fee would be put aside in a trust for long-term care. (*Id.* at 23:6-22; 24:11-23.) She testified that availability of a 24-hour nurse was very important to her, and recalls that Ms. McGrath clearly stated such care would be available. (*Id.* at 20:13-25.) When shown the documents attached as Exhibits 1-7, 9, 12, 13 to the TAC, Ms. Short either does not recall seeing these documents, or else received them after moving in and thus did not rely on them in making her decision to enter the Community. (*Id.* at 38:18-40:24; 41:11-42:14; 43:24-44:9; 55:2-56:20; 57:19- 59:6; 63:2-12; 70:20-72:1.) When asked about various additional brochures, Ms. Short testified that she did not see them prior to signing the CCRA (*id.* at 40:25-41:10; 44:10-23), and although she recalls seeing various tax letters, she did not rely on them. (*Id.* at 60:19-63:1; 64:15-22; 65:18-24.) Ms. Short did visit the Community's website in late 2000, but has no specific memory of what she viewed on the site. (*Id.* at 66:19-67:18.)

at 78:11-79:10; 79:15-25; 303:5-304:2; 304:13-305:14.) Mr. Gleason, in deciding to move to the Community, relied on an unidentified "glossy brochure" and a hand-written note from Ms. Parkins explaining that the only expenses he would incur for long term care would be the extra meal fee. (*Id.* at 433:3-434:20; 434:9-16.)[10] In a further alleged conversation with executive director Jim Hayes, Mr. Gleason claims that he was told his entrance fees would go into a master trust – Mr. Gleason "assumed" that part of those funds were being set aside for long-term care. (*Id.* at 86:2-87:8.) According to Mr. Gleason, Mr. Hayes also represented to him orally that monthly fees would not be used to pay for any losses of the Care Center. (*Id.* at 82:24-83:6.)

Mr. Gleason does not recall either seeing or relying on the brochures that are Exhibits 7 and 9 to the TAC prior to moving in. (*Id.* at 436:4-20; 436:25-437:9.) When asked about various additional brochures, Mr. Gleason testified that he cannot recall when, or if, he ever saw them (*id.* at 434:24-435:23; 435:24-436:20; 437:7-20; 438:3-439:3), and he never saw a letter regarding tax deductions before joining the Community. (*Id.* at 466:4-16.) Mr. Gleason does not recall ever looking at the Community's website. (*Id.* at 436:21-24.)

III. ARGUMENT

A. Legal Standards For Class Certification.

The Court must deny class certification unless Plaintiffs prove: (1) class treatment "will provide substantial benefits both to the courts and the litigants," (2) the existence of an ascertainable class, and (3) the existence of "a well-defined community of interest among the class members." *Washington Mut. Bank v. Super. Ct.*, 24 Cal. 4th 906, 913 (2001); Cal. Civ. Proc. Code § 382. Plaintiffs cannot satisfy the third prong unless they prove: (a) the proposed class presents common questions of law or fact that *predominate* over the individual issues presented by each putative class member; (b) the class representatives' claims or defenses are typical of the putative class; and (c) the class representatives can adequately represent the putative class. *Lockheed Martin*, 29 Cal. 4th at 1104; *Washington Mut.*, 24 Cal. 4th at 913.

[10] Neither Mr. Gleason, nor his wife, have ever been denied entrance to the Care Center at the same monthly fee they pay for their current apartment. (*Id.* at 151:9-15.)

B. It Is Plaintiffs' Burden To Establish The Requirements For Class Certification With Substantial Evidence.

It is Plaintiffs' burden alone to prove that the putative class should be certified. To sustain their burden, Plaintiffs cannot rest on alleged facts or select evidence – *they must offer substantial proof* of each of the above elements. *See Lockheed Martin*, 29 Cal. 4th at 1108-09. It is "incumbent upon the class action proponent to *prove* each required element for class certification." *Washington Mut.*, 24 Cal. 4th at 922-23 (emphasis added); *see also Hamwi*, 72 Cal. App. 3d at 471-472 (plaintiff's burden "requires that the plaintiff establish more than 'a reasonable possibility' that class action treatment is appropriate," and "the issue of community of interest is determined on the merits and the plaintiff must establish the community as a matter of fact"). Plaintiffs can only meet this burden by providing "substantial evidence," "that is, evidence which is reasonable in nature, credible, and of solid value." *People v. Johnson*, 26 Cal. 3d 557, 576 (1980). In determining whether a plaintiff has met its burden, courts consider the totality of the evidence, not just the facts plaintiff selectively presents to the Court that "provid[e] an incomplete picture of the litigable issues." *Quacchia v. Daimler Chrysler Corp.*, 122 Cal. App. 4th 1442, 1448 (2004).

Plaintiffs have totally failed to meet their burden. They provide no evidence supporting their conclusory allegation that common issues allegedly predominate.[11]

C. Plaintiffs Cannot Meet Class Certification Requirements For Any Of Their Causes Of Action Because Individual Issues Predominate.

Plaintiffs' burden "is not merely to show that some common issues exist, but, rather, to place

---

[11] The documents attached to Plaintiffs' NOL, standing alone, are of suspect evidentiary value, as set forth more fully in Defendants' accompanying Evidentiary Objections. Moreover, nearly all of the citations in Plaintiffs' "Factual Background" section are to either the TAC or the lodged documents. Plaintiffs provide no evidence establishing either: (1) when any putative class member allegedly saw any of the lodged documents, or (2) if any putative class member relied on any of the documents in deciding to move to the Community. While Plaintiffs did submit a declaration from named Plaintiff James Gleason, the only lodged documents referenced in that declaration are photographs taken by residents of the front entrance of the independent living tower. The fact that Mr. Gleason fails to state in his declaration that he ever received or relied upon any of the lodged documents speaks volumes. Moreover, it would be improper for the Court to consider any new evidence or arguments Plaintiffs may attempt to submit in their reply papers. *San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.*, 102 Cal. App. 4th 308, 316 (2002) (error to consider new facts in reply); *Neighbours v. Buzz Oates Enterprises*, 217 Cal. App. 3d 325, 335 n.8 (1990) (improper to consider new argument in reply).

substantial evidence in the record that common issues *predominate*." *Lockheed Martin*, 29 Cal. 4th at 1108 (emphasis in original) (citation omitted). "Class actions will not be permitted . . . where there are diverse factual issues to be resolved, even though there may be many common questions of law . . . . [A] class action cannot be maintained where each member's right to recover depends on facts peculiar to his case." *Basurco v. 21st Century Ins. Co.*, 108 Cal. App. 4th 110, 118 (2003) (citations omitted, brackets in original). Individual class "member[s] must not be required to individually litigate numerous and substantial questions to determine his [or her] right to recover following the class judgment . . . ." *City of San Jose v. Super. Ct.*, 12 Cal. 3d 447, 460 (1974).

Here, the evidence makes clear that virtually every single putative class member (including the named Plaintiffs) came to the Community at a different time, met with different sales agents, was privy to different oral and written representations (if any at all), and based his or her decision to enter the Community on different and independent reasons. (*Supra*, § II(B)-(D).) Moreover, contrary to Plaintiffs' assertion that a single contract is at issue, members of the putative class entered into two different versions of the CCRA. (Parkins Decl. ¶ 13.) Accordingly, each of Plaintiffs' claims will require an individualized analysis of the factual scenarios unique to each putative class member.[12]

1. Plaintiffs' Fraud, CLRA And UCL Claims Defeat Class Certification.

a. Plaintiffs' Fraud, CLRA And UCL Claims Require Individualized Proof Of Reliance.

Plaintiffs' fraud, CLRA, and UCL claims (claims 1, 2, 3, 5, 7 and 9 of the TAC) all require Plaintiffs to prove reliance or causation for each putative class member. *See Mirkin v. Wasserman*, 5 Cal. 4th 1082, 1088 (1993) (fraud claim requires individual reliance); *Buckland v. Threshold Enter., Ltd.*, 155 Cal. App. 4th 798, 808 (2007) ("In the case of fraudulent misrepresentation, actual reliance

[12] Plaintiffs' assertion that commonality is supported by the fact that Defendants have raised identical affirmative defenses against each Plaintiff misinterprets the law. (Motion at 16:22-17:3.) Rather, the proper inquiry is whether adjudication of those defenses will require individual factual analysis with respect to each putative class member. *See Walsh v. IKON Office Solutions, Inc.*, 148 Cal. App. 4th 1440, 1450 (2007) ("a defendant may defeat class certification by showing that an affirmative defense would raise issues specific to each potential class member and that the issues presented by that defense predominate over common issues"). Here, commonality is undermined because the defenses faced by putative class members – lack of justifiable reliance, reasonably available alternatives, mitigation, lack of standing, and no injury or damage (4th, 12th, 15th, 19th and 20th affirmative defenses, respectively) – require individual factual inquiries.

occurs only when the plaintiff reposes confidence in the *truth* of the relevant representation, and acts upon this confidence") (emphasis in original); *Kavruck v. Blue Cross of California*, 108 Cal. App. 4th 773, 786 (2003) (class certification denied because of requisite individual reliance inquiry); *Buckland*, 155 Cal. App. 4th at 810-811 (lack of individual reliance defeats a CLRA claim sounding in fraud); *Wilens v. TD Waterhouse Group, Inc.*, 120 Cal. App. 4th 746 (2003) (in affirming denial of class certification of CLRA claims, court notes that "[r]elief under the CLRA is specifically limited to those who suffer damage, making causation a necessary element of proof"); *Akkerman v. Mecta Corp., Inc.*, 152 Cal. App. 4th 1094, 1103 (2007) (affirming order denying class certification of UCL claims for psychiatric patients because each putative class member would have to prove his claim by "establishing reliance and causation").[13]

Plaintiffs here cannot escape the requirement of proving individual reliance under *Vasquez* and its progeny (*see* Motion at 4:1-16), as the California Supreme Court has made clear that those cases are limited to facts where every putative class member received identical alleged material misrepresentations. *Mirkin*, 5 Cal. 4th at 1095 (only "*when the same material misrepresentations have actually been communicated to each member of a class*, an inference of reliance arises as to the entire class" (emphasis in original)).[14]

---

[13] The issue of whether actual reliance by each putative class member is required under the UCL is unsettled in California. This issue currently is before the California Supreme Court, which has granted review of *Pfizer Inc. v. Super. Ct.*, 141 Cal. App. 4th 290 (2006) and *In re Tobacco II Cases*, 142 Cal. App. 4th 891 (2006).

[14] The plaintiffs in *Vasquez* asserted that the same representation was made to each class member because salespeople all memorized a standard script contained in a training manual, and this script was presented to each and every putative class member. *Vasquez*, 4 Cal. 3d at 811-812. Because the *Vasquez* holding was in the context of a demurrer, the court noted that it "assume[d] for the present that these representations were made to each plaintiff." *Id.* at 812. In *Occidental*, there was no evidence (like that in *Vasquez)* that the oral representations were based on a script read to all putative class members. Thus, the court specifically found that if the plaintiffs were moving on the oral representations alone, class certification could not be granted. *Occidental*, 18 Cal. 3d at 361. Focusing instead on the written representations, the court pointed out that they were contained in a single document provided to each purchaser and receipt of the representation was evidenced by the signature of the purchaser. *Id. Massachusetts Mutual* similarly is limited to situations where the plaintiffs all "alleged the same omission." *See Gartin v. S&M NuTec LLC*, 2007 U.S. Dist. LEXIS 38050 at *29 (April 4, 2007) (denying class certification because "unlike in *Massachusetts Mutual*, the proposed . . . class members may not have read the [alleged misrepresentations]" and may have implicated other unique factors, so "determining causation in this case will require much more individualized attention than in *Massachusetts Mutual*"). Moreover, the court in *Massachusetts Mutual* also relied on the fact that plaintiffs' UCL claim did not require individual "deception,

(Footnote continues on next page.)

Although Plaintiffs make a half-hearted attempt to do so, they cannot squeeze into the narrow requirements of *Vasquez, Occidental,* and *Massachusetts Mutual.* Plaintiffs, *without any evidentiary support,* assert that certain identical documents were received by all residents. Plaintiffs' naked assertion, however, has been refuted by the sworn testimony of the Sales Director at the Community and 10 putative class members, including the named Plaintiffs. (*Supra,* § II(B)-(D).) Against this evidence, the Plaintiffs rely only on allegations in the TAC and argument of counsel. What the facts establish is that rather than delivering a single, uniform communication to all putative class members, communications to the putative class members were diverse. (*Id.*) This broad range of communications is natural in an evolving Community, where residents have come to the Community over a seven year period and there is no single document or single statement which has been repeated over and over by a single speaker. (Parkins Decl. at ¶ 5, 21.) Moreover, the dates of the various documents themselves, when compared to the dates that the putative class members entered the Community, establish that some of the documents pre-dated and others post-dated the presence of the hundreds of putative class members in the Community. (Plaintiffs' NOL.) As such, it would be impossible for every putative class member to have relied on such documents in deciding to join or remain in the Community.[15] Most telling is that members of the putative class, including the named Plaintiffs, have testified that they either did not see or did not rely upon these documents. (*Supra,* § II(C)-(D).) *And there is no sworn testimony from any putative class member that he or she did.* Thus, without a class wide inference of reliance, Plaintiffs will be required to prove at trial reliance and causation for each putative class member.[16] *Mirkin,* 5 Cal. 4th at 1094.

(Footnote continued from previous page.)

reliance, and injury." *Massachusetts Mutual,* 97 Cal. App. 4th at 1291. This standard has changed after the passage of Proposition 64. *Akkerman,* 152 Cal. App. 4th at 1102 (plaintiff must show "injury in fact and lost money or property due to defendant's conduct").

[15] For example, the Shorts did not begin investigating the Community until October 2000 (Lane Decl. Ex. D (D. Short Depo.) at 31:9-13), and therefore nearly one-third of the 31 documents Plaintiffs contend were distributed to every putative class member predate the Shorts' first visit to the Community (*see* NOL Exs. 7, 9, 10, 16, 17, 18, 25, 39, 42).

[16] Plaintiffs' Motion assumes that the Court will accept the argument that *Vasquez* and its progeny will apply to the facts of this case, making proof of individual reliance by each putative class member unnecessary. Perhaps recognizing the futility of their position, Plaintiffs do not even attempt

(Footnote continues on next page.)

b. Proving The Requisite Reliance Requires Litigation Of Individual Issues.

Because Plaintiffs cannot avoid proving individual reliance for each putative class member in their fraud, CLRA and UCL claims, the resolution of individual factual questions will predominate these claims. *See Akkerman*, 152 Cal. App. 4th at 1101-1103 (affirming order denying class certification of UCL claims for psychiatric patients since the class "would be too amorphous for certification" where putative class members allegedly received the same booklet, because resolution would still depend on determination of individualized issues); *Brown v. Regents*, 151 Cal. App. 3d 982, 989 (1984) (insufficient community of interest for class action where determining putative class members' reliance in fraud case required analysis of each class members' unique experience); *Kavruck*, 108 Cal. App. 4th at 786 (same); *Caro v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 668-669 (1993) (denying class certification for CLRA claim because of predominance of individual issues).[17] This authority makes clear that a class should not be certified here.

For example, in *Akkerman*, the plaintiff claimed that identical booklets regarding potential risks had been distributed to all putative class members considering a certain psychiatric treatment. *Akkerman*, 152 Cal. App. 4th at 1100. The court denied class status, noting that each class member would have to provide proof of:

> (1) whether he relied on [the booklet], (2) documents from other sources, or (3) whether he relied on a combination of information, (4) whether he was in fact deceived, or (5) whether he would have requested [treatment], notwithstanding knowledge of all the risks.

Id. at 1103. Similarly, in *Brown*, the plaintiffs alleged that the defendant hospital made both oral and written misrepresentations regarding quality of care to induce putative class members to undergo

---

(Footnote continued from previous page.)

to argue that, in the alternative, a class should be certified if they will be required to prove the individual reliance of each putative class member. Therefore, if this Court determines that *Vasquez* and its progeny do not apply, it is clear that a class cannot be certified.

[17] As in *Caro*, where the court found that the subjective nature of the reliance issue required an individual analysis of what each class member thought was "fresh" orange juice, *id* at 669, here an individual analysis will be required to determine what each resident considers to be "outstanding" care in the Care Center and "luxury senior housing at its finest" or "a warm and gracious setting," (Motion at 13:5, 14, 16).

treatment. *Brown*, 151 Cal. App. 3d at 987. The court held that no community of interest could be established, because whether or not each member of the putative class actually relied on any specific representation depended on a separate set of facts applicable only to that individual. *Id.* at 989. In *Kavruck*, the court focused on the fact that plaintiff's alleged reliance was based on oral representations of the defendant's sales agents.[18] Because this situation "would require proof on a subscriber by subscriber basis, rather than a common set of facts for the entire class," it was "not appropriate for class treatment." *Kavruck*, 108 Cal. App. 4th at 786. And in *Caro*, the court found that individual issues predominated a CLRA claim where liability turned on what portions of a product label consumers read, and whether they considered the representations on the portions they did read to be material. *Caro*, 18 Cal. App. 4th at 466-469.

The evidence here establishes that each resident relied on different facts, from different sources, in deciding to enter and remain in the Community. (*Supra*, § II(C)-(D).) The Werners entered because they were impressed after investigating the Community upon the advice of another resident. (Werner Decl. at ¶2.) The Wrights entered because of their "positive feelings" about the Community. (Wright Decl. ¶ 5.) The Lessers entered because the Community is close to their children and to gain the peace of mind of living in a retirement community. (Lesser Decl. ¶¶ 2, 7.) The Darmstandlers entered because they wanted to simplify their lives. (Darmstandler Decl. ¶ 3.) And none of these residents relied on any written materials provided by the Defendants in deciding to move in or remain in the Community. (*Supra*, § II(C).)

The named Plaintiffs' experiences also establish that individual issues predominate. (*Supra*, § II(D).) Each of the named Plaintiffs met with different sales agents at different times. (*Id.*) Mrs. Westervelt was a resident long before Defendants purchased the Community and decided to remain in the Community before the Defendants purchased it, for reasons totally unrelated to any oral or written representations by any Defendant. (*Supra*, § II(D)(1).) Ms. Meehan's and Ms. Yelle's

[18] Plaintiffs understandably do not want the Court to focus on their repeated allegations in the TAC of alleged oral misrepresentations in deciding this motion. (*See* TAC ¶¶ 12, 35, 41, 43, 44, 85, 171.) But these allegations are fatal to their request for class certification. *See Occidental*, 18 Cal. 3d at 361 (rejecting plaintiff's theory of class certification based on varying oral representations); *Kavruck*, 108 Cal. App. 4th at 786-87 (same).

decision to move in was primarily based on their desire not to have to maintain a house. (*Supra*, § II(D)(2)-(3).) While they claim to recall oral representations that a portion of their entrance fees would be set aside for long-term care, neither could identify any specific written materials provided by the Defendants they relied on. (*Id.*) The Shorts also could not identify any specific written document they relied on to enter the Community. (*Supra*, § II(D)(4).) They did so in order to be near Mrs. Short's daughter and for the availability of 24-hour nurse response (but neither could point to any document that promised that program would continue indefinitely). (*Id.*) Mr. Gleason based his decision to buy on a "glossy brochure" (that he cannot identify), together with a written representation by Kelly Parkins regarding his monthly fees in the Care Center and an oral representation by Jim Hayes, neither of which was made to any other Plaintiff. (*Supra*, § II(D)(5).) And he moved to the Community because of its "vibrance." (*Id.*)

These situations are no different from those in *Akkerman, Brown, Kavruck,* and *Caro*. Just as class certification was not warranted in those cases because a trier of fact there would be required to determine reliance on an individual basis, this case necessitates a resident-by-resident analysis. Here, putative class members spoke with different sales agents at different times, received differing representations (or none at all), and relied on different factors in deciding to enter the Community. (*Supra*, § II(B)-(D).) Thus, proving reliance here will require litigation of individual issues regarding what was told to each resident by different sales agents (and when), or what – if any – written materials each resident saw (and when). Only then can a factual determination be made regarding whether or not a putative class member relied on any alleged misrepresentations or omissions in deciding to move into or remain in the Community. This record makes clear that individual questions of fact predominate Plaintiffs' claims. *See Akkerman*, 152 Cal. App. 4th at 1100; *Brown*, 151 Cal. App. 3d at 987; *Kavruck*, 108 Cal. App. 4th at 786; *Caro*, 18 Cal. App. 4th at 466-69.

2. Plaintiffs' Breach Of Contract Claim Defeats Class Certification.

Plaintiffs also cannot establish sufficient community of interest for their breach of contract claim (claim 8 of the TAC). In *Hamwi*, a putative class brought a breach of contract claim against the owners of leased office space and sought to use parol evidence to interpret the meaning of a specific lease provision. In affirming denial of class action status, the court focused on evidence that the

ambiguous provision was individually discussed with each putative class member. *Id.* at 465-466. The court found that "interpretation of the [contract] in each individual instance would involve a separate trial of the issue of meaning based upon the extrinsic evidence of those discussions" and denied class certification. *Id.* at 473.

Plaintiffs' breach of contract claim is based, almost in its entirety, on parol evidence that Plaintiffs claim is incorporated into the CCRA.[19] If parol evidence is permitted, inquiry into the documents received and statements heard by each putative class member will be required. Thus, if the Court accepts Plaintiffs' theory, analysis of Plaintiffs' breach of contract claim will require individual factual analysis for each putative class member. This also precludes class certification. *Hamwi*, 72 Cal. App. 3d at 465-466.

3. Plaintiffs' Remaining Claims Are Not Eligible For Class Certification.

Plaintiffs' remaining claims for relief include elder abuse, breach of fiduciary duty and violation of Health & Safety Code section 1793.5. (claims 4, 6 and 10 of the TAC, respectively.) Each of these causes of action incorporates (and is based on) the factual claims made in support of the claims for fraud, CLRA, breach of contract, and UCL. (TAC at ¶¶ 141, 157 and 182.) As such, each of these claims will turn on the same set of operative facts – specifically, the alleged misrepresentations and omissions to members of the putative class by the Defendants. (TAC at ¶¶ 147, 148, 159(c),(f), 184.) Thus, individual factual issues predominate all of Plaintiffs' claims.[20]

D. Class Certification Must Be Denied Because A Class Action Is Not Superior.

"A class action should be certified only if it will provide substantial benefits both to the court

---

[19] While Defendants maintain that parol evidence should not be considered by this Court (or a jury) because the contract provisions are not ambiguous, Plaintiffs' breach of contract theory is based on the admission of such evidence. (TAC at ¶171 (CCRAs allegedly supplemented by oral promises, brochures, and other literature)).

[20] Plaintiffs' elder abuse claim (count 4 of the TAC) includes allegations of mental suffering. Because adjudication of mental suffering claims requires a case-by-case analysis of each putative class member, these claims are not proper for class certification. *See, e.g. Bennett v. Regents*, 133 Cal. App. 4th 347, 358-359 (2005) ("class certification is generally inappropriate when each member of the proposed class must individually establish emotional distress damages" and thus "the difficulty of establishing each individual's issues outweighs the benefit derived from jointly trying any common issues").

and the litigants." *Washington Mut.*, 24 Cal. 4th at 914. The evidence here makes clear that liability will have to be established for each putative class member on an individual basis. Thus, the result of certifying a class action will be more than 250 mini-trials. This will require a single jury to consider the varying testimony and evidence related to hundreds of different class members, each with a unique set of facts. Discovery will take more than a year. Trial will take multiple months, with hundreds of witnesses and multiple thousands of exhibits. Certification, therefore, will not conserve judicial resources or expedite this case, instead it will needlessly prolong and expand it. Moreover, class certification would make it virtually impossible for any party to receive a fair trial on the merits, where the volume of evidence will be immense and will vary significantly from resident to resident. A jury simply will be unable to keep separate the evidence relating to each class member and avoid prejudicing either the Defendants or individual plaintiffs.

The Court should ignore Plaintiffs' attempt to compel this Court to certify a class with the slightly veiled threat that if this Motion is denied 80 other individuals will file suit. The veracity of this assertion is highly suspect (and not supported by any admissible evidence). Moreover, even if some number of additional residents seek to join this action, the resulting case will be far more manageable, and provide a much more equitable result for all parties, than the proposed class action.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request this Court to deny Plaintiffs' Motion for Class Certification.

Dated: November 30, 2007

ERIC M. ACKER
LINDA L. LANE
MORRISON & FOERSTER LLP

By: Eric M Acker
Eric M. Acker

Attorneys for Defendants
CC-LA JOLLA, INC., CC-LA JOLLA, L.L.C. (d/b/a CCW-LA JOLLA, L.L.C.), CC-DEVELOPMENT GROUP, INC., CLASSIC RESIDENCE MANAGEMENT LIMITED PARTNERSHIP