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5 Attorney for all Plaintiffs, individually,
6 and on behalf of all others similarly situated
7

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

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

13 Plaintiffs,)

14 v.)

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

18 Defendants.)
19

CASE NO: GIC877707

Date: December 14, 2007

Time: 10:30 a.m.

Judge: Hon. Yuri Hofmann

Dept: 60

Action Filed: December 29, 2006

Trial Date: Not yet set

NOTICE OF LODGMENT IN
SUPPORT OF PLAINTIFFS' REPLY
TO DEFENDANTS' OPPOSITION
TO PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION

20 In support of the plaintiffs' motion for class certification, the plaintiffs lodge the
21 following documents:

22 Exhibit 43: Additional La Jolla Village Towers resident petitions as of December 7,
23 2007;

24 Exhibit 44: Revised Case Management Statement filed November 28, 2007, by
25 defendants;

26 Exhibit 45: Excerpts from the deposition of Person Most Knowledgeable Kelly
27 Parkins Aguirre taken on August 23, 2007;

28 Exhibit 46: Excerpts from the depositions of James F Gleason taken on October 12,

- 1 2007, October 15, 2007, and October 17, 2007;
- 2 Exhibit 47: Excerpts from the depositions of Donald R. Short taken on October 8,
- 3 2007, and October 12, 2007;
- 4 Exhibit 48: Excerpts from the depositions of Marilyn Short taken on October 17,
- 5 2007, and November 7, 2007;
- 6 Exhibit 49: Excerpts from the depositions of Casey Meehan taken on September 25,
- 7 2007, and September 26, 2007;
- 8 Exhibit 50: Letter dated May 3, 2004, from Assistant Secretary Matt Phillips to John
- 9 Stephens, Vice President of Wachovia Bank;
- 10 Exhibit 51: Letter dated July 2, 2004, from Assistant Secretary Matt Phillips to John
- 11 Stephens, Vice President of Wachovia Bank;
- 12 Exhibit 52: Letter dated July 23, 2004, from Assistant Secretary Matt Phillips to John
- 13 Stephens, Vice President of Wachovia Bank;
- 14 Exhibit 53: Letter dated September 3, 2004, from Assistant Secretary Matt Phillips to
- 15 John Stephens, Vice President of Wachovia Bank;
- 16 Exhibit 54: Letter dated September 7, 2004, from Assistant Secretary Matt Phillips to
- 17 John Stephens, Vice President of Wachovia Bank;
- 18 Exhibit 55: Letter dated February 2, 2004, from Assistant Secretary Matt Phillips to
- 19 John Stephens, Vice President of Wachovia Bank;
- 20 Exhibit 56: Letter dated March 1, 2004, from Assistant Secretary Matt Phillips to John
- 21 Stephens, Vice President of Wachovia Bank;
- 22 Exhibit 57: Letter dated April 16, 2004, from Assistant Secretary Matt Phillips to John
- 23 Stephens, Vice President of Wachovia Bank;
- 24 Exhibit 58: Letter dated April 27, 2004, from Assistant Secretary Matt Phillips to John
- 25 Stephens, Vice President of Wachovia Bank;
- 26 Exhibit 59: La Jolla Village Towers, A Classic Residence by Hyatt Continuing Care
- 27 Residency Agreement, draft dated March 8, 1999;
- 28 Exhibit 60: Advertisement by defendants, March 2000: "Frequently Asked

Questions”;


Exhibit 61: Memorandum dated October 14, 1998, from Executive Vice President of
Sales and Marketing Stacie Mills to La Jolla Village Towers Sales Staff;
and

Exhibit 62: A Special Health Report from Harvard Medical School: “Improving
Memory Understanding age-related memory loss.”

Dated: December 7, 2007

LAW OFFICE OF MICHAEL A. CONGER

By:



Michael A. Conger
Attorney for Plaintiffs

EXHIBIT 43

La Jolla Village Towers Resident Petitions as of December 6, 2007

***Residents added since November 16, 2007**

1. Alleshouse, Margaret
2. Alleshouse, Paul
3. Badgley, Marion
4. Ballard, Sally
5. Belden, Wilanne*
6. Bodinger, Cleo P.
7. Bradner, Hugh*
8. Brooks, Helen Louise
9. Buckley, Frances Shea
10. Campbell, Muriel H.
11. Cariola, Roy E.
12. Chen, May Y.
13. Cooper, George
14. Cooper, Joan R.
15. Cowan, A. Halsey*
16. Cowan, Gabrielle*
17. Dagradi, Rosalind
18. Danan, Lynne
19. Darling, Fred
20. Darling, Ruth

21. Diener, Anna
22. Diener, Natan
23. Earle, Millie
24. Eichberg, Norman
25. Eichberg, Joan
26. Eisenberg, Doris
27. Elliott, Ann
28. Ettinger, Joel E.*
29. Feldman, Dan
30. Feldman, Sylvia
31. Fishleder, Phyllis
32. Flentye, Louise
33. Forsyth, Rebecca
34. Freidman, Barry
35. Freidman, Sue
36. George, Robert
37. Ginsberg, Mona
38. Gleason, Patricia B.
39. Goldsmid, Eileen
40. Grim, Wendy
41. Grosvenor, Rachel*
42. Gusman, Samuel

43. Hansson, Helen C.*
44. Hansson, Karl
45. Hertwig, Waldemar R.
46. Jackson, Elizabeth
47. Jaimerena, Luis
48. James, David
49. James, Nancy
50. Kahn, Eugene
51. Keenan, Joseph*
52. Keenan, Patricia*
53. Kimball, Denise
54. Kornbluth, Pearl
55. Kramer, Joan*
56. Kramer, Victor B.*
57. Krintzman, Carol A.
58. Krintzman, Jean
59. Lane, Alva J.
60. Larson, Luisa J.
61. Law, Edward
62. Law, Helen
63. Lichter, Charlotte*
64. Livingston, Magdaline

65. Masotti, Iris*
66. McCharles, Eva R.
67. McKearly, Georgia M.
68. McKellar, Beverly
69. Miller, Grace A.
70. Pearlman, Nelle
71. Pinkert, Delores*
72. Pittluck, Betty
73. Rabin, Marilyn
74. Rabin, Seymour
75. Redlitz, Louise M.
76. Ridgeway, Carolyn D.
77. Roberts, Ann
78. Rubin, Jeanette M.
79. Sawyer, George A.
80. Sawyer, Ruth W.
81. Sein, Joseph
82. Seramur, Doris
83. Seramur, Paul L.
84. Shafer, Margie
85. Shehorn, Clayton
86. Silva, Edward J.

87. Slutzky, Herman
88. Small, Mildred
89. Sokol, Beatrice
90. Tennent, Jeanne M.
91. Venn, Kenneth
92. Venn, Mary Frances
93. Watkins, Ruby
94. Watson, Kenneth M.
95. Watt, Robert
96. Weiss, Ruth*
97. Worlein, Deane
98. Worlein, Frances
99. Wubbeler, Raymond A.
100. Abraham (illegible)

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: Nov 17, 2007 William Schneider Belden

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: 10.24.20 Don Short ✓

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: Nov. 21, 07 A. Halsey Cowan ✓

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: Nov 21, 07 Jaquella Hewan ✓

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: NOV. 19, 2007

Joel E. Ettinger ✓

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: Rachel J. Grovenor ✓

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: 11/10/07 Helen C. Harrison

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: 11-19-2007 Joseph L. Turner
#708

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated:

11.14.17 Patricia B. Leland
708

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: 11/21

Joan Kramer ✓

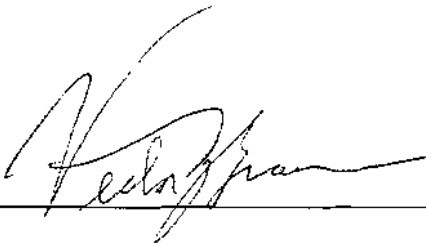
I, the undersigned, am a resident of La Jolla Village Towers.

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If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: 11/19/07

A handwritten signature in black ink, appearing to read "Victor B. Kramer", written over a horizontal line.

VICTOR B KRAMER
APT 2007

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: 11/3/08 Charlotte S. Lutter ✓

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: 11-16-07

Joe P. Masotto

✓

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: 11-20-07 Delores Pinart v

I, the undersigned, am a resident of La Jolla Village Towers.

I am familiar with the pending lawsuit brought by Don Short and 5 other residents, because I have received and read the plaintiffs' second amended complaint, with exhibits.

If the Court grants class certification, I would opt to be a class member, because I have claims similar to the plaintiffs' claims.

If the Court does not grant class certification, I will seriously consider filing my own lawsuit.

Dated: 11/21/07 Reeth Weiss v

EXHIBIT 44

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address) Eric M. Acker #135805/Linda L. Lane #211206 Morrison & Foerster LLP 12531 High Bluff Drive, Suite 100 San Diego, CA 92130-2040 TELEPHONE NO 858-720-5100 FAX NO (Optional) 858-720-5125 E-MAIL ADDRESS (Optional): EAcker@mofo.com ATTORNEY FOR (Name) CC-La Jolla, Inc., CCW-La Jolla, L.L.C., et al.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME:	
PLAINTIFF/PETITIONER: DONALD R. SHORT, et al. DEFENDANT/RESPONDENT: CC-LA JOLLA, INC., et al.	
REVISED CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	CASE NUMBER GIC877707 <div style="font-size: 2em; font-weight: bold; margin-top: 10px;">BY FAX</div>
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: December 14, 2007 Time: 10:30am Dept.: C-60 Div.: Room: Address of court (if different from the address above):	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. ☒ This statement is submitted by party (name): Defendants CC-La Jolla, Inc., CC-La Jolla, L.L.C. (d/b/a CCW-La Jolla, L.L.C.), CC-Development Group, Inc., and Classic Residence Management Limited Partnership
 - b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date):
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**
 - a. Type of case in ☒ complaint ☐ cross-complaint (describe, including causes of action):
 Putative civil class action for alleged: Fraud and Deceit- Intentional Misrepresentation; Fraud and Deceit- Negligent Misrepresentation, Fraud and Deceit- Concealment, Elder Abuse, Violations of the Consumer Legal Remedies Act; Violations of Business and Professional Code §17200, Breach of Contract; Constructive Fraud; and Violation of Health and Safety Code § 1793.5.

PLAINTIFF/PETITIONER: Short	CASE NUMBER GIC877707
DEFENDANT/RESPONDENT: CC-La Jolla, Inc., CCW-La Jolla, L.L.C., CC-Development Group, Inc., and Classic Residence Management Limited Partnership	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

Plaintiffs allege that Defendants, the owners and operators of a luxury continuing care retirement community in La Jolla, California, engaged in a conspiracy to defraud them over a 9-year period regarding the entrance fees Plaintiffs paid to enter the community, the monthly fees Plaintiffs pay to reside in the community, and the level of amenities Plaintiffs receive. Of the hundreds of current and former residents of the community, only six have joined the action. Plaintiffs, however, seek to certify a class of all current residents who entered into a residency agreement prior to August 1, 2005. **CONTINUED ON ATTACHMENT 4.b.**

☒ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**

The party or parties request ☒ a jury trial ☐ a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. **Trial date**

- a. ☐ The trial has been set for (date):
- b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain): This case will not be ready for trial within twelve months of the filing of the original complaint (12/29/06) for multiple reasons. These reasons include: (1) Defendants plan to file a motion for summary judgment after the completion of fact discovery; (2) fact discovery will take several additional months to complete; (3) following completion of fact discovery, Defendants anticipate additional time will be required for expert depositions; and (4) this case is provisionally complex based on Plaintiffs' request for class certification, and if denied, Plaintiffs claim that additional plaintiffs will be added to the action.
- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):
May 8 2008- May 31, 2008 (Counsel will be in Athens, Greece for a hearing in a different lawsuit)

7. **Estimated length of trial**

The party or parties estimate that the trial will take (check one):

- a. ☒ days (specify number): The length of trial will depend on what portion, if any, of the case survives summary judgment motions. As currently pled, Defendants anticipate that trial will last 2-3 weeks. If additional plaintiffs are added or a claim is certified, the length of trial will increase significantly.
- b. ☐ hours (short causes) (specify):

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference (specify code section):

10. **Alternative Dispute Resolution (ADR)**

- a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3 221 to the client and has reviewed ADR options with the client.
- b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):
- c. ☐ The case has gone to an ADR process (indicate status):

PLAINTIFF/PETITIONER: Short	CASE NUMBER GIC877707
DEFENDANT/RESPONDENT: CC-La Jolla, Inc., CCW-La Jolla, L.L.C., CC-Development Group, Inc., and Classic Residence Management Limited Partnership	

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☐ Mediation
- (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
- (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
- (4) ☐ Binding judicial arbitration
- (5) ☐ Binding private arbitration
- (6) ☐ Neutral case evaluation
- (7) ☐ Other (specify):

e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

X The party or parties are willing to participate in an early settlement conference (specify when):

In Summer 2008, after the Court has heard and decided Plaintiffs' motion for class certification and motion for summary judgment.

12. Insurance

a. ☐ Insurance carrier, if any, for party filing this statement (name):b. Reservation of rights: ☐ Yes ☐ Noc. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

a. ☐ There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

☐ Additional cases are described in Attachment 14ab. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

X The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

Defendants have opposed Plaintiffs' motion for class certification; Defendants intend to file a motion for summary judgment; Defendants intend to file motions to consolidate related cases, if necessary.

PLAINTIFF/PETITIONER: Short	CASE NUMBER: GIC877707
DEFENDANT/RESPONDENT: CC-La Jolla, Inc. CCW-La Jolla, L.L.C., CC-Development Group, Inc., and Classic Residence Management Limited Partnership	

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
--------------	--------------------	-------------

SEE RESPONSE AT ATTACHMENT 17.b.

- c. The following discovery issues are anticipated (*specify*):

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other issues

- X The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*): This case is deemed a provisionally complex case under Cal. Rule Court 3 400(c)(6) because it was filed by Plaintiffs as a class action; Defendants believe this case should also be deemed complex under Cal. Rule Court 3 400(b)(2); Defendants may file a cross-complaint against one or more of the Plaintiffs.

20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): ☒ none ☐ attached as Attachment 21.

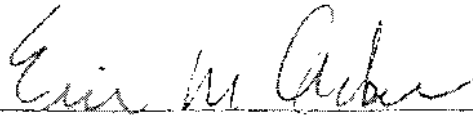
22. Total number of pages attached (*if any*): 1

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: November 28, 2007

Eric M. Acker

(TYPE OR PRINT NAME)

► 
(SIGNATURE OF PARTY OR ATTORNEY)

►

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

PLAINTIFF/PETITIONER: DONALD R. SHORT
DEFENDANT/RESPONDENT: CC-LA JOLLA, INC., et al.
CASE NUMBER: GIC 877707

ATTACHMENTS TO CASE MANAGEMENT CONFERENCE STATEMENT

ATTACHMENT 4.b:

Class certification, however, would be improper because individualized questions of fact clearly predominate over class issues.

Each of the named Plaintiffs executed a Continuing Care Residency Agreement ("CCRA") when they entered the community that defines the parties' respective rights and obligations. Each CCRA has been approved by the California Department of Social Services. All of the conduct Plaintiffs allege in their Third Amended Complaint is consistent with the terms of each Plaintiff's CCRA and consistent with the Master Trust Agreement that each Plaintiff joined when entering the community. No Plaintiff has improperly lost any of their entrance fees. The Plaintiffs' monthly fees have only been raised as allowed for under the CCRA's. And no Plaintiff has been denied any rights, care, or amenities required under the CCRA's. In 2006, Plaintiffs raised their allegations with the State Department of Social Services, the government agency charged with regulating continuing care communities; the Department has indicated that it does not intend to take any regulatory action as a result of Plaintiffs' allegations.

ATTACHMENT 17.b:

17. Discovery

- a. ☐ The party or parties have completed all discovery.
b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiffs	Plaintiffs Marilyn and Donald Short, Gleason, and Westervelt's Supplemental Responses to Defendants' Requests for Production, Form Interrogatories, and Special Interrogatories	November 30, 2007
Plaintiffs	Plaintiffs Casey Meehan and Dottie Yelle's Supplemental Responses to Defendants' Requests for Production, Form Interrogatories, and Special Interrogatories	December 15, 2007
Defendants	Finalize remaining named Plaintiff depositions.	January 2008
Defendants	Various Additional Fact Depositions: Defendants anticipate between 15 – 20 depositions, the number of which will increase greatly if class is certified or if additional plaintiffs are added.	April 2008
Plaintiffs	Plaintiffs have recently indicated interest in taking depositions of five of Defendants' corporate employees in Chicago, Illinois.	January- February 2008
Plaintiffs/Defendants	Expert Depositions	May 2008

1 ERIC M. ACKER (BAR NO. 135805)

Email: EAcker@mofo.com

2 LINDA L. LANE (BAR NO. 211206)

Email: LLane@mofo.com

3 MORRISON & FOERSTER LLP

12531 High Bluff Drive, Suite 100

4 San Diego, California 92130-2040

Telephone: 858.720.5100

5 Facsimile: 858.720.5125

6 Attorneys for Defendants

CC-LA JOLLA, INC., CC-LA JOLLA, L.L.C.

7 (d/b/a CCW-LA JOLLA, L.L.C.), CC-DEVELOPMENT

GROUP, INC., CLASSIC RESIDENCE MANAGEMENT

8 LIMITED PARTNERSHIP

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO

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

15 Plaintiff,

16 v.

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

21 Defendants.

Case No. GIC877707

BY FAX

DECLARATION OF SERVICE

Judge: Hon. Yuri Hofmann

Dept: C-60

Date Action Filed: December 29, 2006

Trial Date: Not yet set

22 I, the undersigned, declare that I am employed with the law firm of Morrison & Foerster LLP,
23 whose business address is 12531 High Bluff Drive, Suite 100, San Diego, California 92130. I am
24 over the age of eighteen years and not a party to the within action. On November 29, 2007, I served
25 the documents named below on the parties in this action as follows:
26

27 **REVISED CASE MANAGEMENT STATEMENT (UNLIMITED CASE)**

1 **SERVED UPON:**

2 Michael A. Conger
3 LAW OFFICE OF MICHAEL A. CONGER
4 16236 San Dieguito Road, Suite 4-14
5 Mailing: P.O. Box 9374
6 Rancho Santa Fe, CA 92067
7 Telephone: 858.759.0200
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Attorneys for Plaintiffs DONALD R.
SHORT, JAMES F. GLEASON, CASEY
MEEHAN, MARILYN SHORT, PAITY
WESTERVELT, and DOTTIE YELLE

9 ☐ (BY OVERNIGHT DELIVERY) I am readily familiar with the practice of Morrison &
10 Foerster LLP for collection and processing of correspondence for overnight delivery and know that
11 the document(s) described herein will be deposited in a box or other facility regularly maintained by
12 UPS for overnight delivery.

13 ☐ (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in
14 the United States mail at San Diego, California. I am readily familiar with the practice of Morrison
15 & Foerster LLP for collection and processing of correspondence for mailing, said practice being that
16 in the ordinary course of business, mail is deposited in the United States Postal Service the same day
17 as it is placed for collection.

18 ☐ (BY FACSIMILE) The above-referenced document was transmitted by facsimile
19 transmission and the transmission was reported as complete and without error. The facsimile
20 machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by
21 the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a
22 transmission record of the transmission, a copy of which is attached to this declaration.

23 ☒ (BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by
24 Nationwide Legal, Inc. to receive documents to be delivered on the same date. A proof of service
25 signed by the authorized courier will be filed with the court upon request.

26 ☐ BY ELECTRONIC SERVICE [Code Civ. Proc. sec. 1010.6] by electronically mailing a true
27 and correct copy through Morrison & Foerster LLP's electronic mail system to the e-mail address(s)
28 set forth below, or as stated on the attached service list per agreement in accordance with Code of
Civil Procedure section 1010.6.

1 I declare under penalty of perjury under the laws of the State of California and United States
2 of America that the foregoing is true and correct, and that this declaration is executed on November
3 29, 2007, at San Diego, California.

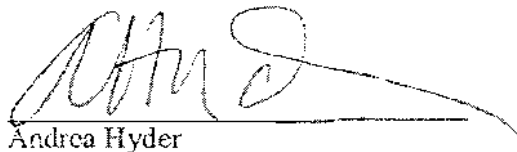
4 
Andrea Hyder

EXHIBIT 45

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

DONALD R. SHORT, individually and)
on behalf of all others similarly)
situated,)

Plaintiffs,)

vs.)

No. GIC877707)

CC-LA JOLLA, Inc., a Delaware)
Corporation, CC-LA JOLLA, L.L.C.,)
a Delaware limited liability)
company, and DOES 1 to 50,)
inclusive,)

Defendants.)

DEPOSITION OF PERSON MOST KNOWLEDGEABLE

KELLY PARKINS AGUIRRE

DEL MAR, CALIFORNIA

AUGUST 23, 2007

KATRINA F. BURLASON
CSR NO. 5898



Fivecoat & With

Certified Shorthand Reporters, Inc.
701 B Street • Suite 358
San Diego, California 92101-8141
(619) 236-0333

COPY

14:09:46 1 Q. Okay. So by the time -- It's your
2 understanding by the time that that first version of the
3 contract in 2000 was ready for residents to sign --

14:09:57 4 A. Um-hmm.

14:09:58 5 Q. -- the process and program as of that time had
6 stopped evolving.

14:10:09 7 A. What process and program are you speaking of?
8 There's plenty of processes and programs within the
9 community. Could you be a little more clear?

14:10:19 10 Q. The part where residents are told specific
11 things and whether these specific things that are told
12 actually come to pass. Like -- For example, let me back
13 up. Let me give you a couple examples.

14:10:32 14 A. Okay.

14:10:32 15 Q. Since March of '99, when you began, do you ever
16 recall telling a prospect that we here at La Jolla
17 Village Towers for the Independent Living residents
18 offer 24-hour emergency response from a licensed nurse?
19 Do you ever recall telling people that?

14:10:56 20 A. Yes, at one point we did offer 24-hour
21 emergency response from a licensed nurse.

14:10:59 22 Q. And when did that stop?

14:11:03 23 A. I don't know the exact date that it stopped,
24 but we never stopped offering 24-hour emergency
25 response. We just no longer have the emergency response

1 being provided by a nurse.

14:11:18 2 Q. Do you recall, after the nurse was no longer
3 provided, that residents were instructed to call 911 in
4 the case of an emergency?

14:11:27 5 A. Yes.

14:11:35 6 Q. Would you, in Exhibit 44 -- Well, let me ask
7 you this. Do you ever recall residents requesting that
8 the contract be made more clear to them?

14:11:51 9 MR. ACKER: Just -- It's vague. Are you
10 talking about prospects or residents? Any resident?

14:11:57 11 MR. CONGER: I'll rephrase.

14:11:58 12 MR. ACKER: And also -- Timing is --

14:12:00 13 MR. CONGER: You don't have to object more
14 because I withdraw it.

14:12:04 15 MR. ACKER: Okay, great.

14:12:05 16 MR. CONGER: You can object to the next one.

14:12:07 17 MR. ACKER: Super.

14:12:08 18 BY MR. CONGER:

14:12:08 19 Q. Do you ever recall any of the residents, the
20 existing residents, requesting that the language of the
21 2000 version of the residency agreement be clarified?

14:12:21 22 A. I don't remember any specifics. I'm sorry.

14:12:24 23 Q. And Question 57 of Exhibit 44, would you read
24 that question and answer for us, please.

14:12:32 25 A. "What is the unlimited 40 percent plan?"

14:12:38 1 "Actually, the plan is called the Extensive
2 Plan. You may select an entrance fee return of
3 40 percent or 0 percent under this plan. If you select
4 40 percent return, your entrance fee will be higher. If
5 you select a 0 percent return, your entrance fee will be
6 lower."

14:12:58 7 Q. Pardon me?

14:13:00 8 A. Did I read --

14:13:01 9 Q. No. Yours is different than mine. I thought
10 it was the same.

14:13:05 11 A. Maybe I read the wrong one.

14:13:10 12 Q. No. You read the right one. I just have a
13 different, similar document. And this document, which
14 I'd rather use this one because mine's not dated but
15 yours is. Exhibit 44, would you read Question 60,
16 please.

14:13:28 17 A. "Can the limitations of nursing care and
18 assisted living and skilled nursing be made clearer in
19 our contract?"


14:13:33 20 "The contract is as it is. Changes would
21 require a redrafting, renegotiating, and signing.
22 However, a close reading of the various care plan
23 options will give you a clear understanding. If not, we
24 hope these questions and answers will assist you."

14:13:51 25 Q. Does that refresh your recollection as to

1 whether any of the residents requested clarification of
2 the provisions of the 2000 version of the residency
3 agreement?

14:14:04

4 A. I don't recall any specifics. However, as I
5 stated earlier, with this question and answer, this I
6 believe was a compilation of questions that management
7 put together to try to provide a presentation to the
8 residents to give them clarity on any specifics of the
9 contract so that they would understand, without any
10 question, and have any opportunity to ask questions,
11 what their program was, what the contract said about
12 their program, and to get them prepared so that if we
13 did decide that we were going to give them the ability
14 to change from the standard or the modified into the
15 extensive plan, they would have a refresher. The
16 reality is some of our residents signed the contract
17 several years ago. So this was designed to be a
18 refresher, to my best recollection.



14:15:04

19 Q. To your understanding, Exhibit 44 was not
20 intended to change any of the terms of the contract;
21 correct?

14:15:11

22 A. No. 44 --

14:15:13

23 Q. Exhibit 44?

14:15:15

24 A. Exhibit 44?

14:15:16

25 I'm sorry. Now, I'm sorry, again, ask the

1 question.

4:15:20 2 Q. Were the questions and answers designed to
3 change the terms of the residency agreement or just
4 explain the terms of the residency agreement?

4:15:27 5 A. They were never -- To my knowledge, this was
6 never designed to change the terms of the residency
7 agreement. The terms of the residency agreement are the
8 terms of the residency agreement.

4:15:38 9 Q. Was it designed to explain the terms of the
10 residency agreement to the residents, your
11 understanding?

4:15:46 12 A. It was designed -- Again, my understanding was
13 it was designed to provide a healthy conversation,
14 clarity, and an opportunity for them to ask questions so
15 that it would be a refresher on their contract.

4:15:58 16 Q. Is this one of the documents, Exhibit 44, that
17 you reviewed within the last 24 hours in preparation for
18 today's deposition?

4:16:05 19 A. Yes, it is.

4:16:06 20 Q. And did you -- Upon reviewing the document, did
21 you happen to notice anywhere in it that it informed
22 residents that any Care Center losses would be paid for
23 as part of the Independent Living monthly fee?

4:16:26 24 A. Can you ask that question again? I'm sorry.

4:16:28 25 Q. Do you recall any question and answer that

1 addressed the topic of whether or not any Care Center
2 operating losses would be charged as part of the
3 Independent Living residence monthly fees?

14:16:46 4 MR. ACKER: And you don't have to go from
5 memory. You can read the document.

14:16:50 6 THE WITNESS: Go through --

14:16:52 7 MR. ACKER: Yeah.

14:17:01 8 BY MR. CONGER:

14:17:01 9 Q. And, Ms. Parkins, I'll withdraw the question
10 and ask you again.

14:17:05 11 From memory -- Because we can all read the
12 document, the jury can read the document. It will be
13 provided to them. From memory, do you recall any of
14 these questions and answers addressing the topic of
15 whether or not any losses at the Care Center would be
16 charged to Independent Living residents' monthly fees?
17 From memory.

14:17:27 18 A. Mr. Conger, there are 61 topics in here, and I
19 have looked at so many documents, I don't have a
20 recollection of one document, unless I go through and
21 look at it. I couldn't tell you every single question
22 in here and answer "Yes" or "No." I'm sorry.

14:17:42 23 Q. Fair enough.

14:17:44 24 Do you recall, again from memory, ever seeing
25 it written anywhere, informing residents that Care

1 Center operating losses would be charged as part of the
2 Independent Living residents' monthly fees?

14:18:03 3 A. I recall, as part of the contract, the
4 continuing care residency agreement, that it states very
5 clearly that the monthly fee covers all operational
6 costs of the community. And that would involve and
7 include Independent Living and the Care Center.

14:18:21 8 MR. ACKER: Could we take a break?

14:18:22 9 MR. CONGER: Sure. But can I just follow up on
10 that one question?

14:18:27 11 MR. ACKER: Sure.

14:18:27 12 BY MR. CONGER:

14:18:28 13 Q. Are you talking about the 2000 contract, when
14 you just gave that testimony, where it states very
15 clearly what you just said?

14:18:35 16 A. The current contract. I guess I'd have to look
17 at the new -- at the other one, at the initial one, to
18 review.

14:18:41 19 Q. Okay. Thank you.

14:18:42 20 MR. CONGER: Yes, let's take a break.

14:18:44 21 VIDEOTAPE OPERATOR: Going off the record at
22 2:18 p.m.

14:18:48 23 (Recess taken.)

14:28:36 24 VIDEOTAPE OPERATOR: We're back on the record
25 at 2:28 p.m.

LA JOLLA VILLAGE TOWERS

— A CLASSIC RESIDENCE BY —

HYATT

MEMORANDUM

DATE: June 6, 2003

TO: All La Jolla Village Towers Residents

FROM: Jim Hayes

SUBJECT: Care Center Questions and Answers

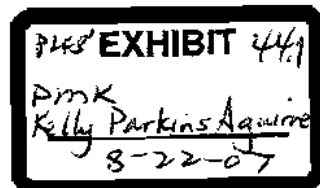
In conjunction with our up-coming Care Center seminars, we asked for questions you would like to have addressed... and you responded.

In preparation for the Care Center meetings, which will soon take place, I ask that you review the questions and answers we have provided. We hope they will be of help in making the seminars a successful effort for us all.

James H. Hayes
Executive Director

La Jolla Village Towers,
A Classic Residence by Hyatt
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San Diego, CA 92122

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