

EXHIBIT 49

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN DIEGO

3 DONALD R. SHORT, JAMES F.)
4 GLEASON, CASEY MEEHAN,)
5 MARILYN SHORT, PATTY)
6 WESTERVELT, and DOTTIE YELLE,)
7 individually, and on behalf of)
8 all other similarly situated,)
9 Plaintiffs,)

Certified Copy

vs.) No. GIC877707

10 CC-LA JOLLA, INC., a Delaware) VOLUME I
11 Corporation, CC-LA JOLLA,)
12 L.L.C., a Delaware limited)
13 liability company,)
14 CC-DEVELOPMENT GROUP, INC.,)
15 CLASSIC RESIDENCE MANAGEMENT)
16 LIMITED PARTNERSHIP, an)
17 Illinois Limited Partnership,)
18 and DOES 1 to 110, inclusive,)
19 Defendants.)

20 Videotaped Deposition of MARY KATHERINE
21 MEEHAN, taken at 12531 High Bluff Drive,
22 Suite 100, San Diego, California, commencing
23 at 9:03 a.m., Wednesday, September 25, 2007,
24 before Shuri Gray, CSR No. 3786.
25 PAGES 1 - 222

1 APPEARANCES OF COUNSEL:

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21 ALSO PRESENT:

22 GRANT MEISENHOLDER, VIDEOGRAPHER

23 SARA J. O'CONNELL, ESQ.

24 DOTTIE YELLE

25 PATTY WESTERVELT

1 Q. Approximately when did you receive this 09:23
2 document?

3 A. I'd have to say that I can't remember the exact
4 date. It was prior to moving in. It was probably in
5 1996 or '7. 09:23

6 Q. And again that was when the previous owners,
7 not my clients, were the owners of the property; is that
8 right?

9 A. Yes. That's the first time I saw it, but I
10 have seen it many times since.

09:23

11 Q. When have you seen it since?

12 A. In all the literature that I have ever received
13 from them, folders, it always showed this picture.
14 Postcards, which I sent to people, this is where I am
15 going to live.

16 Q. And that was after you moved into the towers?

17 A. Yes. I have seen it before and after.

18 Q. So when was the last time that you saw this
19 picture in brochures and things of that nature?

20 MR. CONGER: If you recall. 09:23

21 THE WITNESS: Well, if I can recall, I mean,
22 they have been in my possession ever since we moved in.
23 I don't look at them every day, but I have had them in
24 my possession the whole entire time.

25

1 BY MS. LANE:

09:24

2 Q. And it's your testimony today that Classic
3 Residence by Hyatt used this picture of these towers?

4 A. Yes.

5 Q. And have you given those documents to your
6 attorney to give to us?

09:24

7 A. Yes, I have.

8 Q. Okay. And you were not a resident when the
9 property was acquired in April of '98; is that correct?

10 A. No, I was not a resident in April of '98.

09:24

11 Q. Why did you decide to move to La Jolla Village
12 Towers?

13 A. Well, the first reason is because it was --
14 looked like a very beautiful place to spend the
15 remainder of my life. I was very impressed with the
16 advantages to living there, having had my mother in a
17 separate assisted living facility at the time. It was
18 beautiful. They promised to take care of me my entire
19 life. Due to the sale of my home I was able to afford
20 to move in. I thought this is beautiful. I loved its
21 location, and I loved all the amenities that they
22 promised us, showed us pictures of, and decided to take
23 advantage of using my money for as long as possible
24 instead of waiting until I was quite a bit older.

09:24

09:25

25 Q. One of the first things you said is you moved

09:25

24

1 there because of the advantages to living there? 09:25

2 A. Uh-huh.

3 Q. What are those?

4 A. Well, having been a homeowner for many, many
5 years, I enjoyed having somebody else take care of 09:26

6 landscaping, plumbing problems and providing me with a

7 swimming pool, a dining facility, the community life,

8 the other amenities of living in a community. I liked

9 its location. And I liked the fact that they had or

10 were going to have a health care center that would take 09:26

11 care of me in my very declining years.

12 Q. And did you shop around at any other properties
13 before moving -- before deciding on La Jolla Village?

14 A. Yes.

15 Q. Where else did you look at? 09:26

16 A. I looked at Pacific Regent, which is not a CCRC

17 I realized after I looked at it. I looked at the Hyatt

18 in Carmel or Monterey, since my parents used to live

19 there. Not in the retirement community, but they lived

20 in the city of Carmel. I looked at La Vida Del Mar. I 09:26

21 looked at Carlsbad by the Sea. And as I said, I had my

22 mother in an assisted living facility, of which she was

23 a renter. The idea of paying an entrance fee and having

24 these facilities and all the advantages of living there

25 provided me, it was very enticing. 09:27

1 Q. So I'd like to go through those. Let's start 09:27
2 with Pacific Regent. Why did you decide not -- why did
3 you decide against Pacific Regent?

4 A. Well, first of all, it was not a continuing
5 care retirement community. It was a different financial 09:27
6 setup. You bought it. You received a deed for your
7 apartment and so on. And I felt that the facility did
8 not have all of the advantages and amenities that
9 La Jolla Village Towers was going to have or had
10 already. 09:28

11 Q. What sort of amenities was it missing?

12 A. Well, I never saw a swimming pool at Pacific
13 Regent. I had a neighbor whose parents lived there. We
14 visited their apartment. I thought the apartments were
15 small. They had only an elevator for the residents, two 09:28
16 elevators side by side, which were very small, and I
17 anticipated that with a building of that size and people
18 having to use assistive devices like walkers and
19 wheelchairs, that it would be very difficult to move
20 around the building. It was just a different feel too. 09:28

21 Q. Can you describe the feel that how it was
22 different from La Jolla Village?

23 A. Well, the first thing you walk in the concierge
24 was very snotty and not very receptive to showing us the
25 building or even any of the facilities. The general 09:29

26

1 population that was seen in the lobby and when we did 09:29
2 visit this one couple, they -- I felt they were a great
3 deal older than the group that I felt I would probably
4 see and had seen at La Jolla Village Towers. It was a
5 very active community at La Jolla Village Towers. 09:29
6 Friendly.

7 Q. With the Hyatt in Monterey, why did you decide
8 against that Hyatt?

9 A. I love San Diego. I didn't want to live there.
10 And it was a rental. In fact, I think it used to be a 09:29
11 hotel. I'm not sure of that, but anyway.

12 Q. And La Vida Del Mar, why did you decide not to
13 move there?

14 A. They did not seem to have as much independent
15 living people. They had more assisted living type of 09:30
16 facility, and it was also a rental. And I thought it
17 just -- I didn't really like where it was located
18 either.

19 Q. And Carlsbad by the Sea?

20 A. Well, having living on and off since 1969 and 09:30
21 1996 in University City, I knew the advantages of living
22 in the Golden Triangle as opposed to Carlsbad, and I
23 felt that it would be a lovely place to live, but that
24 the disadvantage of having to travel on Interstate 5 to
25 get to an airport and so on and so forth, it did not 09:30

1 appeal to me in that respect. It did not have the 09:30
2 advantage of its location, location, location.

3 Q. When did you begin talking to marketing folks
4 at La Jolla Towers?

5 A. As best as I can recall, it was sometime in '96 09:31
6 or '7 we went to the trailer after we had seen the
7 building being dug, and they were advertising it, so we
8 went over to see it.

9 Q. And who did you talk to?

10 A. I really can't recall it other than James. I 09:31
11 don't recall his last name.

12 Q. Who is the first marketing employee that you
13 remember talking to, that you remember their name?

14 A. You mean his whole name? Is that what you
15 mean? 09:31

16 Q. Other than James?

17 A. Oh, other than James. Well, after the building
18 was built, and we visited it many times, visiting our
19 friends here, eating dinner here, meeting the other
20 residents and finally making the decision that despite 09:32
21 my relatively young age and my housemate's age, that we
22 maybe we should consider moving here, and so at that
23 time one of our friends said why don't you talk to
24 Kristine Cram, so that's the one we spoke with.

25 Q. When was that, approximately? 09:32

1 A. It must have been in 1998, approximately. 09:32

2 Q. After the property was being run by Classic
3 Residence by Hyatt?

4 A. I really can't say. I don't know who was
5 running it. It was not -- I think it was still in 09:32
6 bankruptcy. I don't remember when it came out of
7 bankruptcy.

8 Q. And what did Kristine Cram tell you about the
9 property?

10 MR. CONGER: It's over broad. You can answer. 09:33

11 THE WITNESS: Well, she just reiterated
12 everything that was in the brochures and the flyers and
13 the lovely, gorgeous materials about the facility. We
14 were interested, of course, in finding a unit that was
15 to our best advantage, and we knew a lot about the 09:33
16 building, having been there many, many times. We knew
17 already about all of the wonderful amenities, and so it
18 was really -- it really got down to the finances and
19 which apartment would we like.

20 BY MS. LANE: 09:33

21 Q. Did you talk to any other marketing employees
22 during the sales process?

23 A. As best I can recall, Kristine was the only one
24 that we spoke with.

25 Q. And is she still employed by Hyatt, by Classic 09:34

1 nurse --

10:20

2 MS. LANE: Yes.

3 MR. CONGER: -- or that this sentence provides
4 for a nurse?

5 BY MS. LANE:

10:20

6 Q. This sentence provides for a nurse.

7 A. This sentence does not say nurse. I agree that
8 that is what it says.

9 Q. And were you told during the time that you were
10 signing this in June of 1999 that there would be a nurse 10:20
11 24 hours per day?

12 A. Yes. I was made aware of that through other
13 literature.
[REDACTED]

14 Q. What literature?

15 A. All of the flyers, all the literature that they 10:21
16 were given, that there would be 24-hour response by a
17 nurse, a licensed nurse. It did not say whether it was
18 LVN or RN.
[REDACTED]

19 Q. And specifically what literature was that
20 referenced? 10:21

21 MR. CONGER: If you recall.

22 THE WITNESS: I don't know them by name. I can
23 just say that all of the material that we were ever
24 given through the sales office stated that.

25

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1 as set forth in this agreement, with a portion of that 10:56
2 loan being repaid to you determined by the length of
3 time you are a resident of the community."

4 Did you read that provision before signing in
5 the year 2000? 10:56

6 A. Yes, I did.

7 Q. Did you have any questions about that
8 provision?

9 A. I asked for an explanation from -- yes.

10 Q. What was your question? 10:56

11 A. Have it explained to me.

12 Q. And who did you ask that to?

13 A. I asked it of the sales consultant I had, plus
14 the executive director.

15 Q. And who was the sales consultant? 10:57

16 A. Kristine Cram.

17 Q. And the executive director?

18 A. Vicky Simpson.

19 Q. What did Kristine Cram say when you asked her
20 for an explanation? 10:57

21 A. Well, what was back on the other page, that
22 said after 50 months because of the purchase that there
23 would be no money coming back to me.

24 Q. So when you asked her to explain this
25 provision, she said what? 10:57

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1 A. That it would go down every month that I was 10:57
2 there until past 50 months, there would be no money
3 left.

4 Q. What would go down?

5 A. The amount of money that was paid in as an 10:57
6 entrance fee.

7 Q. Did you ask her about the language about the
8 entrance fee being a loan to Classic Residence by Hyatt?

9 A. No, I did not. The best of my knowledge, I do
10 not remember asking about what that meant. 10:58

11 Q. So what was your question about this provision?

12 A. To explain to me if I decided to leave
13 sometime, what money there would be left coming back to
14 me, and she explained.

15 Q. And you asked the same question of Vicky 10:58
16 Simpson?

17 A. Yes.

18 Q. And what did she say?

19 A. The same thing that Kristine said.

20 Q. And do you have any reason to believe that 10:58
21 that's not the case?

22 A. No.

23 MR. CONGER: The question is vague and
24 ambiguous. You can answer.

25

1 and when we should be transferred to the care facility 11:41
2 that was soon to be built.

3 Q. And when you say "no increase in the fee," you
4 mean other than the regular monthly fee increases that
5 are spelled out in the agreement? 11:41

6 A. That is correct.

7 Q. And who was the person to explain that entrance
8 fee to you?

9 A. Our salesperson.

10 Q. Kristine Cram? 11:41

11 A. That is correct.

12 Q. And what was your initial monthly fee?

13 MR. CONGER: If you recall.

14 THE WITNESS: Well, it's on Page 3.

15 BY MS. LANE: 11:42

16 Q. And what was it?

17 A. \$2,325 plus \$550 for the second person.

18 Q. And what is your current monthly fee, if you
19 know?

20 A. It's roughly -- it's only roughly -- 3800. 11:42

21 Q. Total?

22 A. Yes, ma'am.

23 Q. And what did you understand your monthly fee to
24 include?

25 A. Well, everything that was in any of the 11:42

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1 brochures: Occupancy of our apartment, weekly cleaning, 11:42
2 dining facilities, use of all facilities in the
3 building, emergency service, and eventual possible
4 transfer to a memory support or assisted in skilled
5 nursing. 11:43

6 Q. And you understood the monthly fees to cover
7 those things; is that right?

8 A. Yes.

9 Q. Including the transfer to the skilled nursing
10 or the care center? 11:43

11 A. That our monthly fees, yes, that's what I
12 understood.

13 Q. And have you been happy while living at La
14 Jolla Village Towers?

15 A. I have had periods of great happiness, yes. 11:43

16 Q. I know this is a broad question, but why? What
17 has made it a happy experience?

18 MR. CONGER: It's vague as to time. You can
19 answer.

20 THE WITNESS: I'm sorry? 11:43

21 MR. CONGER: I said the question is vague as to
22 time. You may answer. I'm sorry, Casey. I was
23 mumbling.

24 THE WITNESS: Well, of all the reasons stated.
25 I had -- somebody else was worrying about a lot of 11:44

1 BY MS. LANE:

01:57

2 Q. When you entered into the agreement with
3 Classic Residence by Hyatt in 2000, were you under the
4 belief that Classic Residence was required to set aside
5 a portion of your entrance fee for any reason?

01:57

6 A. Yes.

7 Q. And what was your belief?

8 A. My belief? It was written, it was told to me
9 that they would set aside a portion for long-term care.

10 Q. And you said it was written and told to you.

01:58

11 Where was it written?

12 A. In all the brochures that I received.

13 Q. Can you describe the brochures at all
14 specifically, which brochures?

15 A. No, I cannot at this time. I don't recall.

01:58

16 Q. So, as you sit here today, you do not remember
17 a specific document that required Classic Residence by
18 Hyatt to set aside a portion of your entrance fee?

19 MR. CONGER: That question, the required part,
20 calls for a legal conclusion. But you can answer the
21 question.

01:58

22 THE WITNESS: I don't recall which documents,
23 but I believe it was in all of the brochures and
24 literature and the verbal words that came from the
25 salespeople with regard to the long-term care, including

01:58

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1 \$18,000 for the second person, would exclusively be 01:58
2 used, set aside for long-term care.
3 BY MS. LANE:
4 Q. Who in the marketing department told you that?
5 A. Speak a little louder because I have a hearing 01:59
6 loss.
7 Q. Who in the marketing department told you that?
8 A. Kristine Cram.
9 Q. And what exactly did she tell you?
10 A. What I just said. 01:59
11 Q. Did she say anything different than the
12 brochures said that you described?
13 A. Not that I recall.
14 Q. Now, did she tell you what portion of your
15 entrance fee would be set aside? 01:59
16 A. I do not recall her saying a specific amount.
17 Q. Did she tell you where that money would be set
18 aside?
19 A. You mean like which bank or something?
20 Q. Or even in an account or what would happen to 01:59
21 that money?
22 A. I do not recall.
23 Q. Anyone other than Kristine Cram.
24 A. No.
25 Q. Did you understand that you would continue to 02:00

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1 pay monthly fees upon moving into the care center; is 02:00
2 that correct?

3 A. Yes.

4 Q. And did you understand that a portion of those
5 monthly fees would go towards payment for the care 02:00
6 center?

7 A. No, I don't believe I understood that.

8 Q. Did you believe that none of those monthly fees
9 would go towards the care center?

10 A. At the end of each year we received a letter 02:00
11 from the controller, Carolyn Zhuel, that stated a
12 portion of our fees were in fact going for a wellness
13 center and for -- and if you had just moved in, a
14 portion of your entrance fee could be deducted for
15 prepaid long-term care. 02:01

16 Q. So did you believe that monthly fees --

17 A. Part of the monthly fees.

18 Q. -- would go towards the care center?

19 A. No, would go for the wellness center.

20 Q. Okay. Did you believe that a portion of the 02:01
21 mom fees would go towards the care center?

22 A. No, I don't believe I believed that. I don't
23 believe I believed that. I don't recall that.

24 Q. Did you believe that none of the monthly fees
25 would go towards payment for the care center? 02:01

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1 BY MS. LANE:

02:03

2 Q. What do you mean what you thought was
3 independent?

4 A. Well, when somebody has a lot of assistive
5 devices and an attendant with them, I don't call that
6 individual resident independent anymore. And they are
7 living in the same building I am living in? We were
8 told that a new licensing thing allowed them to have
9 these people there.

02:03

10 Q. And when you said that memos, you said memos
11 gave you this impression, what memos were you referring
12 to?

02:04

13 A. Well, there was a memo from, I believe it was
14 executive director Mr. Hayes, who was the current -- the
15 director at the time that the health care center opened. 02:04
16 They were going to -- that it was not going to be -- we
17 were not going to be charged for operating losses, for
18 example, because we asked that many times in resident
19 council meetings.

20 Q. Okay. Tell me about those times. What
21 happened in the resident council meetings?

02:04

22 A. The question was asked that you just asked me,
23 and we were told no, we were not going to pay for the
24 care -- the health care center.

25 Q. Who told you that in the resident council

02:04

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1 BY MS. LANE:

02:28

2 Q. Let's talk about the monthly fees. Do you
3 believe that Classic Residence by Hyatt is attempting to
4 minimize your monthly fees?

5 MR. CONGER: Okay. I would instruct the
6 witness not to answer when you are asking the present
7 tense as opposed to past tense questions, because I
8 believe it calls for a party's contention in the case.
9 You are just substituting the word belief for
0 contention. So I instruct you not to answer.

02:29

02:29

1 BY MS. LANE:

2 Q. Prior to the filing of this lawsuit, did you
3 believe that Classic Residence by Hyatt was attempting
4 to minimize your monthly fee increases?

5 A. Yes.

02:29

6 Q. And what is that based on?

7 A. Memoranda that we received. They were doing
[REDACTED]
8 their utmost, rest assured that we are looking at all of
9 our contracts to do buying in large amounts to reduce
10 cost. They changed all the light bulbs in the building
11 to reduce the electrical bill. They kept assuring us
[REDACTED]
12 that we were doing -- that they were doing as much as
[REDACTED]
13 they could to minimize cost.

02:30

4 Q. And do you believe those assurances were true?

5 MR. CONGER: Objection. Instruct not to

02:30

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1 answer. That calls for a party's contention in the 02:30
2 case. You are asking her do you believe that they have
3 defrauded you. That's what you are asking her. And I
4 instruct you not to answer.

5 MS. LANE: That's not what I am asking her. I 02:30
6 can rephrase my question.

7 BY MS. LANE:

8 Q. Do you believe -- and I am talking about the
9 lawsuit was filed in December of 2006. So in November
10 of 2006 did you believe that Classic Residence by Hyatt 02:30
11 was doing its best to minimize the monthly fee
12 increases?

13 A. I think by 2006 I was beginning to doubt they
14 were minimizing our fees.

15 Q. Why? 02:31

16 A. Because they kept increasing our monthly fees
17 despite diminishing the amenities that we had available
18 to us and told us it was insurance, workers' comp.

19 Q. And do you have reason to believe that the
20 increases were not due to insurance or workers' comp? 02:31

21 MR. CONGER: I instruct you not to answer.
22 That question calls for a party's case in violation of
23 Rifkind versus Superior Court. Present tense questions,
24 I'll object to every one of them when you are asking for
25 contentions, every single one until we get this worked 02:31

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1 BY MS. LANE: 02:32

2 Q. In November 2006, before you filed this
3 lawsuit, did you have any reason to believe that the
4 statement that Classic Residence by Hyatt was not making
5 a profit was not true? 02:32

6 A. I feel like it's a double negative. Did I feel
7 --

8 Q. I'm sorry. In November of 2006, so before the
9 lawsuit was filed --

10 A. Right. 02:33

11 Q. -- did you have any reason to believe that the
12 statements that you just referred to, that Classic
13 Residence was not making a profit, did you have reason
14 the believe that statement was untrue?

15 A. I really didn't know. 02:33

16 Q. Let's go on to the 24-hour emergency response
17 issue. What was the 24-hour emergency response program
18 when you moved into the community?

19 A. When I moved into the towers? La Jolla Village
20 Towers? There were call buttons in all of the rooms, 02:33
21 including the bathrooms. We were instructed to push one
22 button every morning to alert the concierge, or somebody
23 who checked it, that we were upright and breathing, and
24 that if we needed anything in an emergency we were to
25 call that button, and they were going to call us, or if 02:34

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1 we called for assistance, that a nurse, a licensed nurse 02:34
2 would come and investigate what we needed.

3 Q. And did you ever use that system?

4 A. No, I have not.

5 Q. What were the benefits that you saw of that 02:34
6 system?

7 A. Well, I think it's rather obvious that if in
8 fact I was in my apartment by myself and I fell in the
9 bathroom or something, I could pull a cord, if I could
10 reach it, and somebody would come to my assistance. 02:35

11 Q. And are there still call buttons in the room?

12 A. Yes, there are.

13 Q. And are there still the pull cords that you are
14 referring to?

15 A. Yes. 02:35

16 Q. And is there still the process where you push
17 the buttons in the morning to let the concierges know?

18 A. Yes.

19 Q. So how did the program change?

20 A. Well, the buttons and the calling and, you 02:35
21 know, pulling your button, not that I ever have, in the
22 morning button pushing, it's not changed. What has
23 changed is that if you call for assistance, even -- I
24 guess it has changed. If you pull one of those buzzers,
25 you are going to either get a phone call from the 02:35

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1 concierges or a security guard to come up and find out 02:35
2 what the problem is.

3 Q. And when did the program change?

4 A. I don't recall.

5 Q. Does 2005 sound correct? 02:35

6 A. I would say it was before that.

7 Q. Were there any meetings held regarding this
8 change in systems?

9 A. It was mentioned at a resident council meeting,
10 yes. 02:36

11 Q. What was said about the change?

12 A. They said you would call the wellness clinic
13 from 8:00 until 4:00 or 5:00, and after that some nurse
14 would be on call, or if it was after 11:00 at night,
15 that the concierges would call security and they would 02:36
16 come.

17 Q. And the current program is called the first
18 responder program; is that right?

19 A. That is correct.

20 Q. Did they give you the -- they, I am saying at 02:36
21 these meetings. Were there reasons given for the change
22 to the first responder program?

23 A. I'm sure there were, but I don't recall what
24 they are.

25 Q. Do you recall that it would have been a 02:36

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1 faster -- it is a faster response under the first 02:36
2 responder program?

3 A. Do I recall that they said this?

4 Q. Yes.

5 A. I don't recall. 02:36

6 Q. Do you recall that they said this was a safer
7 program under the first responder program?

8 A. I do not recall them saying that.

9 Q. Do you recall being given a talk by the
10 San Diego Fire Department about the program? 02:37

11 A. Yes, I do.

12 Q. And do you recall that they endorsed the
13 program?

14 A. I believe so, yes.

15 Q. What did the San Diego Fire Department say 02:37
16 about the program?

17 A. They said it would be helpful.

18 Q. What else did they say?

19 A. I don't recall. It's been quite a while ago.

20 Q. Did anyone tell you when you moved in that 02:37
21 nurses would also be available 24 hours a day?

22 A. Specifically those words?

23 Q. Yes.

24 A. Say the words or write the words?

25 Q. Did anyone -- did you learn from any source 02:37

1 that nurse response 24 hours a day is a program that 02:37
2 would also always be in effect?

3 A. I believe that's what I understood in reading
4 the brochures, yes.

5 Q. So that understanding came from the brochures? 02:38

6 A. Yes.

7 Q. Anywhere else?

8 A. Not that I recall.

9 Q. And it's your belief that the brochures said
10 that that program not only that it did exist at that 02:38
11 point in time, but that it would always exist?

12 A. Let me say that that was my assumption.

13 Q. Do you recall that being conveyed to you in any
14 form, whether it be brochure or orally?

15 A. Other than the brochure? 02:38

16 Q. Well, that is my question. You said that was
17 assumption it would continue, but was there anything
18 that told you that it would continue indefinitely?

19 A. No. I don't recall seeing anyone saying this
20 would go on forever. 02:38

21 Q. And do you know whether it was required by your
22 contract, your agreement with Classic Residence by
23 Hyatt, that this program would go on forever?

24 MR. CONGER: Objection. Instruct you not to
25 answer. That calls for a party's contention in the 02:39

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1 BY MS. LANE:

03:05

2 Q. And, Ms. Meehan, do you understand that you are
3 still under oath?

4 A. Yes, I understand.

5 Q. Before the break we discussed your
6 understanding, in entering the community in 1999 and
7 2000, about a portion of your entrance fee being set
8 aside to fund long-term care. Do you remember that
9 discussion?

03:05

10 A. Yes.

03:05

11 Q. I want to clarify, and I realize that we have
12 gone through this once, but I do want to talk to you
13 more about where you heard that information or where you
14 got that information that a portion of your entrance fee
15 would be set aside.

03:05

16 MR. CONGER: Okay. Wait for a question.

17 BY MS. LANE:

18 Q. I asked where did you get that information?

19 MR. CONGER: Asked and answered. You can
20 answer it again.

03:05

21 THE WITNESS: From all the brochures.

22 BY MS. LANE:

23 Q. Anywhere other than the brochures?

24 A. Not that I can recall.

25 Q. And is it your understanding that the money

03:06

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1 Q. Right. Knowing what you know now about the 03:13
2 construction, would you have moved in in 1999 or 2000?

3 A. Probably not.

4 Q. And in 1999 when you signed the agreement to
5 move into the community, if you had known that you would 03:14
6 have had the ability to enter into the care center
7 without paying any difference in monthly fees between
8 independent living and the care center, but that a
9 portion of your entrance fee wouldn't be set aside in
10 some separate account, would you have still signed the 03:14
11 continuing care residency agreement?

12 MR. CONGER: Assumes facts not in evidence as
13 phrased. You can answer.

14 THE WITNESS: I don't think so. If I didn't
15 know? 03:14

16 BY MS. LANE:

17 Q. If it was your understanding, which is the
18 case, that your monthly fees wouldn't increase when you
19 were moving into the care center --

20 A. Correct. 03:14

21 Q. -- but that a portion of your entrance fees
22 weren't going to be set aside in some account for
23 long-term care, would you still have entered into the
24 continuing care residency agreement?

25 MR. CONGER: Well, that question assumes facts 03:14

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1 not in evidence and presents a hypothetical, but you can 03:14
2 answer the question.

3 THE WITNESS: But, see, I did understand that
4 that's how it was going to be, especially with the
5 18,000 extra dollars. 03:14

6 BY MS. LANE:

7 Q. But my question to you, though, is if you
8 under- -- if you -- in 1999, if you were entering into
9 the community, and you knew that your monthly fees would
10 stay the same when you moved into the care center -- 03:15

11 A. Which I did know. That's what they told me.

12 Q. And which is true, correct?

13 A. Uh-huh.

14 MR. CONGER: Wait, hold it. That calls for a
15 party's contention in the case. I instruct you not to 03:15
16 answer whether that's true or not.

17 THE WITNESS: Okay.

18 MR. CONGER: We have given you 25 pages about
19 why that's not true.

20 BY MS. LANE: 03:15

21 Q. If you had known that a portion of your
22 entrance fee wouldn't be set aside, yet your monthly
23 fees would remain the same, like they do, would you have
24 moved into the care center in 1999?

25 MR. CONGER: The question assumes facts not in 03:15

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1 evidence and it's compound. You can answer.

03:15

2 THE WITNESS: No.

3 BY MS. LANE:

4 Q. Why?

5 A. Because I would doubt that I was going to be
6 able to continue to live at a price that I could carry
7 monthly.

03:15

8 Q. So your concern would have been -- your concern
9 would have been what then?

10 A. That my prepaid long-term care was really not
11 going to be there when I needed it.

03:16

12 Q. And have you ever been denied care at the care
13 center?

14 A. Not at this time, no.

15 Q. And have you ever been given any indication
16 that you will be denied care in the care center?

03:16

17 A. No.

18 Q. So explain the concern to me.

19 A. My concern is that yearly we are shown in
20 budgetary meetings and literature that the care center
21 is operating at a loss.

03:16

22 Q. Are you aware of anyone in the community that
23 has ever been denied care in the care center?

24 A. I am not aware of anyone. I do not know that.

25 Q. You also mentioned, I had asked you if the

03:17

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1 counsel. 03:19

2 MR. CONGER: Casey, I want to talk to you
3 outside for a second.

4 THE WITNESS: Okay.

5 MS. LANE: We can go off the record. 03:19

6 THE VIDEOGRAPHER: We are going off the record.
7 The time is 3:20.

8 (Recess)

9 THE VIDEOGRAPHER: We are going back on the
10 record. The time is 3:25. 03:24

11 BY MS. LANE:

12 Q. And, Ms. Meehan, you understand that you are
13 still under oath?

14 A. Yes, I do.

15 Q. The question that I have for you, that I don't 03:24
16 believe has been answered yet, is that in 1999 and 2000
17 was it your understanding that even for people that were
18 not going into the care center, just those individuals
19 that were going to be living in independent living, is
20 it your understanding that a portion of their entrance 03:25
21 fee was going to be used to fund the care center?

22 A. I don't know what anybody else was thinking. I
23 don't know about anybody who moved into the towers
24 thinking they were only going to live in the independent
25 living. My understanding was that a portion of the 03:25

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1 money that we paid of \$383,675 was going to go for 03:25
2 ~~_____~~
3 prepaid long-term care for two people forever until we
4 ~~_____~~ died. That's what I understood.

4 ~~_____~~ I do not recall that it ever said to pay for
5 the health care center. It just said you are paying for 03:26
6 long-term care prepaid, and that's what I believed and
7 that's what I understood. And that's what I feel like
8 maybe it's not going to happen.

9 Q. So in 1999 and 2000, what was your
10 understanding then of how the care center would be 03:26
11 funded if it wouldn't be with monthly fees and if your
12 entrance fee was going towards this prepaid long-term
13 care, how did you think the care center would be funded?

14 MR. CONGER: Assumes that she has such an
15 understanding. You can answer. 03:26

16 THE WITNESS: I had no idea how they were going
17 to do it.

18 BY MS. LANE:

19 Q. Did you ever ask anyone?

20 A. No. 03:26

21 Q. Why not?

22 A. I figured it was their business. They told me
23 what they would do if I paid this amount of money, and I
24 believed them and I paid it.

25 Q. Earlier you had testified that if you had known 03:27

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1 in 1999 what you now know about the construction and how 03:27
2 it's gone, you probably --

3 A. What was that?

4 Q. What you knew -- what you knew now about the
5 construction. If you knew then what you know about the 03:27
6 construction in 1999, that you probably would not have
7 entered the La Jolla Village Towers as a resident. Now,
8 you said probably not. Are you certain that you
9 wouldn't have entered at that time?

10 A. You want me to think about what I was doing in 03:27
11 1999?

12 Q. I want you to tell me whether or not you are
13 certain that you would not have entered the community in
14 1999 if you had known then what you know now about
15 construction? 03:27

16 MR. CONGER: I think the question is over broad
17 and vague about, quote, what you know about
18 construction, but you can answer.

19 THE WITNESS: Well, what I know now is more
20 than just the construction inconveniences, diminishing 03:27
21 of services. It also involves the fact that we have
22 found out that there isn't any money available in a
23 trust or something. And for that reason if I had known
24 that, I would definitely not have come in.

25

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN DIEGO

3 DONALD R. SHORT, JAMES F.)
4 GLEASON, CASEY MEEHAN,)
5 MARILYN SHORT, PATTY)
6 WESTERVELT, and DOTTIE YELLE,)
7 individually, and on behalf of)
8 all other similarly situated,)
9 Plaintiffs,)

Certified Copy

vs.) No. GIC877707

10 CC-LA JOLLA, INC., a Delaware) VOLUME II
11 Corporation, CC-LA JOLLA,)
12 L.L.C., a Delaware limited)
13 liability company,)
14 CC-DEVELOPMENT GROUP, INC.,)
15 CLASSIC RESIDENCE MANAGEMENT)
16 LIMITED PARTNERSHIP, an)
17 Illinois Limited Partnership,)
18 and DOES 1 to 110, inclusive,)
19 Defendants.)

20 Continued Videotaped Deposition of MARY
21 KATHERINE MEEHAN, at 12531 High Bluff Drive,
22 Suite 100, San Diego, California, commencing
23 at 9:07 a.m., Thursday, September 26, 2007,
24 before Shuri Gray, CSR No. 3786.
25 PAGES 223 - 300

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20 DAVID PITCHER, VIDEOGRAPHER

21 DOTTIE YELLE

22 PATTY WESTERVELT

23 DONALD SHORT

24 MARILYN SHORT

25 JAMES GLEASON

1 A. Yes.

09:29

2 Q. Is there any language in this letter that led
3 you to believe that money paid would be set aside in a
4 separate account to fund long-term care?

5 MR. CONGER: Calls for speculation. You can
6 answer.

09:29

7 THE WITNESS: The original agreement that I
8 signed stated that a percentage or that money would be
9 set aside which I believe for prepaid long-term care.
10 This document and the one before so states that. That
11 total of your entrance fee paid is considered to be for
12 prepaid long-term care. I believe that that's what
13 Hyatt said in all their brochures, and that's what I
14 believed.

09:29

15 BY MS. LANE:

09:29

16 Q. Now, you first said that the document that you
17 signed said that money would be set aside for prepaid
18 long-term care. What document are you referring to?

19 MR. CONGER: Misstates her testimony. She said
20 the word agreement. You can answer.

09:30

21 BY MS. LANE:

22 Q. What agreement are you referring to?

23 A. I am referring to the original agreement to
24 move into the towers; that I would be -- a portion of my
25 entrance fee would be for long-term care, extensive

09:30

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1 long-term care for two individuals. 09:30

2 Q. And that was the agreement that we reviewed
3 yesterday --

4 A. Yes.

5 Q. -- your continuing care retirement agreement? 09:30

6 A. That is true.

7 Q. Now, this letter, does it say that money would
8 be set aside in a separate account to fund prepaid
9 long-term care?

10 MR. CONGER: Asked and answered. Harassing. 09:30
11 The document speaks for itself. You may answer the
12 question.

13 THE WITNESS: I do not see those words "set
14 aside" in this document.

15 BY MS. LANE: 09:30

16 Q. Did you, in fact, take a deduction based on
17 this letter?

18 A. Yes.

19 Q. And again you haven't consulted your tax
20 advisor or the IRS about your current belief that those 09:30
21 deductions were wrongly taken?

22 MR. CONGER: That assumes facts not in
23 evidence, and it's been asked and answered. You can
24 answer.

25 THE WITNESS: No. 09:30

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1 MR. CONGER: Also it misstated her testimony. 09:31

2 MS. LANE: Mark this as Exhibit 28.

3 (Exhibit 28 was marked for
4 identification.)

5 BY MS. LANE: 09:31

6 Q. Have you ever seen this document before?

7 A. Yes.

8 Q. When was the first time that you saw this
9 document?

10 A. February of '03. 09:31

11 Q. And again did you -- what is this document
12 regarding?

13 MR. CONGER: The document speaks for itself.
14 You can answer.

15 THE WITNESS: Medical tax deduction, monthly 09:32
16 fees.

17 BY MS. LANE:

18 Q. And again it says that a portion of monthly
19 fees -- and this is in italics -- may be deductible as a
20 medical expense subject to certain limitations. Do you 09:32
21 see that?

22 A. Yes, I do.

23 Q. Is there anywhere in this letter that says that
24 money would be a set aside in separate account to fund
25 long-term care? 09:32

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1 point to any specific provision within the CCRA that 09:38
2 gave you that belief; is that correct?
3 A. That is correct.
4 MS. LANE: Are we on 30?
5 THE REPORTER: Yes. 09:39
6 (Exhibit 30 was marked for
7 identification.)
8 BY MS. LANE:
9 Q. Have you seen this document before?
10 A. Yes. 09:40
11 Q. And what is the title of this document?
12 A. "Medical Tax Deduction."
13 Q. And this is a letter dated March 15, 2004, to
14 Dear Resident from Carolyn Zuehl; is that correct?
15 A. Yes. 09:40
16 Q. And this again states that you should seek
17 advice from your tax consultant and other advisors
18 regarding your eligibility for medical tax deductions;
19 is that correct?
20 A. It so states. 09:40
21 Q. And you did seek that advice, as we have
22 established; is that correct?
23 A. Yes.
24 MR. ACKER: Michael, I assume you instructed
25 them that there wouldn't be conversations during this. 09:40

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1 (Exhibit 31 was marked for 09:42

2 identification.)

3 BY MS. LANE:

4 Q. Have you ever seen this document before?

5 A. Yes. 09:42

6 Q. When was the first time that you saw it?

7 A. I don't recall.

8 Q. Did you receive a -- have you ever seen it
9 before the litigation began?

10 MR. CONGER: If you recall. 09:42

11 THE WITNESS: I don't recall.

12 BY MS. LANE:

13 Q. Do you recall seeing this document before
14 moving into the community?

15 MR. CONGER: Calls for speculation based on her 09:43
16 previous answer. You can answer.

17 THE WITNESS: I don't recall.

18 BY MS. LANE:

19 Q. Do you recall whether this document convinced
20 you in any respect to move into the community? 09:43

21 A. In itself?

22 Q. This document.

23 A. Just this one document?

24 Q. Yes.

25 A. Well, since I don't recall when I saw it, 09:43

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1 whether it would be before or after I moved in, I'd have 09:43
2 to say I don't recall utilizing this information
3 specifically in this document to convince me to move in.

4 Q. And what is this document?

5 A. It's called a continuum of care. 09:43

6 Q. Do you believe it to be a portion of a
7 brochure?

8 MR. CONGER: Calls for speculation. You can
9 answer.

10 THE WITNESS: I don't know it looks like it, 09:43
11 but I don't know specifically if it was.

12 BY MS. LANE:

13 Q. Yesterday during your deposition you
14 referenced, I think you said that everything you ever
15 received from the marketing department promised that 09:44
16 nurses would be available 24 hours a day. Do you
17 remember that testimony?

18 MR. CONGER: Misstates testimony. You can
19 answer.

20 THE WITNESS: Yes. 09:44

21 BY MS. LANE:

22 Q. Would this be one of those documents, do you --
23 is this one of the documents you were referring to?

24 A. Yes.

25 Q. Okay. So you do remember that this is one of 09:44

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1 the documents that you received from the marketing 09:44
2 department?

3 A. Well, as I said, I do not remember when I
4 received it. I know I have received it, but I don't
5 remember when. 09:44

6 Q. Okay. Let's look at the documents itself. You
7 said that it was titled "Continuum of Care"?

8 A. Uh-huh.

9 Q. The first -- there are three categories in this
10 document. Do you see that? The first category states 09:44
11 "rental agreement coverage"?

12 A. Yes.

13 Q. The second category states "continuing care
14 agreement coverage prior to care completion"?

15 A. Yes. 09:44

16 Q. And the third category is "continuing care
17 agreement coverage after completion of the care center."
18 Do you see those three -- those three categories?

19 A. Yes.

20 Q. And is it your understanding that there was a 09:45
21 period of time when the community, as run by Classic
22 Residence by Hyatt, was a rental community?

23 MR. CONGER: That calls for speculation based
24 on her previous answer. She said she didn't know which
25 of the many Hyatt entities ran what. You can answer. 09:45

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1 Q. Is that what the hours of the office at the 09:51
2 wellness center are today, if you know?

3 A. I really do not know.

4 Q. And did anything in this document lead you to
5 believe that nurses would be available 24 hours a day or 09:51
6 around the clock?

7 A. No.

8 MS. LANE: I'd like to mark this as Exhibit 33.

9 (Exhibit 33 was marked for

10 identification.) 09:52

11 BY MS. LANE:

12 Q. Have you ever seen this document before?

13 A. Yes.

14 Q. Do you remember the first time that you -- when
15 the first time was when you saw this document? 09:53

16 A. I do not recall.

17 Q. And what is this document?

18 A. It looks like a brochure, literature.

19 Q. A marketing brochure?

20 A. A marketing brochure, yes, uh-huh. 09:53

21 Q. Do you have any reason to believe that you
22 relied on this brochure in making your decision to enter
23 La Jolla Village Towers?

24 A. Since I don't recall when I saw it, I don't
25 know if I specifically relied on this document or not. 09:53

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1 Q. And again your testimony yesterday was that all 09:54
2 of the documents that you received from marketing led
3 you to believe that nurses would be available 24 hours a
4 day; is that correct?

5 MR. CONGER: That misstates her testimony. 09:54
6 Asked and answered. You can answer it again.

7 THE WITNESS: If that's what I stated, that's
8 what I believed.

9 BY MS. LANE:

10 Q. Can you show me what in this document brochure 09:54
11 led you to believe that nursing staff would be available
12 24 hours a day?

13 A. I said I did not receive this -- necessarily
14 remember this document.

15 MR. CONGER: Let me interpose an objection. 09:54
16 That question assumes facts not in evidence. But you
17 can answer if you are able to go through this document
18 and identify something.

19 THE WITNESS: Since I don't know where I got
20 it, I -- I can't hardly say that. I don't recall. 09:54

21 BY MS. LANE:

22 Q. And Mr. Conger or somebody has gone through and
23 underlined and highlighted portions that he or she
24 thought was important in this document. Do any of those
25 portions say anything that you can see about nursing 09:55

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1 care available 24 hours a day, around the clock, 09:55
2 whatever language you choose?

3 MR. CONGER: Assumes facts not in evidence.

4 You can answer if you can.

5 THE WITNESS: Not those that are highlighted, 09:55
6 no.

7 BY MS. LANE:

8 Q. The final bracketed portion that has been
9 bracketed, I think it's on Page Short 1105, do you see
10 that? 09:55

11 A. Yes, I do.

12 Q. It states that: "Under our continuing care
13 plans, residents will be able to move to our on-site
14 care center, offering high quality assistive living,
15 memory support, Alzheimer's care and skilled nursing, if 09:55
16 the need should arise, at virtually no increase in our
17 monthly fee"; is that correct?

18 A. That's what it states.

19 Q. That final portion of this sentence we
20 discussed at length yesterday, and it is your contention 09:55
21 that if you were to move to the care center, this
22 language remains true, that there would be no increase
23 in your current monthly fee that you are paying in the
24 independent living towers; is that correct?

25 MR. CONGER: I object and instruct the witness 09:56

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1 the litigation; is that correct? 10:17

2 A. That is correct.

3 MS. LANE: Exhibit 37.

4 (Exhibit 37 was marked for
5 identification.) 10:18

6 BY MS. LANE:

7 Q. This is a letter dated March 2003 stating Dear
8 Neighbors signed by Jeff Tipton; is that correct?

9 A. Yes.

10 Q. And to me this letter looks like something that 10:18
11 was sent to people that were not currently living in the
12 towers. Would you agree with that?

13 MR. CONGER: Calls for speculation. You can
14 answer, if you know.

15 BY MS. LANE: 10:19

16 Q. If it helps, you can take a look at the final
17 full paragraph. It says: "If you have been seeking a
18 truly exceptional senior living experience, you owe it
19 to yourself to find out more about this exclusive
20 opportunity." 10:19

21 A. I don't recall that it was only sent to people
22 outside of -- on their waiting list or something because
23 it was also intended, I believe, for people who may be
24 considering moving to the tower, the second tower when
25 it's built. 10:19

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1 Q. And when was the first time that you saw this 10:19
2 document?

3 A. I guess in March of '03.

4 Q. So did you see this document prior to the
5 litigation being filed? 10:19

6 A. Yes.

7 Q. Okay. And did anything in this document lead
8 you to believe that nursing care would be provided 24
9 hours a day or around the clock?

10 MR. CONGER: If you recall. Calls for 10:20
11 speculation. You can answer.

12 THE WITNESS: I do not see those words in this
13 document.

14 BY MS. LANE:

15 Q. And in the portion that's bracketed, again on 10:20
16 the first page, it states: "Perhaps most importantly of
17 all, La Jolla Village Towers offers a vibrant active
18 lifestyle with a peace of mind that comes from knowing
19 your potential long-term care needs will be expertly met
20 at our on-site center at virtually no extra cost." 10:20

21 A. Yes, I see that.

22 Q. And today is long-term care being provided at
23 the care center at no extra cost above and beyond your
24 monthly fee?

25 MR. CONGER: Calls for speculation from this 10:20

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1 anxiety, loss of sleep, financial concerns, stress, have 10:28
2 they prevented you from undertaking any activities?

3 A. Would you restate the question?

4 Q. Sure. Have any of those symptoms prevented you
5 from doing anything you would normally do? 10:28

6 A. No.

7 Q. And have you sought any medical attention for
8 the mental suffering?

9 A. No.

10 Q. Why not? 10:28

11 A. I continued to believe that La Jolla Village
12 Towers was going to somehow or other stand up and
13 fulfill all the promises that they made to us and that
14 eventually, eventually some of these things would
15 decline, my symptoms. 10:29

16 Q. And that's the reason that you did not seek
17 medical attention?

18 A. Yes.

19 Q. And have you taken any medication for any of
20 those symptoms? 10:29

21 A. Yes.

22 Q. What's that?

23 A. Aspirin, Ibuprofen.

24 Q. On how many occasions have you taken aspirin
25 and Ibuprofen -- 10:29

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