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7 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,
PATTY WESTERVELT, AND DOTTIE
13 YELLE, individually, and on behalf of all others
similarly situated.

14 Plaintiff,

15 v.

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

20 Defendants.
21

Case No. GLC877707

**OPPOSITION TO PLAINTIFFS'
EX PARTE MOTION TO
ADVANCE CASE MANAGEMENT
CONFERENCE AND HEARING
ON DEFENDANTS' DEMURRER**

Date: July 18, 2007
Time: 8:30 am

Judge: Hon. Yuri Hofmann
Dept: C-60

Date Action Filed: December 29, 2006
Trial Date: Not yet set

1 Plaintiffs' *ex parte* request to advance the scheduled dates for the hearing on Defendants'
2 Demurrer to the Second Amended Complaint, Defendants' Motion to Strike portions of the Second
3 Amended Complaint, and the Case Management Conference should not be granted because Plaintiffs
4 fail to support their request with legitimate cause or legal authority. Their failure to prosecute this
5 case diligently defeats their new argument that they have a compelling need for expedited
6 proceedings.

7 Plaintiffs provide no legitimate cause for their request. They claim that they deserve an
8 expedited schedule for the hearing and conference due to Rule 3.721 of the California Rules of Court
9 and the advanced age of the Plaintiffs. However, their previous activity in this case belies these new
10 claims. After complaining for several years to La Jolla Village Towers' staff and executives about
11 the perceived problems that are the subject of their lawsuit, Plaintiffs Donald Short and James
12 Gleason finally presented their grievances in an official complaint to the California Department of
13 Social Services (the "DSS") on December 6, 2006. In that letter they detail alleged "unreasonable fee
14 increases" since 2005, among other complaints. The DSS declined to take any responsive action,
15 understanding that the Plaintiffs' complaints are belied by the DSS-approved written continuing care
16 contracts each Plaintiff entered with Defendants. Mr. Short then filed his original complaint with this
17 Court on December 29, 2006. He subsequently filed a First Amended Complaint ("FAC") on
18 January 9, 2007. After Mr. Short was served with Defendants' Demurrer to the FAC on March 9,
19 2007, he was told that Defendants would consider withdrawing the Demurrer if he provided
20 Defendants with the Second Amended Complaint ("SAC") and attempted to fix the defects in the
21 FAC. Instead of promptly taking the Defendants up on their offer, Mr. Short and the other named
22 Plaintiffs waited more than three months, until June 13, 2007, to file an *ex parte* request with the
23 Court to file the SAC. That *ex parte* was never heard by the Court because Defendants did what they
24 said they would do three months earlier, and agreed to take their original Demurrer off calendar and
25 stipulate to the filing of the SAC.

26 In the SAC, Plaintiffs greatly expanded the nature and scope of their allegations-- going from
27 the 66-paragraph FAC to the 197-paragraph SAC. The new SAC has significantly increased the
28 issues in the case and, in turn, the discovery that will be required to refute Plaintiffs' allegations.

Moreover, for all of the reasons set forth in the recently filed Demurrer, ten of the eleven causes of action in the SAC are defective. The Demurrer makes clear that the SAC will, more than likely, not be the final complaint in this action. In addition, Defendants also ask the Court in their pending Motion to Strike to remove from the SAC allegations regarding a Master Trust, because Plaintiffs have failed to comply with the contractually-required procedures for bringing an action based on that Trust. Simply put, this is a complicated case, including nearly 1000 potential class members, multiple theories of liability, allegations spanning over nine years, and ever-changing theories of liability. Rather than supporting expedited proceedings, this background demonstrates that Plaintiffs have been in no hurry to advance the progress of this case. Their history of failing to prosecute this case diligently contradicts their newly expressed need for an accelerated schedule.

Plaintiffs also argue that this case is entitled to statutory preference according to Cal. Civ. Proc. Code § 36, but have not met any of the mandatory statutory provisions to petition the Court for this preference. First, section 36(a)(2) clearly states that in order to grant a preference, the Court must find "the health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation," but Plaintiffs include no facts to support such a finding in the Plaintiffs' *ex parte* motion. *See also* Code Civ. Pro. § 36(d) ("the court may grant a motion for preference served with the memorandum to set or the at-issue memorandum and accompanied by clear and convincing medical documentation which concludes that one of the parties suffered from an illness or condition raising substantial medical doubt of survival of that party beyond six months") Further, Plaintiffs have not satisfied the statute's requirements by serving the documents necessary for seeking such a preference. *See* Cal. Civ. Proc. Code § 36(c).

Additionally, to the extent that Plaintiffs base their argument on the interests of La Jolla Village Towers' residents other than the six named Plaintiffs, the argument fails. Unless and until Plaintiffs receive class certification, any proffered arguments based on anyone other than the named Plaintiffs are irrelevant to the proceedings in this case. And significant class discovery will be required given the scope of allegations in the SAC before the Court will be able to make a determination on Plaintiffs' class allegations.

1 Moreover, Plaintiffs will not be prejudiced if this case proceeds on the Court's regular
2 calendar. Plaintiffs have not responded to any written discovery, which was only served after
3 Plaintiffs' SAC was filed with the Court on June 13, 2007. Further, Plaintiffs have indicated that
4 they may need extensions of time to respond to discovery. Given the breadth of Plaintiffs'
5 allegations and requests for class certification, it will take months to complete the discovery
6 necessary for class certification briefing, let alone to complete all fact discovery. Class certification
7 discovery will not be completed or the issues briefed before November, let alone the fact discovery
8 and a trial. And, if Plaintiffs are eventually able to state legally cognizable claims, Defendants will
9 move for summary judgment, given that lack of any facts to support Plaintiffs' allegations. Thus, the
10 discovery process will continue far beyond the currently-scheduled October 5 date for Defendants'
11 Demurrer, Defendants' Motion to Strike portions of the Second Amended Complaint, and the Case
12 Management Conference.

13 For the foregoing reasons, Defendants respectfully request that this Court not grant Plaintiffs'
14 request to advance the dates scheduled for the hearing on Defendants' Demurrer to the Second
15 Amended Complaint, Defendants' Motion to Strike portions of the Second Amended Complaint, and
16 the Case Management Conference.

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18 Dated: July 17, 2007

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