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

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

16 Plaintiffs,

17 v.

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

26 Defendants.

) CASE NO: GIC877707

) Judge: Hon. Yuri Hofmann

) Dept: 60

) Action Filed: December 29, 2006

) Trial Date: Not yet set

) NOTICE OF PENDENCY OF
) CLASS ACTION

27 TO: ALL CURRENT RESIDENTS OF LA JOLLA VILLAGE TOWERS,
28 LOCATED AT 8515 COSTA VERDE BOULEVARD, SAN DIEGO,
CALIFORNIA, INCLUDING THOSE WHO HAVE ALREADY
TRANSFERRED TO THE CARE CENTER LOCATED AT 4171 LAS
PALMAS SQUARE, SAN DIEGO, CALIFORNIA, WHO ENTERED
INTO A RESIDENCY AGREEMENT WITH EITHER (1) CC-LA JOLLA,
INC., A DELAWARE CORPORATION, (2) CC-LA JOLLA, L.L.C., A

1 DELAWARE LIMITED LIABILITY COMPANY (D/B/A CCW-LA
2 JOLLA, L.L.C), (3) CC-DEVELOPMENT GROUP, INC., OR (4)
3 CLASSIC RESIDENCE MANAGEMENT LIMITED PARTNERSHIP, AN
4 ILLINOIS LIMITED PARTNERSHIP, PRIOR TO AUGUST 1, 2005.

5
6 A CLASS ACTION LAWSUIT HAS BEEN FILED AND CERTIFIED ON
7 BEHALF OF A PLAINTIFF CLASS OF WHICH YOU MAY BE A MEMBER.
8 THIS NOTICE PROVIDES IMPORTANT INFORMATION ABOUT YOUR
9 RIGHTS IN CONNECTION WITH THAT LAWSUIT. PLEASE READ IT
10 CAREFULLY.

11 Currently pending in the Superior Court of the State of California for the
12 County of San Diego is a class action lawsuit against CC-La Jolla, Inc., CC-La
13 Jolla, L.L.C., CC-Development Group, Inc. and Classic Residence Management
14 Limited Partnership (“the Defendants”). A class action lawsuit is a lawsuit in
15 which one or more persons sue on behalf of themselves and others who have
16 similar claims. This is not a notice of a lawsuit against you. This Notice is being
17 published for the purpose of informing you of the pendency of the litigation and of
18 your rights with respect thereto.

19 In this lawsuit the Plaintiffs allege the following: Through numerous
20 publications, marketing brochures, oral presentations, letters, memos, and
21 contracts, the Defendants made “continuing care promises” to the elderly residents
22 of La Jolla Village Towers (“LJVT”). The Plaintiffs further allege that these
23 continuing care promises were material and calculated to induce trust and reliance
24 in the Defendants to fulfill lifetime health care promises in exchange for “entrance
25 fee” payments. Plaintiffs allege that mandatory “monthly fee” payments have
26 increased 49 percent during the past seven years.

27 The Plaintiffs allege false promises in the following five general categories:

- 28 1. LJVT residents were falsely told that portions of their entrance fees would

1 be “set aside” and were pre-payments for lifetime care in the care center,
2 where they could transfer, when the need arose, for virtually no additional
3 cost;

4 2. LJVT residents were falsely told they would be provided 24-hour
5 emergency response from a licensed nurse;

6 3. LJVT residents were falsely told they could “rest assured” defendants would
7 diligently act to minimize future monthly fee increases;

8 4. LJVT residents were falsely told that the prepaid lifetime care they would
9 receive at the care center would be “expert,” “exceptional,” “high quality,”
10 and “outstanding”; and

11 5. LJVT residents were falsely told they would enjoy retirement living at its
12 finest, including several amenities, since withdrawn, and a peaceful, quiet
13 living environment.

14 Plaintiffs allege that, relying on those promises, LJVT residents paid “entrance
15 fees,” ranging from \$176,700 to \$1,222,000, some of which were to be maintained
16 in a master trust for prepaid long-term health care. Plaintiffs allege that the
17 Defendants have exhausted the entire master trust, in part by means of
18 unauthorized “cash disbursements” to individual owners of LJVT, and that none of
19 the trust remains to be used, as promised, for prepaid long-term health care.

20 Plaintiffs also allege that the Defendants have begun charging the Plaintiffs and all
21 of the other class member residents for long-term health care a second time.

22 Finally, Plaintiffs note that provisions of the Health and Safety Code state that (1)
23 “continuing care promises” include any “promise or representation, whether part
24 of a continuing care contract, other agreement, or series of agreements, or
25 contained in any advertisement, brochure, or other material, either written or oral,
26 is a continuing care promise” and (2) approval by the Department of Social
27 Services of the continuing care residency agreements used by the Defendants is
28 neither a guarantee of performance nor an endorsement of any continuing care

1 contract provisions. Plaintiffs have stated various claims for relief, and seek
2 general and special damages, punitive damages, injunctive relief, statutory damages,
3 attorney fees and costs from the Defendants.

4 The Defendants deny that they have engaged in any illegal, deceptive or
5 unfair practice or activity, that any amounts are owed, or that they injured or
6 damaged any of the class members in any way. Defendants allege that each
7 member of the Plaintiff class executed a Continuing Care Residency Agreement
8 (“CCRA”) when they entered the community that defines the parties’ respective
9 rights and obligations. Each CCRA has been approved by the California
10 Department of Social Services. Defendants allege that most of Plaintiffs’
11 allegations are refuted by the express terms of each Plaintiff’s CCRA and the
12 Master Trust Agreement that each Plaintiff joined when entering the Community.
13 Defendants respond to the Plaintiffs’ allegations of five false promises as follows:

- 14 1. The controlling CCRA’s do not state that entrance fees would be “set aside”
15 in a separate account to pre-pay for care in the care center. Instead, each
16 CCRA clearly explains that long term care is a service included in each
17 resident’s monthly fees. No money is missing from the master trust and no
18 resident’s long-term care is in jeopardy. Moreover, residents can transfer
19 (and do transfer) to the care center, when the need arises, at virtually no
20 additional cost.
- 21 2. The controlling CCRA’s do not provide for 24-hour emergency response
22 from a licensed nurse. Instead, the CCRA’s provide for 24-hour emergency
23 response and this service is still being provided through the more efficient
24 First Responder Program which was adopted in 2005.
- 25 3. Defendants have diligently acted to minimize monthly fees increases. In
26 fact, there was no monthly fee increase in 2008-2009.
- 27 4. The care provided to residents in the care center is of high quality.
- 28 5. Residents of the Community continue to enjoy fine retirement living.

1 Defendants have done their most to minimize inconveniences associated
2 with ongoing construction. Construction is anticipated to end in Spring
3 2008.

4 The Court has certified the following two sub-classes:

5 **Sub-class # 1:**

6 A class consisting of all current residents of La Jolla Village
7 Towers, located at 8515 Costa Verde Boulevard, San Diego,
8 California, including those who have already transferred to the
9 care center located at 4171 Las Palmas Square, San Diego,
10 California, who entered into a residency agreement with any
11 defendant prior to August 1, 2005. Certification is granted for
12 all causes of action except the fifth cause of action for
13 violations of the Consumer Legal Remedies Act. The proposed
14 class representatives are Donald R. Short, James F. Gleason,
15 Casey Meehan, Marilyn Short, and Patty Westervelt; and

16 **Sub-class # 2:**

17 A class consisting of all current residents of La Jolla Village
18 Towers, located at 8515 Costa Verde Boulevard, San Diego,
19 California, including those who have already transferred to the
20 care center located at 4171 Las Palmas Square, San Diego,
21 California, who entered into a residency agreement with any
22 defendant prior to August 1, 2005. Certification is granted for
23 this class for the fifth cause of action for violations of the
24 Consumer Legal Remedies Act, only. The proposed class
25 representatives are James F. Gleason, Casey Meehan, and
26 Marilyn Short.

27 **The Court has not decided the merits of any of the parties' contentions.**
28 **The notice is not to be understood as an expression of any opinion of the**

1 **Court.**

2 The law firm of **Michael A. Conger, P.O. Box 9374, Rancho Santa Fe,**
3 **California 92067, (858) 759-0200** ("Class Counsel"), is prosecuting this action on
4 behalf of the class and has been appointed class counsel for both sub-classes by
5 the Court. Class Counsel represents the class members on a contingent basis,
6 without any charge to class members. Any reimbursement of costs or expenses or
7 award of attorney fees to Class Counsel will be made by the Court from any
8 recovery for the class members or from the Defendants directly.

9 Eric Acker and Linda Lane with the law firm of Morrison & Foerster LLP,
10 12531 High Bluff Drive, Suite 100, San Diego, California, 92130-2040, (858)
11 720-5150 ("Defendants' Counsel") are representing Defendants.

12 If you are a member of either or both of the sub-classes as defined above
13 and do not request exclusion from the class, you will remain a member of the
14 class. If you remain in the class, any claims that you may have against defendants
15 arising from the matters alleged in the class action will be determined in the class
16 action, in which you will be represented by Class Counsel. You will not be able to
17 present such claims in another lawsuit whether the outcome of this action is
18 favorable to you or not. **IF YOU WANT TO REMAIN A MEMBER OF THE**
19 **CLASS, YOU SHOULD NOT SEND IN THE REQUEST FOR EXCLUSION.**
20 **YOU ARE NOT REQUIRED TO DO ANYTHING AT THIS TIME.**

21 If you wish to **EXCLUDE** yourself from the class, you must send the
22 attached Form A: "Request for Exclusion" postmarked on or before Monday,
23 January 14, 2008, in the enclosed postage paid business reply envelope addressed
24 as follows:

25 **Michael A. Conger, Esquire**
26 **Law Office of Michael A. Conger**
27 **P.O. Box 9374**
28 **Rancho Santa Fe, CA 92067**

The Form Request for Exclusion indicates that you wish to request to be

1 excluded from the plaintiff class in the case entitled *Short v. CC-La Jolla, Inc., et*
2 *al.*, Case No. GIC 877707, Superior Court of the State of California, County of
3 San Diego. You must include your name and address on the Form.

4 If you request to be excluded from the class, you will not share in any
5 recovery (if any) that may be made in the class action; you will not be bound by
6 any judgment in the class action; and you are free to pursue any claims you may
7 have against the defendants by filing your own lawsuit.

8 If you have any questions about this notice, or this lawsuit, you may contact
9 Class Counsel:

10 **Michael A. Conger, Esquire**
11 **Law Office of Michael A. Conger**
12 **P.O. Box 9374**
13 **Rancho Santa Fe, CA 92067**
Telephone: (858) 759-0200
Facsimile: (858) 759-1906

14 You may wish to seek the advice and guidance of your own attorney, at
15 your own expense, about your legal rights. For further information concerning
16 this Notice, you may also contact Michael A. Conger, Esquire at the address
17 shown above. **PLEASE DO NOT WRITE OR CALL THE COURT OR THE**
18 **CLERK OF THE COURT.**

19
20 **BY ORDER OF THE HONORABLE YURI HOFMANN:**

21
22 DATE: December 20, 2007 /s/ Yuri Hofmann
23 Judge of the Superior Court
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FORM A

REQUEST FOR EXCLUSION FROM CLASS ACTION

I request to be excluded from the plaintiff class in the case entitled
***Short, et al. v. CC-La Jolla, et al.*, Case No. GIC877707.**

Name: _____ **[please print]**

Address: _____

Date: _____

Signed: _____

This form must be postmarked on or before Monday, January 14, 2008, to the following address, postage paid business reply envelope included:

**Michael A. Conger, Esquire
Law Office of Michael A. Conger
P.O. Box 9374
Rancho Santa Fe, CA 92067**