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

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

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

17 Plaintiff,

18 v.

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

25 Defendants.

CASE NO: GIC877707

Judge: Hon. Yuri Hofmann

Dept: 60

Action Filed: December 29, 2006

Trial Date: Not yet set

NOTICE OF RULING

26 **TO: ALL COUNSEL AND THEIR ATTORNEYS OF RECORD**

27 Please be advised that the Court in the referenced matter issued a ruling on August 21,  
28 2007. A true and correct copy of that ruling is attached hereto as Exhibit 1.

Dated: August 23, 2007

**LAW OFFICE OF MICHAEL A. CONGER**

By:

Michael A. Conger  
Attorney for Plaintiffs

**EXHIBIT #1**

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO

MINUTE ORDER

Date: 08/21/2007

Time: 02:05:55 PM

Dept: C-60

Judicial Officer Presiding: Judge Yuri Hofmann

Clerk: Sandra Seematter

Bailiff/Court Attendant:

ERM:

Reporter:

Case Init. Date: 12/29/2006

Case Title: SHORT vs CC-LA JOLLA INC

Case No: GIC877707

Case Category: Civil - Unlimited

Case Type: Fraud

Event Type:

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**Appearances:**

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In this matter previously submitted by the Court on August 17, 2007, the Court now confirms its tentative ruling as follows:

Defendants' request for Judicial Notice is DENIED in its entirety.

1. Defendants' demurrer to the Second, Third, Fourth, Sixth, Seventh, Eighth, Tenth and Eleventh Causes of Action in the Second Amended Complaint is OVERRULED. The Court finds that there are sufficient facts alleged to support each cause of action including sufficient specific facts to support the claims for fraud. The Court is not persuaded by any of Defendants' other arguments.

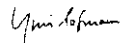
The demurrer to the First Cause of Action for violation of Health & Safety Code §1771.8 is SUSTAINED WITHOUT LEAVE TO AMEND. Health & Safety Code §1770 et seq. sets forth an entire statutory scheme regarding continuing care retirement communities including the legislative intent, the regulation by the Department of Social Services, licensing requirements, the minimum requirements for providers and enforcement remedies. Chapter 10, Article 7 sets forth the offenses and penalties for violations of the statutes. Whether a private right of action exists for violation of Health & Safety Code §1771.8 appears to be an issue of first impression. "The question of whether a regulatory statute creates a private right of action depends on legislative intent. [Citations.] In determining legislative intent, '[w]e first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [Citations.]'" Thornburg v. El Centro Regional Medical Center (4th Dist. 2006) 143 Cal. App. 4th 198, 204.

Chapter 10 expressly authorizes the Department of Social Services, the State Attorney General and the local district attorneys to bring enforcement actions. See Health & Safety Code §§1793.6, 1793.19, 1793.21, 1793.27, 1793.29, 1793.31. The various statutes also set forth the fines and penalties. Notably, there is no specific provision that provides for a private right of action to enforce §1771.8. Further, and contrary to Thornburg, the Legislature did assign statutory enforcement of this Chapter to the Department of Social Services. Health & Safety Code §1770(d); See Thornburg v. El Centro Regional Medical Center, supra, 143 Cal.App.4th at 205. While a private right of action is expressly provided for abandoning the obligations under the continuing care contract pursuant to Health & Safety Code §1793.5(d), there is nothing in the statutory scheme to suggest that the Legislature intended a private right of action for violation of §1771.8.

The demurrer to the Ninth Cause of Action for breach of contract is SUSTAINED WITH 10 (TEN) DAYS LEAVE TO AMEND. The allegations in this cause of action make it unclear whether Plaintiffs are suing for breach of the written provisions of the Continuing Care Residency Agreement or perhaps breach of the continuing care promises as defined in Health & Safety Code §1771(10). See Second Amended Complaint, ¶¶182-184.

2. Defendants' motion to strike is DENIED in its entirety. The Court has denied Defendants' request to take judicial notice of the Master Trust Agreement and the truth of its contents. Whether Defendants have a complete defense to the various causes of action based on language in the Master Trust Agreement is beyond the scope of a motion to strike. See Code Civ. Proc. §437. The fraud and negligent misrepresentation allegations at issue are not irrelevant, false or improper. Code Civ. Proc. §§435, 436.

IT IS SO ORDERED.



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Judicial Officer Presiding: Judge Yuri Hofmann