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Michael A. Conger

Civil Litigation
Employment Law
Business Law
Wrongful Death
Serious Injury

December 20, 2007

Via Fax No. (858) 720-5125

Confidential Pursuant to Evidence Code sections 1115-1128

Linda L. Lane, Esquire
Morrison & Foerster LLP
12531 High Bluff Drive, Suite 100
San Diego, CA 92130-2040

Re: Short, et al. v. CC-La Jolla, Inc., et al.
San Diego Superior Court Case No. GIC877707

Dear Linda:

Thank you for your letter of December 19, 2007, regarding the possibility that your clients might agree to attend mediation. You have asked my clients to forward a demand in order that you can determine whether mediation is appropriate at this time, and this letter is intended to do so.

At the outset my clients have asked me to express their sincere appreciation for three recent extremely constructive steps taken by your clients: (1) no increase in resident monthly fees in 2008; (2) offering English courses for employees at the care center; and (3) offering to refund 100% of residents' entrance fees if they move out.

A framework for resolution of this matter was set forth in letters to your clients by four of the plaintiffs (before they became plaintiffs) in early April, 2007. Since then, the case has improved somewhat from the plaintiffs' perspective. *First*, the plaintiffs have survived defendants' demurrers and motions to strike with nine of ten challenged causes of action intact. Notably, these surviving claims permit treble damages, punitive damages, and attorney fees. *Second*, class certification was recently granted, ensuring that more than 100 residents

are now bringing claims. *Third*, as we are sure you noticed, the Court's ruling granting the motion to certify itself demonstrates why summary judgment will not be granted in this case—"plaintiffs submit evidence which tends to establish that 349 elderly residents of LJVT may have been misled into contracting with defendants based on numerous publications, marketing brochures, oral representations, letters, memos, and contracts."

Nevertheless, my clients have authorized me to restate the suggested resolution they made in early April 2007, before these favorable developments:

1. Set aside \$18.4 million into an interest-earning trust fund, to be administered by a mutually agreeable trustee, to be used only to subsidize care center costs for class members.¹ Agree to cease the practice of including care center operating losses in class members' monthly fees.
2. Reimburse class members the portion of monthly fees charged to them, at any time since the care center opened, to subsidize the care center (believed to be \$800,000). In addition, pay each of these class members \$5,000 pursuant to section 1780, subdivision (b)(1), and section 3345, subdivision (b).
3. Reimburse class members a total amount of \$350,400 and reinstate 24-hour emergency response from a nurse in the independent living towers. In addition, pay each of the class members \$5,000 pursuant to section 1780, subdivision (b)(1), and section 3345, subdivision (b). We agree that the future cost of providing a 24-hour nurse may be charged to monthly fees.
4. Terminate the managing and marketing agreement dated April 28, 1998, and reimburse class members one-half of expenses paid to Classic Residence Management for management fees, marketing expenses, sales commissions, and administrative expenses for the past four years, with interest at the rate of ten percent per annum. In addition, pay each of these residents \$5,000 pursuant to section 1780, subdivision (b)(1), and section 3345, subdivision (b).
5. Reimburse all private duty nursing care costs, with interest at the statutory rate of 10 percent per annum, charged to independent living residents with the extensive continuing care plan, who have moved to the care center in the past three years. Agree to provide appropriate staffing so that the need for private duty nurses no longer exists for class members.

¹ Please note all of this money would eventually be paid to your clients and none would be directly paid to the plaintiffs or any class members.

6. Agree to pay for monitoring by a licensed health care consultant selected by the Health Services Committee of the Resident Association's elected Resident Council for at least three years to ensure that the level of care provided at the care center is "high quality," "exceptional," "outstanding," and "expert," including (a) hiring and retention of only care givers who speak, read and write English fluently, (b) the training, supervision and care provided in the care center is at or above the standard of care advertised by you, and (c) you obtain and maintain appropriate staffing levels for the care center to ensure this standard.
7. Reimburse class members 25 percent of their monthly fees since construction began to compensate them for the substantial loss of amenities and the construction noise, dust, and inconvenience.

We sincerely hope that your clients will agree to attend mediation and that the positive steps your clients have already taken and our suggestions provide the framework for a constructive dialog.

Again, we are willing to go any mutually-agreeable mediator your client selects, so long as there is no pre-existing relationship between your client or firm and the mediator. Any proposed settlement requires court approval now that the class has been certified. (Cal. Rules of Court, rule 3.769.) Our experience has been that use of an accomplished mediator greatly assists in this approval process.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MAC', with a long horizontal flourish extending to the right.

Michael A. Conger

MAC/pbm
cc: Clients