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8 Attorney for all Plaintiffs, individually,
9 and on behalf of all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**

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

17 Plaintiffs,)

18 v.)

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

25 Defendants.)

CASE NO: GIC877707

Date: July 18, 2007

Time: 8:30 a.m.

Judge: Hon. Yuri Hofmann

Dept: 60

Action Filed: December 29, 2006

Trial Date: Not yet set

PLAINTIFFS' EX PARTE
APPLICATION TO ADVANCE
CASE MANAGEMENT
CONFERENCE AND HEARING ON
DEFENDANTS' DEMURRER

[CRC 3.721]

26 Pursuant to rule 3.721 of the California Rules of Court, the plaintiffs request that the
27 Court advance the current dates set for the initial case management conference and defendants'
28 demurrer, both presently set for October 5, 2007. In support of this application, plaintiffs state:

29 1. This case alleges violations of statute, fraud, elder abuse, breach of fiduciary duty
30 and breach of contract against the owners and operators of a continuing care retirement
31 community in San Diego. Through numerous publications, marketing brochures, and oral
32 presentations, the caregiver defendants made knowingly false "continuing care promises" to the
33 elderly plaintiffs and the other 300 elderly residents of La Jolla Village Towers ("LJVT"). These
34 continuing care promises were calculated to induce trust and reliance in defendants to fulfill

1 lifetime health care promises in exchange for total payments of approximately \$85 million.
2 Relying on those promises, LJVT residents—whose average age exceeds 83 years—paid
3 “entrance fees” ranging from \$218,000 to \$700,000 into a trust created by defendants to be used
4 in part for pre-paid life-time health care. Defendants have exhausted the entire trust fund,
5 including making “cash disbursements” to individual owners of LJVT. None of the \$85 million
6 trust fund remains to be used, as promised, for pre-paid long-term medical care. Incredibly,
7 defendants have begun charging the plaintiffs and the other elderly residents for long-term health
8 care a second time, and several other residents a third time.

9 2. The original complaint in this matter was filed on December 29, 2006. The case
10 was originally assigned to The Honorable Linda B. Quinn. The complaint was amended in early
11 January, 2007, prior to service, and the first amended complaint was filed and served by mid-
12 January, 2007. The first amended complaint had one plaintiff, 85-year-old Donald Short, and
13 two defendants, CC-La Jolla, Inc., and CC-La Jolla, LLC.

14 3. The defendants filed a demurrer to the first amended complaint, which was
15 originally set to be heard on April 27, 2007. After full briefing, Judge Quinn continued the
16 hearing date until May 4, 2007, on her own motion, and then recused herself at the hearing upon
17 realizing she had personal knowledge of the facts in controversy.

18 4. The defendants’ demurrer was never heard. Instead, after the case was reassigned
19 to this Court, Mr. Short scheduled and briefed an ex parte application to file a second amended
20 complaint. In his second amended complaint, Mr. Short sought to add five additional LJVT
21 residents as plaintiffs, and two additional defendants. Both of the additional defendants, CC-
22 Development Group, Inc., and Classic Residence Management Limited Partnership, are affiliated
23 with, and controlled by, the same individuals as the original two defendants, and both new
24 defendants are represented by the same attorneys in this case. Mr. Short also added substantial
25 additional detail in an attempt to placate the alleged pleading deficiencies raised by the
26 defendants in their first demurrer. Mr. Short’s ex parte hearing was set for June 7, 2007.

27 5. After receiving Mr. Short’s ex parte application and proposed second amended
28 complaint, the defendants stipulated to permit its filing, with their response due no later than July
13, 2007.

1 6. On July 13, 2007, the defendants filed another demurrer to several—but not
2 all—of the plaintiffs’ causes of action. The new demurrer hearing has been scheduled for
3 October 5, 2007, the same date as the initial case management conference in this case.

4 7. Plaintiffs request that the Court advance both the hearing on the demurrer and the
5 case management conference for the following reasons:

6 a. Rule 3.721 of the Rules of Court provides that “[i]n every general civil case,
7 except complex cases . . . , the court must review the case no later than 180 days
8 after filing of the initial complaint.” Because the initial complaint was filed on
9 December 29, 2006, and because this case is not and should be designated as
10 “complex,”¹ the case management conference should have occurred by June 29,
11 2007.

12 b. This case is entitled to statutory preference. (Code Civ. Proc., § 36.) Four of the
13 plaintiffs are over age 70, and the average age of the putative class is also over 70
14 years. As counsel for the plaintiffs has expressed to defense counsel since
15 February, 2007, the plaintiffs will move for a trial preference pursuant to Code of
16 Civil Procedure section 36 at the case management conference.

17 c. The parties have been diligently conducting discovery. The plaintiffs have
18 propounded several written discovery requests, prompting the production of
19 numerous documents by the defendants. The plaintiffs have already completed
20 two depositions and have three others scheduled. The defendants recently served
21 several written discovery requests on the plaintiffs, including on several of the
22 theories on which the defendants claim their demurrer should be granted without
23 leave to amend. The plaintiffs expect to be ready for trial by November, 2007.

24 d. Many of the issues raised in the defendants’ pending demurrer have already been
25 briefed and the plaintiffs could file their opposition on shortened time.

26 e. Immediately following the demurrer hearing, plaintiffs intend to move to certify a
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28 ¹ Neither the plaintiffs nor the defendants designated the case as complex as set
forth in rules 3.401 or 3.402(b).

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class on several of their claims. Since the complaint was filed, at least 10 members of the putative class have died.

Therefore, pursuant to rule 3.721 of the California Rules of Court, the plaintiffs request that the Court advance the current dates set for the initial case management conference and defendants' demurrer, both presently set for October 5, 2007.

Dated: July 18, 2007 **LAW OFFICE OF MICHAEL A. CONGER**

By: _____
Michael A. Conger
Attorney for Plaintiffs