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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: December 14, 2007 Time: 10:30 a.m. Judge: Hon. Yuri Hofmann Dept: 60 Action Filed: December 29, 2006 Trial Date: Not yet set PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO MOTION FOR CLASS CERTIFICATION

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I. INTRODUCTION

Plaintiffs' motion should be granted because most of the applicable criteria for class certification are undisputed, and all are satisfied.

Because defendants have announced their intent to seek consolidation of any separate lawsuits filed by the other 100 LJVT residents[1] who have similar claims if plaintiffs' motion to certify is denied,[2] and because only "actions involving a common question of law or fact" (Code Civ. Proc., § 1048, subd. (a)) may be consolidated, defendants effectively concede commonality.

In 1971, the Supreme Court observed:

> "Thirty years ago commentators, in urging the utility of the class suit to vindicate the rights of stockholders, made this incisive observation: 'Modern society seems increasingly to expose men to . . . group injuries for which they are in a poor position to seek legal redress, either because they do not know enough or because such redress is expensive. If each is left to assert his rights alone if and when he can, there will be at best random and fragmentary enforcement, if there is any at all. This result is not only unfortunate in the particular case, but it will operate seriously to impair the deterrent effect of the sanctions which underlie much contemporary law.' [¶] What was noteworthy in the milieu three decades ago for stockholders is of far greater significance today for consumers. Not only have the means of communication improved and the sophistication of promotional and selling techniques sharpened in the intervening years, but consumers as a category are generally in a less favorable position than stockholders to secure legal redress for wrongs committed against them." (*Vasquez v. Superior Court* (*Vasquez*) (1971) 4 Cal.3d 800, 807, citation omitted.)

What was noteworthy 36 years ago for consumers is of far greater significance today for the putative class of elderly residents of a continuing care facility.[3] The granting of plaintiffs' motion to certify will allow the claims of putative class members, whose average age is over 80, to be heard promptly and efficiently. The denial of the motion, as a practical matter, will extinguish many of those

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[1] Since plaintiffs filed their motion for certification on November 16, 2007, 15 additional LJVT residents have expressed a desire to proceed with claims similar to plaintiffs' claims. (Declaration of Michael A. Conger in Support of Plaintiffs' Reply to Defendants' Opposition to Motion for Class Certification ("Conger Reply Dec."), ¶ 2; Notice of Lodgment in Support of Plaintiffs' Reply [etc.], Exhibit 1 ("Reply NOL, Exh. 43").)

[2] Defendants' Revised Case Management Conference Statement, p. 3 ["Defendants intend to file motions to consolidate related cases, if necessary"]. (Reply NOL, Exh. 44.)

[3] The Legislature has expressly recognized the vulnerability of elderly persons and the need to protect them. (See., e.g., *Conservatorship of Kayle* (2005) 134 Cal.App.4th 1, 5 ["legislative purpose of [Elder Abuse Act] is to afford extra protection to vulnerable portion of population"]; Welfare & Inst. Code, § 15600 [enacted in 1991]; Health & Saf. Code, 1770 [enacted in 1990]; Civ. Code, §§ 1780, subd. (b)(1) [elder protection added in 2003]; 3345 [elder protections added in 1988].)

claims. Defendants do not dispute that, since this case was filed, 20 putative class members have died. (Gleason Dec., ¶ 12.) The defendants are opposing class certification of claims they concede should be consolidated because they are waging a war of attrition.

II. THE DEFENDANTS DO NOT DISPUTE THAT MOST CLASS CERTIFICATION CRITERIA ARE PRESENT INCLUDING (1) CLASS ASCERTAINABILITY, (2) NUMEROSITY, (3) PREDOMINANT COMMON ISSUES OF LAW, (4) THE ADEQUACY OF THE PROPOSED CLASS REPRESENTATIVES, AND (5) THE COMPETENCY OF CLASS COUNSEL.

The Supreme Court has identified five criteria which bear on the decision to certify a class under Code of Civil Procedure section 382.[4] In their opposition, the defendants dispute only whether there are predominant common questions of *fact* (Defendants' Opposition to Motion for Class Certification ("Def. Opp."), pp. 12-19) and (2) whether a class action is superior to multiple, individual lawsuits (*id.*, pp. 19-20). They do not dispute there are predominant questions of *law* (Plaintiffs' Mem., p. 17:16-23), or the presence of the *other three criteria for class certification* (*id.*, pp. 14-15 [a sufficiently numerous, ascertainable class], 17-18 [class representatives with claims or defenses typical of the class who can adequately represent the class with the assistance of competent counsel]). (Def. Opp., *passim.*)

III. COMMON ISSUES OF FACT *OR* LAW PREDOMINATE.

A. Because the Defendants Have Failed To Dispute That Common Issues of *Law* Predominate, the Community of Interest Requirement Is Unrefuted.

A plaintiff seeking class certification must demonstrate "predominant common questions of law *or* fact" (*Fireside Bank, supra*, 40 Cal.4th at p. 1089; *Sav-On, supra*, 34 Cal.4th at p. 326.) Because the test is framed in the disjunctive, the plaintiff need not show a predominance of common questions of both fact *and* law in order to satisfy the commonality requirement. (See *Lubin v. Sybedon Corp.* (S.D. Cal. 1988) 688 F. Supp. 1425, 1459.[5]) Because the defendants do not

[4] (1) "[A] sufficiently numerous, ascertainable class" (*Fireside Bank v. Superior Court* (*Fireside Bank*) (2007) 40 Cal.4th 1069, 1089; *Sav-On Drug Stores, Inc. v. Superior Court* (*Sav-On*) (2004) 34 Cal.4th 319, 326) and "a well-defined community of interest," which consists of (2) "predominant common questions of law *or* fact" and (3) "class representatives with claims or defenses typical of the class," (4) "who can adequately represent the class" with the assistance of competent class counsel (*Fireside Bank, supra*; *Sav-On, supra*, italics added; *Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846), and (5) whether "certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods" (*Fireside Bank, supra*; *Sav-On, supra*).

[5] Although the court in *Lubin* was applying rule 23(a)(2) of the Federal Rules of

deny that there are predominant common questions of *law* (see Plaintiffs' Mem., p. 17), as a matter of logic they have wholly failed to negate the "community of interest" requirement.

B. Common Issues of *Fact* Predominate As Well.

1. The meaning of "predominate"

Common issues "predominate" when they "would be the principal issues in any individual action, both in terms of time to be expended in their proof and of their importance." (*Vasquez, supra*, 4 Cal.3d 800 at p. 810; *Caro v. Proctor & Gamble Co.* (1993) 18 Cal.App.4th 644, 667-668.)

2. The vast majority of factual issues are common issues.

All of the facts alleged by the plaintiffs on behalf of the putative class have been placed in issue by the defendants' general denial. As the plaintiffs' have demonstrated, the vast majority of the disputed, factual issues are *common* issues. (Plaintiffs' Mem., pp. 1, 15-17.) They include:

- whether the defendants' represented that substantial portions of the class members' entrance fees would be used for their long-term health care;
- whether those representations were false;
- whether the defendants knew they were false when made;
- whether material facts—such as disadvantageous terms of the 50-year, inter-defendant management contracts and disadvantageous terms of the Master Trust Agreement—were concealed from class members;
- the meaning of the class members' identical, residency agreements and Residents' Handbook;
- whether the defendants made a continuing care promise to class members to minimize monthly fee increases;
- whether the defendants breached that continuing care promise by charging class members excessive, monthly fees for management, marketing, and administration;
- whether the defendants' promised class members that the operating losses of the adjacent Care Center would not be shifted to residents of the independent living tower;
- whether operating losses of the Care Center were used to calculate monthly fee increases for class members;
- whether the defendants made a continuing care promise to class members that a licensed nurse would be on duty in the Wellness Center of the independent living tower to provide 24-hour emergency medical response;
- whether the defendants abandoned that promise;

Civil Procedure, the analysis is the same under Code of Civil Procedure section 382. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1432.)

- whether the defendants' owe a fiduciary duty to class members;
- whether the defendants' breached that fiduciary duty;
- whether the quality of assisted living, skilled nursing, and Alzheimer's care that the defendants promised class members is being provided in the Care Center;
- whether the defendants' have breached the enhanced covenant of quiet enjoyment promised to class members; and
- whether the defendants have provided the common amenities— such as a heated, indoor swimming pool, exercise room, art studio, computer center, card room, picnic tables, putting green, walking paths, and living room—which they promised class members in marketing brochures and other documents.

These numerous, common issues of fact—particularly whether the representations were false, whether material information was concealed, whether the defendants intended to deceive, and whether a de facto fiduciary relationship exists—"would be the principal issues in any individual action, both in terms of time to be expended in their proof and of their importance." (*Vasquez*, *supra*, 4 Cal.3d at p. 810; *Caro*, *supra*, 18 Cal.App.4th at pp. 667-668.) Yet they are virtually ignored by the defendants. Even if the court were to later require proof of reliance by individual class members, the class should be certified because common factual issues still predominate.

3. *The defendants' argument that the proposed class should not be certified because one factual element of the plaintiffs' fraud claims—reliance—will require individual proof is mistaken.*

Essentially, the defendants argue that common questions of fact do not predominate because the claims of the putative class will require individualized proof of *reliance* (one element of fraud by actual misrepresentation). However, the defendants' position is legally insufficient, for reasons explained above in Section III(A); is unpersuasive, for reasons explained above in Section III(B)(2); and it is contrary to well established California decisional law, for reasons explained below.

a. The defendants' legal premise—stated in their introduction—is unsupported by any legal authority.

In their Introduction, the defendants argue: "Plaintiffs must establish that every member of the putative class was privy to the same communications before a class can be certified. Absent such proof, there can be no evidence of class-wide reliance." (Def. Opp., p. 1:6-9.) However, no legal authority is cited in support of that argument, and, as we will show, no California court has ever imposed such an onerous, unattainable requirement for class certification of a fraud case.

"Requiring proof of this nature would necessarily preclude the certification of virtually all class actions based on allegations of fraud. [The Supreme Court's] decision in *Vasquez* repudiates such a concept." (See *Occidental Land, Inc. v. Superior Court* (*Occidental*) (1976) 18 Cal. 3d 355, 363, fn. 6.) The decisional law of *class certification* does not require proof (1) that the defendants told an identical lie to all class members *in one communication* or (2) that every putative class member received and relied upon that single communication, as the defendants seem to contend. Moreover, the defendants' offer of proof "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." (*Blackie v. Barrack* (*Blackie*) (9th Cir. 1975) 524 F.2d 891, 907, fn. 22.)

b. Individual proof of reliance is *not* required because an inference of reliance arises from the concealment of a *material* fact from the entire class or from the making of an identical *material*, false representation to the entire class.

Before addressing the defendants' mistaken premise, it should be noted that 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.*) However, the issue raised by the defendants' opposition is a question of law, *viz.*, from what evidence can an inference of causation be drawn in a class action for fraud?

The answer given by California reviewing courts is that an inference of causation may be drawn from either (1) the defendant's concealment from the *entire* class of the same *material* information or (2) the defendants' making of the same *material* misrepresentation to the *entire* class. An inference of causation of harm to the entire class turns of the *materiality* of the disclosure or non-disclosure by the defendant, not upon proof that every single putative class member "was privy to the same communications" (Def. Opp., p. 1:7-8).[6]

The plaintiffs do not dispute that causation is an element of common law fraud and an element for relief under Civil Code section 1781, subdivision (a). However, as the Court of Appeal for the Fourth Appellate District, Division One, well explained in *Massachusetts Mutual Life Ins. Co. v. Superior Court* (*Mass. Mutual*) (2002) 97 Cal.App.4th 1282, 1292: "'Causation as to each class member is commonly proved more likely than not by *materiality*. That showing will

[6] In the case of fraud by concealment, it does not even make logical sense to say that every putative class member must be "privy to" the same concealed fact.

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.'" (*Blackie*, *supra*, 524 F.2d at p. 907, fn. 22.) 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.]" (Italics added.)

Materiality 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.

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."[7] (*Id.* at pp. 362-363.) The court upheld class

[7] 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 (NOL, Exh. 19), Ms. Aguirre testified: "this . . . was a compilation of questions that

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 here, 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 also 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 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.)

(i) The defendants disseminated false, material, representations to the entire class.

Plaintiffs have shown that the defendants disseminated *identical written representations to the entire* class. These written material statements, which fall into five categories, constitute even

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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." (Reply NOL, Exh. 45, Aguirre deposition, p. 166:5-12.) 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. (NOL, Exh. 19.)

stronger evidence than the alleged identical oral statements in *Vasquez*.[8] The defendants' assertion that "there were no uniform written materials given to putative class members other than the written contract and application materials (none of which the Plaintiffs argue contain misrepresentations)" (Def. Opp., p. 4:7-9) is doubly mistaken.

First, defendants do not dispute that the five categories of false representations at issue (Plaintiffs' Mem, pp.4:17-14:2) are material and would be material to a reasonable person. The marketing documents (NOL, Exhs. 7-18) stress the same important, material facts relating to the cost and quality of the care to be provided. In fact, the marketing documents were intended by defendants to be read and relied on by prospective residents, i.e., to induce them to move into LJVT. (NOL, Exh. 6, Aguirre deposition, pp. 201:12-203:19 [defendants expect prospects for residency will read and rely on marketing material and "and believe that they're true"], 203:15-19 ["the objective is [for prospects] to use this brochure in making their decision to move over to [LJVT]".)

Second, defendants' own opposition papers demonstrate numerous written materials that were provided to and received by all residents. For example, Ms. Aguirre declares that lodged exhibits 7, 19, 20, 24, 25, 28, 29, 39, and 42 "are letters or mailings which were sent . . . to current residents . . . ." (Aguirre Dec., ¶ 19.) Evidence Code section 641 provides: "A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail." And Ms. Aguirre confirms that exhibits 10 and 12 "are [defendants'] marketing documents that were used at different times and given to . . . prospective residents." (Aguirre Dec., ¶ 20.) Therefore, Ms. Aguirre's declaration and the evidentiary presumption of receipt establishes that these representations were communicated to the class.[9]

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[8] 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.

[9] The defendants' resident declarants also acknowledge they received marketing materials and brochures, even though they understandably do not recall the particulars of those documents. (Wright Dec., ¶ 5 [provided marketing brochures "of which I do not recall the specifics"]; Lesser Dec., ¶¶ 7, 9 [received marketing brochures]; Fujimoto Dec, ¶ 9 [received marketing brochures]; Darmstandler Dec., ¶ 7 ["we were given glossy brochures"]; Werner Dec., ¶ 5 [received "marketing brochure of which I do not recall the specifics"].) Because the *only* marketing materials before the Court are those presented by the plaintiffs, the declarants must be

Fourth, there is no evidence that any of the *oral* representations to putative class members *contradicted* the written materials.[10]

Fifth, the plaintiffs have repeatedly asserted and shown that the residency agreements themselves contain false and misleading statements.[11] All residents were told that the resident handbook, receipt of which was acknowledged on the first page of all residency agreements, was a part of the parties' contract. (NOL, Exh. 25, p. 2 [March 10, 2000 letter to all residents].) That handbook confirms what residents, and all of Southern California (NOL, Exh. 7), had been told, *viz.*, "[d]uring non-office hours and on weekends, licensed nurses are on call." (NOL, Exh. 24.)

Sixth, defendants overlook that Health and Safety Code section 1771, subdivision (c)(8), provides that a "'continuing care contract' means a contract that includes a continuing care promise made in exchange for an entrance fee, the payment of periodic charges, or both types of payments," and section 1771, subdivision (c)(10), which provides:

> "'[c]ontinuing care promise' means a promise, express or implied, by a provider to provide one or more elements of care to an elderly resident for the duration of his or her life or for a term in excess of one year. *Any such promise or representation, whether part of a continuing care contract, other agreement, or series of agreements, or contained in any advertisement, brochure, or other material, either written or oral, is a continuing care promise.*" (Italics added.)

Pursuant to these provisions, all representations made in defendants' advertisements, brochures, letters and memoranda are enforceable continuing care promises.[12]

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referring to the same documents as plaintiffs. The defendants' own declarants confirm that residents all received the identical written marketing documents from defendants.

[10] Although the contrary is true—that defendants made many oral representations *consistent* with their written representations—plaintiffs have not presented that evidence because they do not rely on oral representations for the purposes of this certification motion. (See, e.g., Appendix B, Reply NOL, Exhs. 46 [Gleason], 47 [D. Short], 48 [M. Short], 49 [Meehan].)

[11] TAC, Exh. 14, appendix C ["entrance fee includes . . . long-term care in our future care center. . . . The monthly fee represents the cost of providing you with a range of services and amenities, such as weekly housekeeping, linen service, all utilities [etc.]"; TAC, Exh. 14, p. 9 [entrance fee is increased $12,000 for "each 100 additional care benefit days of coverage . . . ."]; TAC, Exh. 14, Closing Worksheet [additional $18,000 entrance fee for "Second Person Coverage" for "Unlimited Long- Term plan"]; TAC, Exh. 14, p. 24 [entrance fee held in trust].

[12] The defendants also assert: "[w]hat is dispositive here . . . is whether or not every member of the putative class was privy to the exact same alleged misrepresentation or omissions." (Def. Opp., p. 2:26-27, fn. 2.) Even if that were the test, which it is not (the word "privy" does not appear in *Vasquez*, *Occidental*, or *Mass.*), it is met by the evidence.

(ii) The defendants concealed material facts from the entire class.

The defendants do not dispute that they concealed the same information from the entire class or that the concealed information was material. (Aguirre Dec., ¶21 [confirming defendants did not provide residents NOL, Exh. 27, the long-term management and marketing agreement].) Disclosure of this sweetheart long-term arrangement was important to the fixed-income elderly residents, and defendants knew it. (NOL, Exhs. 28-30, TAC, Exhs. 1, 3 ["rest assured" letters or memos to all residents from 1998 to 2005], 39, p. 2 ["we are as sensitive about increases as you are"].) Defendants told all residents "[p]lease rest assured that we are looking at all our expenses and systems to find ways of reducing the impact of such [monthly fee] increases" (TAC, Exh. 3) while they concealed that they were not. (NOL, Exh. 4, CFO Smith's deposition, pp. 132:17-133:16.)

Defendants concealed the master trust agreement, the master trust loan agreement, and the facts that the master trust never held any entrance fees[13] or other money and that "all the money paid into the master trust would immediately get loaned" to defendants for 50 years without interest. (NOL, Exh. 4, CFO Smith's deposition, pp. 29:9-24, 39:19-40:5.[14])

A trust is "[a] right of property, real or personal, *held by one party for the benefit of another*." (Black's Law Dict. (5th ed. 1979), p. 1352, col. 1.) Because the master trust never held the entrance fees, it was a bogus trust, part of a deceptive scheme. Instead of having "a portion of [their] entry fee . . . set aside to cover additional costs associated with the higher levels of care" at the care center (NOL, Exh. 19, p. 4), and having any of those trust funds "protected by a trustee" who would "carefully manage" them, all residents are now paying thousands of dollars per year in

[13] Defendants told residents "[a]nother advantage of a Master Trust is that the use of *your entrance fee is protected by a trustee*, an advantage not offered by many retirement communities . . . . Entrance fees paid by residents are utilized *only* [for] . . . trustee-approved expenditures. This should *reassure you* that your entrance fee is being *carefully managed* and utilized only for purposes which are outlined in the Master Trust Agreement." (Def. NOL, Exh. Z, p. 4, italics modified.)

[14] In fact, whenever a disbursement or refund needed to be made from the master trust, defendants *had to wire money into the cashless trust to pay residents*. (Reply NOL, Exhs. 50 ["[f]unds to cover this transaction will be wired shortly to the . . . master trust account"], 51 ["[w]e will notify you when the funds to cover th[is refund] will be wired to the . . . master trust account"], 52-58 [same]. These highly confidential transactions were concealed from residents, a concealment continued in this case by marking these documents "confidential attorney eyes only" even though the names of the residents were redacted before production.

care center operating expenses. (Gleason Dec., ¶ 6 [$217 per resident per month in 2007].) Defendants admit it was always their intent that "monthly fees . . . cover all operating expenses . . . [of] the Care Center" and entrance fees are not used for this purpose. (NOL, Exh. 5, pp. 2-3.) Defendants cannot explain how "entrance fee[s] [were] for pre-paid Long Term Care" (NOL, Exhs. 20-23, TAC, Exhs. 4-6) when *none* were used for that purpose.

As in *Occidental*, where concealment of a material fact deprived homeowners of information regarding monthly fees they were obligated to pay, here concealment of several material facts deprived residents of information regarding monthly fees they are required to pay.[15]

And the same evidence will be used to establish defendants' intent to conceal incriminating documents. For example, defendants' Executive Vice President of Marketing provided her subordinates "answers to the questions posed [by residents] regarding . . . long-term care," but directed "THIS INFORMATION . . . SHOULD NOT BE SHARED WITH RESIDENTS OR PROSPECTS *IN WRITTEN FORM*." (Reply NOL, Exh. 61, capitalization original, italics added.)

> "Here, unlike the situation [the court] considered in *Caro*, 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.)

(iii) The cases relied upon by the defendants' are distinguishable.

Each of the four reliance cases cited by defendants (Def. Opp., pp. 16-18) are distinguishable.[16] *Akkermann v. Mecta Corp., Inc.* (2007) 152 Cal.App.4th 1094 relied on *Brown v. Regents of Univ. of California* (1984) 151 Cal.App.3d 982. (*Akkerman* at p. 1103.) Each of those cases involved medical malpractice claims and the court noted that putative class members had different doctors with "intervening and independent dut[ies of] disclosure [of] the risks of the procedure under the duty of informed consent." (*Ibid.*) "'[T]he concept of informed consent is a complex one

[15] The Supreme Court stated: "[t]he cost of the monthly maintenance fee is manifestly a material factor in planned development and condominium purchases." (*Occidental*, *supra*, 18 Cal.3d at p. 363.) The materiality of undisclosed information is even greater here. The concealment in *Occidental* involved only a few dollars per month per homeowner. Here the concealment involves hundreds of dollars per month per resident. (Gleason Dec., ¶ 6.)

[16] For the Court's convenience, plaintiffs have attached a summary of the class action reliance cases cited by the parties at Appendix A.

. . . .'" (*Ibid.*, quoting *Brown* at p. 990.) "It involves '[numerous] issues . . . directly controlled by the unique situation of each patient.'" (*Akkerman* at p. 1103, quoting *Brown* at p. 990-991.) "'Since th[e] duty [of informed consent] will necessarily vary from case to case, . . . individual issues . . . predominate[d] . . . .'" (*Akkerman* at p. 1103, quoting *Brown* at p. 991.)

Caro is distinguished by *Mass. Mutual*, which was decided by the same court: "[N]othing we said in *Caro* undermines the general rule permitting common reliance where material misstatements have been made to a class of plaintiffs. Rather, our holding in Caro merely stands for the self-evident proposition that such an inference will not arise where the record will not permit it." (*Mass. Mutual, supra*, 97 Cal.App.4th at p. 1294.)

Finally, certification was denied in *Kavruck v. Blue Cross of California* (2003) 108 Cal.App.4th 773 because the plaintiff relied *solely* on "oral representations of Blue Cross agents." (*Id.* at p. 786.) "[T]his would require proof on a subscriber by subscriber basis, rather than a common set of facts for the entire class . . . ." (*Ibid.*) "[O]nly 'when the same material misrepresentations have actually been communicated to each member of a class' would the inference of reliance arise as to the entire class." (*Id.* at pp. 796-787, quoting *Mirkin v. Wasseran* (1993) 5 Cal.4th 1082, 1095.) Here, unlike *Kavruck*, the plaintiffs' have alleged and shown that the same material misrepresentations were made to the entire class.

IV. A CLASS ACTION IS SUPERIOR TO INDIVIDUAL LAWSUITS.

In deciding whether a class action would be superior to individual lawsuits, courts usually consider four factors: (1) the interest of each member in controlling his or her own case personally; (2) the difficulties, if any, that are likely to be encountered in managing a class action; (3) the nature and extent of any litigation by individual class members already in progress involving the same controversy; and (4) the desirability of consolidating all claims in a single action before a single court. (*Basurco v. 21st Century Ins. Co.* (2003) 108 Cal.App.4th 110, 121; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2007) ¶¶ 14:16, p. 14-12.)

From the perspective of the litigants, the court, and the public, a class action would be superior to individual lawsuits. *First*, the lodged petitions and Mr. Conger's declaration (¶ 10) show that many putative class members *prefer* the certification of a class action to filing their own

individual lawsuits.[17] *Second*, the defendants have identified no difficulties in managing this case as a class action. *Third*, no other litigation by individual class members is already in progress. *Fourth*, in their recently-filed revised case management statement, the defendants have conceded the desirability of consolidating all claims in a single action before a single court. (Reply NOL, Exh. 44, p. 3.) Consolidation is only appropriate for "actions involving a common question of law or fact." (Code Civ. Proc., § 1048, subd. (a).) Moreover, "[d]efendants believe this case should also be deemed complex under Cal. Rule Court 3.400(b)(2)." (Reply NOL, Exh. 44, p. 4.) Rule 3.400(b)(2) provides that a case may be designated "complex" if it "is likely to involve . . . [m]anagement of a large number of witnesses or substantial amount of documentary evidence."

As if the Supreme Court had this case in mind, it recently explained "[m]any of the issues likely to be most vigorously contested . . . are common ones." (*Sav-On*, *supra*, 34 Cal.4th at p. 340.) "Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony.[18]" (*Ibid.*) "The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. (*Ibid.*) "'It would be neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same evidence and decide the same issues.' [Citation.]" (*Ibid.*) "'[T]his state has a public policy which encourages use of the class action device.'" (*Ibid.*, quoting *Richmond v. Dart Industries* (*Richmond*) (1981) 29 Cal.3d 462, 473.) "'By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation.'"[19] (*Sav-On*, *supra*, at p. 209, quoting *Richmond*, *supra*, at p. 469.)

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[17] Because plaintiffs seek certification of class from which any resident could opt out, no resident will be forced to participate in the class action.

[18] Here, expert testimony will show (1) defendants' exorbitant management, marketing, and administrative expenses under the concealed April 28, 1998 agreement and the residency agreements, (2) the cost of providing emergency response from a nurse, (3) defendants' use of one set of financial records to show an operating profit to the Department of Social Services and another set of financial records show an operating loss to residents in order to justify raising monthly fees, and (4) the level and standard of care provided at the care center.

[19] Defendants argue that if the class is not certified it is unlikely that all putative class members would pursue individual claims. (Def. Opp., p. 20:12-16.

Finally, the superiority of a class action is not even a relevant or permissible criterion for certification of the Consumer Legal Remedies Act sub-class. (*Mass. Mutual, supra*, 97 Cal.App.4th at p. 1287, fn. 1 ["Unlike a plaintiff proceeding under Code of Civil Procedure section 382, a plaintiff moving to certify a class under the CLRA is not required to show that substantial benefit will result to the litigants and the court"].)

V. THE PLAINTIFFS' EVIDENTIARY PROOF OF CERTIFICATION CRITERIA IS SUFFICIENT.

A. Proof of the Merits of the Claims Is Not Required and the Declarations of Plaintiffs' Counsel Are Unrefuted Regarding Certification Criteria.

"As the focus in a certification dispute is on what type of questions—common or individual—are likely to arise in the action, rather than on the merits of the case [citations], [courts] consider whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." (*Sav-On, supra*, 34 Cal.4th at p. 327.)

"'Reviewing courts consistently look to the allegations of the complaint and the declarations of attorneys representing the plaintiff class to resolve this question.'" (*Ibid.*, quoting *Richmond, supra*, 29 Cal.3d at p. 478.) The only attorney declarations which address class certification criteria are the unrefuted declarations of plaintiffs' attorneys Conger and Benes. And Mr. Conger, who has substantial class action experience (¶¶ 3-4), has explained why the motion to certify should be granted. (¶¶ 9-20.) The allegations of the third amended complaint and these unopposed, unrefuted attorney declarations alone constitute sufficient evidence to grant the motion.

B. The Lodged, Authenticated Documents Show That the Defendants Made Identical *Written*, Material, Factual Representations To All Class Members, and That All Class Members Signed the Same Contract, and That All Class Members Acknowledged Receipt of the Defendants' Residents' Handbook.

But plaintiffs have gone well beyond a sufficient showing. They have supplied the Court with sufficient documentary evidence to support their claims, including numerous exhibits attached to the Third Amended Complaint to which the defendants have not objected. Although the defendants have objected to some of plaintiffs' other exhibits, those objections should be overruled. (Plaintiffs' Response to Defendants' Objections to Plaintiffs' Evidence [etc.].)

Defendants do not dispute that at least 255 putative class members signed the exact same

residency agreement, with the exact same appendices and related documents. (Aguirre Dec., ¶ 13.) Defendants have not provided a single document in their marketing campaign which omits at least one of the five misrepresentations raised in this case. In other words, *every single marketing piece* contained at least one false or misleading statement. (NOL, Exhs. 7-18.) Nor have defendants produced any evidence of oral statements by any sales or marketing person which contradicted the terms of the residency agreements, appendices to the residency agreement, resident handbook, brochures, advertisements, letters and memoranda to residents. Rather, defendants mistakenly assert that "[p]laintiffs provide no evidence that any putative class member, including the named plaintiffs, received and relied on the documents on which their motion is based." (Def. Opp, p. 1:15-17, italics modified, Appendix B, Reply NOL Exhs. 46-49 [plaintiffs' deposition testimony].)

> "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.)

The fact that plaintiffs recall some information, but cannot, after the passage of several years, recall the precise details of receipt of a particular document, when all were false, does not preclude certification. The identical, written widely disseminated documents, which defendants concede were sent to all residents (Aguirre Dec., ¶¶ 18-20), show that defendants' misrepresentations were communicated and received. The fading memories of elderly citizens afford no license to defraud.[20]

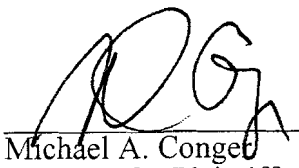
VI. CONCLUSION

Requiring over 100 vulnerable, elderly victims to retain counsel and file separate lawsuits in a complex case in which 20,000 pages of documents have already been produced would only impede or prevent the administration of justice. Based on the foregoing arguments and authorities, plaintiffs request that their motion for class certification be granted.

[20] Elderly persons are susceptible to declarative memory loss. "Declarative memory comprises memory for facts and events, and includes, for example, information about your retirement account." (*Improving Memory*, Harvard Medical School (2006), p. 16, Reply NOL, Exh. 62.) "This form of memory depends on the hippocampus . . . [which] is especially vulnerable to age-related changes." (*Ibid.*)

Dated: December 7, 2007

LAW OFFICE OF MICHAEL A. CONGER

By: 

Michael A. Conger
Attorney for Plaintiffs

APPENDIX A

Class Action "Reliance" Cases

Case	Trial Court's Ruling	How Got to Court of Appeals	Court of Appeals Decision	Notes
Akkerman v. Mecta Corp., Inc. (2007) 152 Cal.App.4th 1094 UCL claim for deceptive advertising of electro-convulsive therapy machine	Denied motion to certify	Writ	Affirm	Vexatious plaintiff. Certification denied on all grounds, not just lack of "inference of common reliance" which turned on informed consent "complexities." (p. 1103)
Brown v. Regents of Univ. Of California (1984) 151 Cal.App.3d 982 Concealment and misrepresentation regarding level of coronary care at medical center	Sustained demurrer without leave to amend	Appeal	Affirm	*Vasquez* distinguishable. "What may be appropriate to a determination of common issues in a relatively simple consumer fraud action . . . is entirely inappropriate when the alleged fraud relates to the decision to obtain open heart surgery." (p. 920) Key was complexities of informed consent which is individualized issue. (p. 921)

Case	Trial Court's Ruling	How Got to Court of Appeals	Court of Appeals Decision	Notes
Caro v. Procter & Gamble Co. (1993) 18 Cal.App.4th 644 Misrepresenting on label that reconstituted orange juice was "fresh"	Denied motion to certify	Appeal	Affirm	4th DCA, Div. 1 (Kremer, Benke, Froehlich) Does not discuss inference of common reliance issue in *Vasquez* or *Occidental* Justice Benke later authored *Mass. Mutual* which distinguished *Caro*
Kavruck v. Blue Cross of California (2003) 108 Cal.App.4th 773 Breach of contract and fraud against insurer in changing how it calculated policy premiums	Granted summary judgment and denied motion to certify	Appeal	Reversed summary judgment and affirmed denial of motion to certify	Factually distinguishable because "[p]laintiff's complaint contain[ed] no . . . allegations" that "same material misrepresentations have actually been communicated to each member of [the putative] class." (p. 787) "[T]he pleadings and plaintiff's deposition testimony indicated she relied on the oral representations of Blue Cross agents. The [trial] court concluded this would require proof on a subscriber by subscriber basis, rather than a common set of facts for the entire class." (p. 786.)

Case	Trial Court's Ruling	How Got to Court of Appeals	Court of Appeals Decision	Notes
Massachusetts Mutual Life Ins. Co. v. Superior Court (2002) 97 Cal.App.4th 1282	Granted motion to certify	Writ	Affirmed Trial Court	"The fact that 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." (p. 1292) "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.'" (p. 1292-1293, quoting *Vasquez* at p. 814) 4th DCA, Div. 1 (Benke, McDonald, McIntyre).

Case	Trial Court's Ruling	How Got to Court of Appeals	Court of Appeals Decision	Notes
Mirkin v. Wasseran (1993) 5 Cal.4th 1082 Securities fraud case	Sustained demurrer	Affirmed	Supreme Court affirmed both lower courts	Distinguishes *Occidental Land* and *Vasquez* because "these decisions do not support an argument for presuming reliance on the part of persons who never read or heard the alleged misrepresentations, such as plaintiffs in the case before us." (p. 1094)

Case	Trial Court's Ruling	How Got to Court of Appeals	Court of Appeals Decision	Notes
Occidental Land, Inc. v. Superior Court (1976) 18 Cal.3d 355 Group of homeowners sued developer for fraud regarding projected maintenance costs for PUD	Denied motion to de-certify	Writ	Supreme Court affirmed (trial court did not abuse discretion in certifying class)	Each class member had received and signed the same report before purchase and that report, in part supported claims. (p. 361-362) But "[t]he report is not entirely clear in this regard." (p. 362) "The cost of the monthly maintenance fee is manifestly a material factor in [the] purchase. 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 reliance upon the representation. That principle controls the present case." (p. 363) "Requiring proof of this nature would necessarily preclude the certification of virtually all class actions based on allegations of fraud." (p. 362, n. 6)

Case	Trial Court's Ruling	How Got to Court of Appeals	Court of Appeals Decision	Notes
Vasquez v. Superior Court (1971) 4 Cal.3d 800 fraud related to purchase of freezers and meats	Sustained demurrer as to class allegations without leave to amend	Writ	Supreme Court (Mosk) granted writ and reversed	Whether fact is material uses reasonable person standard. (P. 805, fn. 9.) "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." (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." (P. 814.)

APPENDIX B

Plaintiffs' Deposition Excerpts

(all references are to page numbers)

Class Representatives Received and Relied On Written Representations in Defendants' Widely-Disseminated Identical Brochures, Advertisements, Letters and or Memoranda

Jim Gleason (Reply NOL, Exh. 46)

73-75	
83	[shown and read Chief Operating Officer's Mary Leary's August 1998 memorandum (TAC, Exh. 2) to residents stating residents had no financial liability for care center]
85	["that made us feel very secure . . . that we would not have any liability [for] . . . the separately run care center"]
140	[shown and read Chief Operating Officer's Mary Leary's August 1998 memorandum (TAC, Exh. 2) to residents stating residents had no financial liability for care center and "losses would be absorbed by the parent company"]
163	
404-405	
432-433	[before signing continuing care residency agreement "I received letter. I received brochures, advertisement, things of that nature . . . [which] gave me a great deal of the reliance"]
433	["I received many different written documents, and I relied on the totality of all [of them]"]
433	["one was a very glossy brochure [which] talked about luxury living and talked about 24-hour care and talked about continuing care"]
433-434	[relied on advertisements and "more than one brochure"]
435-436	
437	["I can't say for certain I have [seen that exact document] but I have seen

documents similar to it"]

438

439 ["I relied on information that's contained in [NOL, Exh. 12] but I don't know if it was this [exact] document [because] the information is contained in several different documents"]

440-442 [received letter stating entrance fees were "prepaid medical expense" because they were used for long-term care]

Don Short (Reply NOL, Exh. 47)

39 [received marketing brochures]

43-44

83-84 ["I trusted [defendants] to do the things and live up to the statements that they had made to me with respect to my security and long-term health care"]

90-95

147-153 [received and relied on marketing brochures. "I believed and trusted [enough] for me to commit a half a million dollars of my assets"]

160 [defendants' marketing documents are "consistent with the representations that were made to me prior to signing and that were important to me"]

162

167-168 [recalls receiving Executive Director Hayes' "please rest assured" letter [TAC, Exh. 3] and Mr. Tipton's March 2003 letter [TAC, Exh. 13] which "reiterates the kind or representations which were made to me prior to moving in"]

174 [received letters [NOL, Exhs. 21-23; TAC, Exhs. 4-6] stating that entrance fees were for prepaid long-term care]

181 [received letters [NOL, Exhs. 21-23; TAC, Exhs. 4-6] stating that entrance fees were for prepaid long-term care]

184

249 ["use of our entrance fees for long-term health care . . . was the primary reason why I moved into the Towers"]

298

300-304

Marilyn Short (Reply NOL, Exh. 48)

19 [received marketing brochures]

20 [received marketing brochures]

38

39 [received copy of marketing brochure [NOL, Exh. 8] "or one very similar to it . . . prior to moving in"]

40

42

56 [received copy of Hayes' December 26, 2001 "please be assured" letter [TAC, Exh. 3]]

57 ["I . . . relied on that, that they were really trying to get the best deal for our money"]

58

59 [received letters [NOL, Exhs. 21-23; TAC, Exhs. 4-6] stating that entrance fees were for prepaid long-term care]

64

67

68-69

94

Casey Meehan (Reply NOL, Exh. 49)

23	[has received a lot of literature from defendants]
24-28	
29	[received and reviewed "brochures and . . . flyers and the lovely, gorgeous materials about the facility"]
54	[aware of 24-hour response from a nurse from the literature]
103-104	
136	["It was written [and] told to me that they would set aside a portion [of the entrance fee] for long-term care"]
137	
138	["at the end of each year we received a letter [NOL, Exhs. 21-23; TAC, Exhs. 4-6] from the controller, Carolyn Zuehl, that stated a portion of our . . . entrance fee [was] for prepaid long term care]
141	["there was a memo . . . from Executive Director Jim Hayes . . . that . . . we were not going to be charged for operating losses . . . . We were not going to pay for the . . . Health care center"]
160	[recalls receiving memoranda from defendants that "Classic Resident by Hyatt was attempting to minimize monthly fees increases"]
160	["they kept assuring us that [they] were doing . . . as much as they could to minimize cost"]
161	
166	
167	[understood defendants would provided emergency response from a nurse 24 hours a day from "reading the brochures"]
178	[understood portion of entrance fee would be set aside for long term care from reading "all the brochures]
186-187	[would not have moved in if knew portion of entrance fee would be set aside for

	long-term care]
191-192	["My understanding was that a portion of the money that we paid of $383,675 was going to go for prepaid long-term care for two people forever until we died. That's what I understood"]
248	[understood the continuing care residency agreement she signed meant the "entrance fee paid is considered to be for prepaid long-term care. I believe that's what Hyatt said in all of their brochures, and that's what I believed"]
249-250	
256	[received letters from defendants stating entrance fee was for pre-paid long term care]
258-260	
266-268	
276-277	
284	

Class Representatives Heard and Relied On Oral Representations Consistent with Written Representations in Defendants' Widely-Disseminated Identical Brochures, Advertisements, Letters and or Memoranda

Jim Gleason (Reply NOL, Exh. 46)

76-77	
78	["she extolled the virtues of the Towers [including] the 24-hour emergency medical care , which . . . was very dear to me"]
79	["she emphasized that . . . your entrance fee took care of all of your long-term health care needs"]
80	[she said "the money was going into a trust"]
81-85	
86	[Executive Director James Hayes said our entrance fees were "going into a master trust" and "set aside for long-term care"]
87	
101-124	
140	
155	
156	[Ms. Aguirre "assured me " that entrance fee would be set aside for long-term care and we would have no "liability for the care center"]
157	
302	
303	[Ms. Aguirre said that Wellness Center "was staffed 24 hours a day"]
304-308	
466	
468	

Don Short (Reply NOL, Exh. 47)

45

65-69 [oral statements were consistent with written brochures and letters]

109-110 [told would receive 24-hour response from a nurse]

169

Marilyn Short (Reply NOL, Exh. 48)

20 [defendants' sales person emphasized "the 24-hour nurse availability." "And I asked, "A nurse 24 hours a day? I just made very, very clear of that. I was at the time recovering from a stroke, and that was probably the most important to me." "From that time until the time we moved in, I must have asked her several times."]

22 ["I just had to be absolutely sure on the 24-hour nursing. I just kept asking on that, and wanted to make sure it would be a safe place for me . . . that was just so important to me."]

23 ["we discussed the money. We discussed the fact that we were paying for long-term care for the rest of our lives. That was so important . . . I even called her a few times to confirm that this is paying—we are paying all this money [more than $500,000] in advance for our health care coverage for the rest of our lives, and we have 24-hour care, because that was important to me."]

24 ["She said that a large portion of what we were paying would be put aside in a trust for our long-term care"]

31

73 ["we signed on trust"]

74-76

83-84

110 [defendants would not provide residents with a copy of the master trust agreement. "We were just told that this was not given to the residents"]

Casey Meehan (Reply NOL, Exh. 49)

24	[moved to La Jolla Village Towers because "they promised to take care of me my entire life"]
25	["I liked the fact that they had . . . a health care center that would take care of me in my very declining years"]
29	[defendants' sales person "reiterated everything that was in the brochures and the flyers and the lovely, gorgeous materials about the facility"]
81-82	
103-104	
136	["It was written [and] told to me that they would set aside a portion [of the entrance fee] for long-term care"]
138	
141	["asked many times in resident council meetings" and confirmed "that . . . we were not going to be charged for operating losses . . . . We were not going to pay for the . . . Health care center"]
163-165	
185-187	
191-193	