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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DONALD R. SHORT, JAMES F. GLEASON, CASEY MEEHAN, MARILYN SHORT, PATTY WESTERVELT, AND DOTTIE YELLE, individually, and on behalf of all others similarly situated, Plaintiffs, v. CC-LA JOLLA, Inc., a Delaware Corporation, CC-LA JOLLA, L.L.C., a Delaware limited liability company, CC-DEVELOPMENT GROUP, INC., CLASSIC RESIDENCE MANAGEMENT LIMITED PARTNERSHIP, an Illinois Limited Partnership, and DOES 1 to 110, inclusive, Defendants.	CASE NO: GIC877707 Date: March 28, 2008 Time: 10:30 a.m. Judge: Hon. Yuri Hofmann Dept: 60 Action Filed: December 29, 2006 Trial Date: September 5, 2008 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR PROTECTIVE ORDER LIMITING DEFENDANTS TO A REASONABLE NUMBER, LENGTH AND LOCATION OF DEPOSITIONS OF ABSENT CLASS MEMBERS

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I. INTRODUCTION

One year after being served with the complaint, and six weeks after this Court granted the plaintiffs' motion for class certification, defendants served a "Notice of Taking Videotaped Deposition"[1] of 59 of the remaining 245 class members.[2] The deposition notice contains four pages of voluminous document production demands. (NOL, Exh. 1, pp. 4-7.)

Defendants have warned this is only the "first round" (NOL, Exh. 4, Lane letter dated January 25, 2008, p. 1) of class member depositions. Defendants have clearly stated they "will need the depositions of all class members," (NOL, Exh. 2, Lane letter dated January 23, 2008, p. 1) including the 36 class members who are Alzheimer's, dementia, and skilled nursing patients.

The purposes served by a class action are to relieve the courts of the burdens of repetitive litigation and multiple named plaintiffs, and also "to relieve the absent class members of the burden of participating in the action." (*Danzig v. Superior Court* ("*Danzig*") (1978) 87 Cal.App.3d 604, 612; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 970.) "To the extent absent class members are compelled to participate in the trial of the lawsuit, the effectiveness of the class action device is destroyed." (*Danzig, supra*, 87 Cal.App.3d at p. 612.) "If adverse parties were allowed full discovery of every unnamed class member, there would probably be no class actions." (*National Solar Equip. Owners' Association v. Gruman Corp.* ("*National Solar*") (1991) 235 Cal.App.3d 1273, 1283.) "An absent class-action plaintiff is not required to do anything. He may sit back and allow the litigation to run its course, content in knowing that there are safeguards provided for his protection." (*Phillips Petroleum Company v. Shutts* (1985) 472 U.S. 797, 810.)

In short, having unsuccessfully opposed plaintiffs' motion to certify, defendants have added oppression and intimidation as tactics in their overall war of attrition, hoping to delay,

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[1] Defendants' Notice of Taking Videotaped Deposition of Certain Plaintiff Class Members is lodged at Exhibit 1 (NOL, Exh. 1).

[2] Since the parties last appeared in Court on January 18, 2008, two additional class members have died. Helen Craver died on January 28, 2008. Franklin Goodspeed died on January 29, 2008. (Declaration of James F. Gleason ("Gleason Dec.," ¶ 2.)

outspend, and intimidate the elderly class, who filed this litigation as a last resort after treatment by defendants similar to that on display before this Court.

Therefore, the class representatives request this Court to issue a protective order:

1. limiting defendants to a reasonable number of class member depositions—such as the depositions of only those few class members who will testify at trial;
2. limiting the length of any class member depositions to two hours—because the issues on which defendants desire to inquire of the deponents is limited to "reliance and damages" (NOL, Exh. 2, p. 1); and
3. requiring that class member depositions take place at the ample available conference rooms at the class members' 21-story residence at La Jolla Village Towers ("LJVT")—to ease the burden of the elderly deponents, many of whom have significant health issues and problems with ambulation.

II. THE COURT SHOULD ISSUE A PROTECTIVE ORDER LIMITING DEFENDANTS TO A REASONABLE NUMBER, LENGTH AND LOCATION OF DEPOSITIONS OF ABSENT CLASS MEMBERS.

A. The Court is Expressly Empowered To Issue a Protective Order and To Closely Manage a Class Action.

The California Supreme Court has at least twice made it clear that a "trial court[has] considerable flexibility in the management of a class action." (*California Employment Development Department v. Superior Court* (1981) 30 Cal.3d 256, 266; see *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 820-821 ["If the class action is to prove a useful tool to the litigants and the court, pragmatic procedural devices will be required to simplify the potentially complex litigation while at the same time protecting the rights of all the parties"].) "The California Supreme Court has recognized the class action suit as a 'valuable medium of litigation' to be accorded 'a flexible if careful application.'" (*Danzig*, *supra*, 87 Cal.App.3d at p. 611, quoting *La Sala v. American Sav. & Loan Association* (1971) 5 Cal.3d 864, 883.) "In class actions, it is for the 'trial courts to adopt innovative procedures which will be fair to the litigants and expedient in serving the judicial process.'" (*Danzig*, *supra*, at p. 612, quoting *Vasquez*, *supra*, at p. 821.)

In class actions, certain types of discovery may be sought, through service of a subpoena,

from a member of a class who is not a party representative or who has not appeared. (Cal. Rules of Court, rule 3.768(a).) However, "[a] party representative . . . may move for a protective order to preclude or limit the discovery." (Cal. Rules of Court, rule 3.768(b).) "*Such a protective order would be appropriate, for example, where a defendant seeks to depose every unnamed class member.*" (Weil & Brown, Cal. Practice Guide: Civil Proc. Before Trial (The Rutter Group 2007), p. 14-73, ¶ 14.137.16, italics added, citing *National Solar*, *supra*, 5 Cal.App.3d at p. 1283.)

B. Relevant Factors Set Forth in the California Rules of Court Favor Issuance of a Protective Order.

Rule 3.768(d) of the California Rules of Court provides guidelines for determining this motion:

> "**Determination by court**
>
> In deciding whether to allow the discovery requested under [rule 3.768] (a) or (c), the court must consider, among other relevant factors: (1) The timing of the request; (2) The subject matter to be covered; (3) The materiality of the information being sought; (4) The likelihood that class members have such information; (5) The possibility of reaching factual stipulations that eliminate the need for such discovery; (6) Whether class representative are seeking discovery on the subject to be covered; and (7) Whether discovery will result in annoyance, oppression, or undue burden or expense for the members of the class." (Cal. Rules of Court, rule 3.768(c).)

Here, all of the applicable factors favor granting the requested protective order, and disallowing the 59 class member depositions, with extensive document production requests, sought by defendants.

1. *The timing of the defendants "first round" of resident depositions is suspect.*

First, the timing of the request is suspect, and appears to be a vindictive attempt to destroy the efficiency of this class action. Notably, the deposition notice was served one year after the complaint was served, six weeks after the Court granted the plaintiffs' motion for class certification, and two weeks after the Court denied defendants' request at the case management

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conference to set this trial for January 2009.[3] Indeed, defendants *unsuccessfully* argued that class certification should be denied because the class would be unmanageable. In their Opposition to Motion for Class Certification, filed November 30, 2007, defendants argued:

> "[T]he result of certifying a class will be more than 250 mini-trials. This will require a single jury to consider the varying testimony and evidence related to hundreds of different class members, each with a unique set of facts. Discovery will take more than a year. Trial will take multiple months, with hundreds of witnesses and multiple thousands of exhibits. Certification, therefore, will not conserve judicial resources or expedite this case, instead it will needlessly prolong and expand it." (Defendants' Opposition to Motion for Class Certification, p. 20:2-7.)

Having lost that battle, defendants seem determined to make the class action as unmanageable as possible, including defendants' patently ludicrous insistence on deposing class members known to suffer from Alzheimer's disease, dementia, and who are patients in defendants' own skilled nursing ward.[4] When, during the parties' meet and confer process, the inability to take seriously infirm class members' depositions was expressly pointed out to defendants,[5] defendants responded: "We believe we are entitled to depose all residents . . .[and] will go ahead and serve deposition requests . . . on the first round of resident depositions." (NOL, Exh. 4, p. 1.)

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[3] Defendants sought to take the depositions of only three other residents class members prior to certification.

[4] Defendants have actual knowledge of the health condition of all class members, including those they know could not possibly give a meaningful deposition, in light of their statutory and regulatory obligations to closely monitor all residents. (Health & Saf. Code, § 1788, subd. (a)(10); Cal. Admin. Code, tit. 22, § 87587 [defendants must conduct reappraisal of physical, mental, mental, and social condition of every LJVT resident at least once every 12 months], § 87569 [defendants must obtain and file resident's annual physician's report].)

[5] NOL, Exh. 3, Conger's letter dated January 24, 2008, p. 2:

> "if you are correct that we must prove reliance and damages with individualized testimony, then you will not be prejudiced by not taking these depositions so long as we do not call these residents. Plaintiffs have the burden of proof and defendants would be entitled to a non-suit if you are correct (which you are not). So either you are correct and will win without the need to depose all of the class members—*including those with Alzheimer's disease, dementia, and who are in skilled nursing*—or you are incorrect and need not depose more than a reasonable number of absent class members. Either way, there is no legitimate need to take the depositions of 241 more class members." (Italics added.)

2. *The information sought is not material.*

The second and third factors of rule 3.768(d) also favor disallowing class member depositions because the primary subject matter to be covered in the depositions—individualized reliance—is not material because individualized proof of reliance by each class member is not required.

As has been already addressed extensively by the parties in the class certification briefing "*when the same material misrepresentations have actually been communicated to each member of a class*, an inference of reliance arises to the entire class." (*Mirkin v. Wasseran* (1993) 5 Cal.4th 1082, 1095, italics in original.) "[T]his . . . mean[s] that actual reliance can be proved on a class-wide basis when each member had read or heard the same misrepresentations." (*Ibid.*) "The rule in this state and elsewhere is that it is not necessary to show reliance upon false representations by direct evidence. The fact that reliance upon alleged false representations may be inferred from the circumstances attending the transaction which oftentimes afford much stronger and more satisfactory evidence of the inducement which prompted the party defrauded to enter into the contract than his direct testimony to the same effect." (*Vasquez*, *supra*, 4 Cal.3d at p. 814.) "[I]f the trial court finds material misrepresentations were made to the class members, at least an inference of reliance would arise as to the entire class." (*Ibid.*, fn. omitted.) Similarly "an inference of reliance arises if a material false representation was made to persons whose acts thereafter were consistent with reliance upon the representation." (*Occidental Land, Inc. v. Superior Court* (1976) 18 Cal.3d 355,363.) "Like the circumstances discussed in *Vasquez* and *Occidental*, [concealment] permits an inference of common reliance. . . .[because] fail[ure] to disclose . . . would have been material to any reasonable person contemplating the purchase . . . ." (*Massachusetts Mutual Life Ins. Co. v. Superior Court* ("*Mass. Mutual*") (2002) 97 Cal.App.4th 1282, 1293.)

Whether a particular inference *can* be drawn from certain evidence is a question of *law*, not fact. (*Willis v. Gordon* (1978) 20 Cal.3d 629, 631.) Whether a particular inference *should* be drawn is a question for the jury. (*Ibid.*)

As the Court of Appeal for the Fourth Appellate District, Division One, well explained in

Mass. Mutual: "[c]ausation as to each class member is commonly proved more likely than not by *materiality*. That showing will undoubtedly be conclusive as to most of the class. The fact a defendant may be able to defeat the showing of causation as to a few individual class members does not transform the common question into a multitude of individual ones; plaintiffs satisfy their burden of showing causation as to each by showing materiality as to all." (*Mass. Mutual*, 97 Cal.App.4th at p. 1292, citation omitted.) Thus, '[i]t is sufficient for our present purposes to hold that if the trial court finds *material misrepresentations were made to the class members*, at least an inference of reliance would arise as to the entire class.' [Citation.]" (*Ibid.*, italics added.)

Materiality of the representation is governed by the reasonable person standard. "If the court finds that a reasonable man would have relied upon the alleged misrepresentations, an inference of justifiable reliance by each class member would arise." (*Vasquez*, *supra*, 4 Cal.3d at p. 814, fn. 9.) Defendants do not dispute that the alleged misrepresentations and concealments were material. Nor could they, because they go to the foundation of the parties' relationship and are the topic of all of the *continuing care* residency agreements, marketing brochures, advertisements, and letters and memoranda to residents. *All* of the representations at issue in this case go to either the *cost or quality* of the continuing care to be provided by defendants.

Occidental was a class action for fraud based on *Vasquez's* "inference of [common] reliance." (*Occidental*, *supra*, 18 Cal.3d at pp. 358, 363.) In *Occidental*, the developer of a planned development provided a written report to home purchasers showing their cost for maintaining common areas. The report failed to disclose substantial costs the developer had been subsidizing. (*Id.* at pp. 358-359.) The court held that class treatment of claims growing out of this failure to disclose the subsidy was appropriate. As in *Vasquez*, "an inference of reliance [could be established on a common basis] if a material false representation was made to persons whose acts thereafter were consistent with reliance upon the representation." (*Occidental*, *supra*, 18 Cal.3d at p. 363.)

In *Occidental*, the plaintiffs were among 155 homeowners who was each required to acknowledge receipt of the report from the developer. The report "refers to the [costs] as an 'estimate' and warn[ed] that expenses are difficult to determine." (*Id.* at p. 361.) In response to

the defendants' argument that the report was technically accurate, the court noted that the report could be construed differently and was "not entirely clear."[6] (*Id.* at pp. 362-363.) The court upheld class certification, noting that "the question whether [defendant] fraudulently represented the actual cost of maintenance . . . remains an issue common to the class." (*Id.* at p. 362.)

Rejecting an argument similar to one made by defendants in opposing class certification, the court stated:

> "Another contention of the defendants is that even if the alleged misrepresentations were made to each home buyer, a class suit is not appropriate because at trial each plaintiff will be required to separately prove justifiable reliance. This assertion is without merit. The cost of monthly maintenance fee is a manifestly material factor in planned development and condominium purchases. As we held in *Vasquez*, an inference of reliance arises if a material false representation was made to persons whose acts thereafter were consistent with their reliance upon the representation. That principle controls the present case." (*Id.* at p. 363.)

In *Mass. Mutual*, the Court of Appeal affirmed the trial court's certification of a class of 33,000 purchasers of life insurance who had dealt with numerous agents at different places and times over a 15-year period. The court reasoned:

> "Like the circumstances discussed in *Vasquez* and *Occidental*, here the record permits an inference of common reliance. The plaintiffs contend Mass Mutual failed to disclose [information] . . . material to any reasonable person contemplating [a] purchase . . . . If plaintiffs are successful in proving these facts, the purchasers common to each class member would in turn be sufficient to give rise to the inference of common reliance on representations which were materially deficient." (97 Cal.App.4th at p. 1293.)

The court rejected the argument—advanced by defendants here—"that each plaintiff will be required to make an individual showing of the representation he or she received." (*Id.* at p. 1286.) "[T]he information Mass Mutual provided to prospective purchasers *appears to have been broadly disseminated. Given that dissemination*, the trial court could have reasonably

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[6] The same lack of clarity exists in the residency agreement and defendants knew it. In explaining why all residents were sent a memorandum by executive director Jim Hayes on June 6, 2003, Ms. Aguirre testified: "this . . . was a compilation of questions that management put together to try to provide a presentation to the residents to give them clarity on any specifics of the contract so they would understand, without any question, . . . what their program was [and] what the contract said about their program." In that document, defendants *falsely* told residents "a portion of your entry fee is set aside to cover additional costs associated with the higher levels of care" at the care center.

concluded that the ultimate question of whether the undisclosed information was material was a common question of fact suitable for class treatment." (*Id.* at p. 1294, italics added.)

Plaintiffs have shown that the defendants disseminated *identical written representations to the entire* class. These written material statements, which fall into five categories (but each of which goes to the cost or quality of the care to be provided by defendants), constitute even stronger evidence than the alleged identical oral statements in *Vasquez*.[7] As this Court stated in granting the motion to certify: "plaintiffs submit evidence which tends to establish that . . . elderly residents of LJVT may have been misled into contracting with defendants based on numerous publications, marketing brochures, oral representations, letters, memos, and contracts."

Moreover, as discussed at length in plaintiffs' briefs in support of their motion to certify, plaintiffs allege that defendants concealed material information from them, and proof of individualized reliance under these circumstances is also not required.

> "Here, unlike the situation [the court] considered in *Caro* [*v. Proctor & Gamble Co.* (1993) 18 Cal.App.4th 644], there is no evidence any significant part of the class had access to all the information plaintiffs believe they needed before purchasing [defendants' product]. Indeed, there is nothing in the record [demonstrating] . . . disclos[ure] to any class member. If the undisclosed [information] was material, an inference of reliance as to the entire class would arise . . . ." (*Mass. Mutual*, *supra*, 97 Cal.App.4th at p. 1294.)

3. *While some class members may have clear memories, many will not.*

The fourth factor of rule 3.768 favors granting the protective order because the elderly class members have already demonstrated some memory loss. For that reason plaintiffs have relied on defendants' identical, written, widely-disseminated documents, which defendants concede were sent to all residents. While fading memories of elderly citizens afford no license to defraud,[8] those same fading memories demonstrate the lack of likelihood that class members

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[7] In fact, in *Vasquez*, the defendants disputed the allegation that "there was a standard sales manual and that the recital did not contain the alleged misrepresentation." (*Vasquez*, *supra*, 4 Cal.3d at p. 803, fn. 7.) Here, there is no dispute that plaintiffs signed identical continuing care residency agreements, identical related documents, received the same resident handbook, and were sent the same letters, memoranda and brochures.

[8] Elderly persons are susceptible to declarative memory loss. "Declarative memory comprises memory for facts and events, and includes, for example, information about your

have the detailed information sought by defendants.

> "A long-term advertising campaign may seek to persuade by cumulative impact, not by a particular representation on a particular date. Children in particular are unlikely to recall the specific advertisements which led them to desire a product, but even adults buying a product in a store will not often remember the date and exact message of the advertisements which induced them to make that purchase. Plaintiffs should be able to base their cause of action upon an allegation that they acted in response to an advertising campaign even if they cannot recall the specific advertisement." (*Committee on Children's Television, Inc. v. General Food Corp.* (1983) 35 Cal.3d 197, 218.)

4. *The parties should be able to reach factual stipulations regarding damages sought by the class.*

The only other basis stated by defendants for taking the depositions of every class member is to inquire regarding damages. But the damages sought by the class will consist of uncontroverted information provided by defendants—the amount of entrance fees and monthly fees paid by each member of the class. This information is readily available to defendants, who simply need to update the data already provided with names of individual class members. (NOL, Exh. 7, Defendants' response to plaintiff's special interrogatory number 1.)

5. *The class representatives have not sought similar discovery from the absent class members and have committed not to take the deposition of any class member or subpoena documents without that class member's consent.*

The sixth factor favors disallowing class members' depositions and document production because plaintiffs have not sought similar discovery from the class members, nor will they do so. (Conger Dec., ¶ 2.)

6. *The elderly members of the class will suffer undue annoyance, oppression, undue burden and expense to submit to a deposition and produce documents they received from defendants.*

Perhaps the most compelling reason to grant the requested protective order is due to the annoyance, oppression, undue burden and expense which will inure to both class members and

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retirement account." (NOL, Exh. 5, *Improving Memory*, Harvard Medical School (2006), p. 16.) "This form of memory depends on the hippocampus . . . [which] is especially vulnerable to age-related changes." (*Ibid.*)

class representatives if defendants are permitted to depose every class member. Numerous class members have already expressed fear and trepidation of being involuntarily required to participate in this litigation, including of being deposed or being required to search for and produce voluminous documents. (Gleason Dec., ¶ 4; Conger Dec., ¶ 3.) Even more oppressive, the documents sought by defendants from class members originated from the defendants, who are required by state law to keep such records themselves. (Cal. Admin. Code, tit. 22, § 87570 [requiring defendants to maintain detailed information on each LJVT resident].)

C. At Most, Defendants Are Entitled To Take Only a Reasonable Number of Class Member Depositions.

At least two California courts have examined the issue requiring absent class members to submit to discovery, and both have held that a defendant may not proceed as the defendants are attempting here.

In *National Solar, supra*, 235 Cal.App.3d 1273, the court held that the trial court erred in denying class certification of fraud claims unless the plaintiffs agreed that the defendants could depose all absent class members. Just like the defendants here, in *National Solar* the defendants opposed class certification and sought to take depositions of all absent class members "because promotional materials changed throughout the life of the [allegedly fraudulent] investment program, and reliance on these materials was always a question requiring individual proof." (*Id.* at 1279.) "The trial court seemed ready to certify the class if [plaintiffs'] counsel" agreed to permit the depositions of absent class members. (*Id.* at 1281.) "When [such a concession] was not forthcoming, the motion [to certify] was denied. This was error." (*Ibid.*)

The Court of Appeal explained why it was error for the trial court to implicitly rule that defendants in a fraud case could take the depositions of all absent class members. First, the court explained why discovery from unnamed class members is restricted. "The reason for such restrictions on discovery of absent class members is that, to the extent the absent class members are compelled to participate in the trial of the lawsuit, the effectiveness of the class device is destroyed." (*Id.* at p. 282, fn. 3.) "The purpose of the [class] device is not only to relieve the courts of the burdens or repetitive litigation and multiple named plaintiffs; it is also to relieve the

absent class members of the burden of participating in the action." (*Ibid.*)

The court explained: "[t]he foregoing cases serve to demonstrate what we believe is fairly obvious: If adverse parties were allowed full discovery of every unnamed class member, there would probably be no class actions." (*Id.* at 1283.) "Courts have recognized this, and have modified traditional notions concerning the scope of discovery accordingly, particularly where (as here) reliance is a key issue." (*Ibid.*) Citing *Occidental* and *Vasquez*, the court stated: "our Supreme Court held that an inference of reliance arises in a class action setting if a material false representation is made to persons whose subsequent acts were consistent with reliance on the representation." (*National Solar*, *supra*, 225 Cal.App.3d at p. 1283.[9]) "Therefore, justifiable reliance may be established on a common basis without taking evidence from each individual class member." (*Ibid.*)

Thus, the court held:"[i]n light of the somewhat relaxed rules concerning reliance in class action settings, it is clear that depositions of every class member will hardly be necessary." (*Id.* at 1284.)

> "While we share the trial judge's concern that defendants not be foreclosed from conducting relevant discovery, mandating depositions of every class member is simply too drastic. The cost of discovery would likely make maintenance of the class action impractical and no more cost efficient than individual actions. We believe defendants are entitled to depose a *reasonable* number of unnamed class members. (See *Blackie v. Barrack* (9th Cir. 1975) 524 F.2d 891, 907, fn. 22; see also *Spoon v. Superior Court* (1982) 130 Cal.App.3d 735, 748 [defendants successfully sought depositions of only two unnamed class members].)" (*Ibid.*, italics in original.)

In *Danzig*, the court issued a writ directing the trial court to vacate its ruling permitting limited interrogatories to unnamed class members. (*Danzig*, *supra*, 87 Cal.App.3d at p. 614.) Citing *Occidental*, the court noted that such discovery was unnecessary, even in a class action fraud case, because "justifiable reliance may be established on a common basis without the taking of evidence from each class member." (*Id.* at p. 613.)

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[9] The court also observed that "where a defendant makes material omissions, plaintiffs need not show reliance." (*Ibid.*)

D. Deposing a Class Member Who Will Never Testify at Trial Is Unreasonable Per Se.

Plaintiffs have twice offered to exchange lists of probable resident witnesses with defendants by February 15, 2008, and to allow those witnesses to be deposed for up to two hours, but defendants rejected this proposal. (Conger Dec., ¶ 4; NOL, Exhs. 3-4.) Plaintiffs propose that each side agree to inform the other of all class members or resident witnesses (exclusive of plaintiffs) they intend to call at trial—not to exceed 15 witnesses. Thus, a *reasonable* number of depositions should include only those residents who will be witnesses at trial.

E. Class Member Depositions Should Be Limited to Two Hours.

Given the limited nature of the reason stated by the defendants for taking these depositions—"proof of reliance and damages for each class member"—they each should easily be able to be completed within two hours. Such an order will lessen the "annoyance, oppression, undue burden and expense for the members of the class." (Cal. Rules of Court, rule 3.768(d)(7); *National Solar*, supra, 235 Cal.App.3d at p. 1281, fn. 3 [court should attempt to ease burden to absent class members].)

F. Class Member Depositions Should Occur in a Conference Room at LJVT

Further, because many of the LJVT residents who may be deposed in this case have limited mobility (Gleason Dec., ¶ 5), the class representatives request that any class member depositions take place at LJVT, which has ample conference rooms available. (Gleason Dec., ¶ 5.) (*National Solar*, supra, 235 Cal.App.3d at p. 1281, fn. 3 [court should attempt to ease burden to absent class members].)

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III. CONCLUSION

Therefore, the class representatives request this Court to issue a protective order:

1. limiting defendants to a reasonable number of class member depositions—such as the depositions of only those few class members who will testify at trial;
2. limiting the length of any class member depositions to two hours; and
3. requiring that class member depositions take place at the ample available conference rooms at the class members' 21-story residence at LJVT.

Dated: February 1, 2008

LAW OFFICE OF MICHAEL A. CONGER

By: 

Michael A. Conger
Attorney for Class