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

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

13 Plaintiff, )

14 v. )

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

18 Defendants. )  
19 )  
20 )  
21 )

CASE NO: GIC877707

THIRD AMENDED  
CLASS ACTION COMPLAINT  
FOR: (1) FRAUD AND DECEIT-  
INTENTIONAL  
MISREPRESENTATION;  
(2) FRAUD AND DECEIT-  
NEGLIGENT  
MISREPRESENTATION;  
(3) FRAUD AND DECEIT-  
CONCEALMENT; (4) ELDER  
ABUSE; (5) VIOLATIONS OF THE  
CONSUMER LEGAL REMEDIES  
ACT; (6) BREACH OF FIDUCIARY  
DUTY; (7) UNFAIR BUSINESS  
PRACTICES; (8) BREACH OF  
CONTRACT; (9) CONSTRUCTIVE  
FRAUD; AND (10) VIOLATION OF  
HEALTH AND SAFETY CODE  
SECTION 1793.5

22  
23 **THIS IS A CLASS ACTION LAWSUIT.**

24 1. This is a class action lawsuit brought by the plaintiffs, Donald R. Short, James F.  
25 Gleason, Casey Meehan, Marilyn Short, Patty Westervelt, and Dottie Yelle, who are residents of  
26 San Diego, California, and residents of a continuing care retirement community marketed by the  
27 defendants as La Jolla Village Towers ("La Jolla Village Towers"). The plaintiffs bring this suit  
28 on their own behalf and on behalf of a class of persons similarly situated pursuant to California

1 Code of Civil Procedure section 382 and/or 1781. The definition of the class is set forth in  
2 paragraph 77 of this complaint.

3 2. The defendants operate a continuing care retirement community located at 8515  
4 Costa Verde Boulevard in San Diego, California, known as the La Jolla Village Towers.

5 3. Defendant CC-La Jolla, Inc. ("CC-La Jolla"), is a Delaware corporation with its  
6 principal place of business in San Diego, California.

7 4. Defendant CC-La Jolla L.L.C. (the "L.L.C.") is a Delaware limited liability  
8 corporation with its principal place of business in San Diego, California. The L.L.C. does  
9 business as CCW-La Jolla, L.L.C., which entity is not registered with the California Secretary of  
10 State.

11 5. Defendant CC-Development Group, Inc. ("Parent"), is a Delaware corporation  
12 doing business in San Diego, California. Parent owns a controlling interest in and directs the  
13 operations and decisions of all of the other named defendants and of La Jolla Village Towers.

14 6. Defendant Classic Residence Management Limited Partnership, doing business as  
15 Classic Residence by Hyatt, an Illinois Limited Partnership ("Classic"), manages the day-to-day  
16 operations of La Jolla Village Towers under direction from Parent.

17 7. The defendants market La Jolla Village Towers to elderly persons as "luxury  
18 senior living" which provides "the added piece of mind that comes with living in a community  
19 that offers additional levels of care," including assisted living and skilled nursing.

20 8. The true names or capacities, whether individual, corporate, associate, or  
21 otherwise, of defendants DOES 1 to 110, inclusive, are unknown to plaintiffs, who therefore sue  
22 said defendants by such fictitious names.

23 9. Plaintiffs are informed and believe and thereon allege that each of the defendants  
24 designated herein as a DOE is responsible in some manner for the events and happenings herein  
25 referred to, and caused injury and damages proximately thereby to plaintiffs and the plaintiff class  
26 as herein alleged. Plaintiffs will seek leave of court to amend this complaint to set forth the true  
27 names and capacities of such named defendants when their identities become known to them.

28 10. Plaintiffs are informed and believe and thereon allege that each defendant named

1 in this action, including DOE defendants, at all relevant times, was the agent, ostensible agent,  
2 servant, employee, representative, assistant, joint venturer, and/or co-conspirator of each of the  
3 other defendants, and was at all times acting within the course and scope of his, her, or its  
4 authority as agent, ostensible agent, servant, employee, representative, joint venturer, and/or  
5 co-conspirator, and with the same authorization, consent, permission or ratification of each of the  
6 other defendants.

7 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

8 11. This case involves a massive actual and constructive fraud perpetrated by the  
9 defendants against more than 300 vulnerable elderly San Diegans residing at La Jolla Village  
10 Towers.

11 12. Through numerous publications, marketing brochures, and oral presentations, the  
12 defendants made knowingly false “continuing care promises” to the plaintiffs and the other  
13 elderly residents of La Jolla Village Towers.

14 13. These continuing care promises were calculated to induce trust and reliance in the  
15 defendants to fulfill lifetime health care promises in exchange for total payments from the  
16 plaintiffs and the other residents of La Jolla Village Towers of approximately \$85 million.

17 14. Relying on those promises, La Jolla Village Towers residents—whose average  
18 age is approximately 85 years—paid “entrance fees<sup>1</sup>” ranging from \$218,000 to more than  
19 \$700,000 into a trust created by the defendants to be used in part for pre-paid lifetime health care.

20 15. The defendants have exhausted the entire trust fund, including making “cash  
21 disbursements” to individual owners of La Jolla Village Towers.

22 16. None of the \$85 million trust fund remains to be used, as promised, for pre-paid  
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25 <sup>1</sup> Health and Safety Code section 1771, subdivision (c)(3) provides: “[e]ntrance  
26 fee’ means the . . . consideration made or promised to be made by, or on behalf of, a person  
27 entering into a continuing care contract for the purpose of assuring care or related services  
28 pursuant to that continuing care contract or as full or partial payment for the promise to provide  
care for the term of the continuing care contract. . . . An initial, amortized, or deferred transfer  
of consideration that is greater in value than 12 times the monthly care fee shall be presumed to  
be an entrance fee.”

1 lifetime health care.

2 17. The defendants have begun charging the plaintiffs and the other elderly residents  
3 for lifetime health care a second time by including a charge in residents' monthly fees, and in  
4 some cases a third time by requiring residents to pay for private duty nurses.

5 18. Continuing care retirement communities ("CCRCs") offer elderly persons lifetime  
6 continuing care, including housing, residential services, and nursing care.

7 19. As of April 1, 2003, California had 77 CCRCs, 71 of which were operated by  
8 nonprofit public benefit corporations.

9 20. The defendants (or affiliates) operate two of six for-profit CCRCs in California,  
10 including La Jolla Village Towers.

11 21. CCRCs are regulated, in part, by Health and Safety Code sections 1770 through  
12 1793.62, which "state[] the minimum requirements to be imposed upon any entity offering or  
13 providing continuing care."<sup>2</sup> (§ 1770, subd. (f).<sup>3</sup>)

14 22. These minimum requirements "appl[y] equally to for-profit and nonprofit provider  
15 entities." (§ 1770, subd. (e).)

16 23. Section 1771, subdivision (c)(8), provides: "'[c]ontinuing care contract' means a  
17 contract that includes a continuing care promise made in exchange for an entrance fee, the  
18 payment of periodic charges, or both types of payments."

19 24. "A continuing care contract may consist of one agreement or a series of  
20 agreements and other writings incorporated by reference." (§ 1771, subd. (c)(8).)

21 25. Section 1771, subdivision (c)(10), provides:

22 "'[c]ontinuing care promise' means a promise, express or implied, by a provider  
23 to provide one or more elements of care to an elderly resident for the duration of  
24 his or her life or for a term in excess of one year. Any such promise or  
series of agreements, or contained in any advertisement, brochure, or other

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26 <sup>2</sup> All further statutory references will be to the Health and Safety Code unless  
otherwise stated.

27 <sup>3</sup> Section 1775, subdivision (d), also provides that "[t]his chapter imposes  
28 minimum requirements upon any entity promising to provide . . . or providing continuing care."

1 material, either written or oral, is a continuing care promise.”

2 26. Section 1775, subdivision (e), provides that “[t]his chapter shall be liberally  
3 construed for the protection of persons attempting to obtain or receiving continuing care.”

4 27. The defendants operate (1) La Jolla Village Towers, a 21-story, 227-unit,  
5 “independent living” apartment building, located at 8515 Costa Verde Boulevard, and (2) a “care  
6 center” providing assisted living, memory support/Alzheimer’s care, and skilled nursing care,  
7 located at 4171 Las Palmas Square (the “care center”).

8 28. The defendants acquired La Jolla Village Towers, a pre-existing building, on or  
9 before April 28, 1998.

10 29. Many of the residents presently living at La Jolla Village Towers were already  
11 residents before La Jolla Village Towers was acquired by the defendants.

12 30. Pre-existing residents were required to apply and pay an entrance fee to defendants  
13 in order to remain at La Jolla Village Towers.

14 31. Admission to La Jolla Village Towers (and re-admission for already-existing  
15 residents residing there before April 28, 1998) begins with acceptance into the independent living  
16 apartment building. Admission is limited to persons age 62 or older who pass a physical  
17 examination and meet the defendants’ income and asset criteria.

18 32. As residents age and require assisted living, memory support, or skilled nursing  
19 care, they move from the independent living apartment building to the care center.

20 33. The defendants charge residents in two ways, an “entrance fee” and a “monthly  
21 fee.”

22 34. Plaintiffs and all residents of La Jolla Village Towers (“residents”) pay an entrance  
23 fee<sup>4</sup> upon moving into an independent living apartment.

24 35. The defendants’ agents represented to plaintiffs and all residents, both orally and  
25 in writing, that a portion of their entrance fee would be held in trust for pre-paid lifetime health  
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27 <sup>4</sup> Under certain circumstances, a portion of the entrance fee is refundable.  
28 However, the vast majority of entrance fees are never refunded.

1 care. The defendants's agents told residents that—depending on which of three lifetime health  
2 plans are selected by the resident—between 8 percent to 40 percent of the entrance fee was for  
3 pre-paid lifetime health care.

4 36. The defendants acknowledge that a resident's non-refundable entrance fee  
5 typically comprises a substantial portion of that resident's life savings. Indeed, one of the  
6 defendants' marketing brochures state "[m]ost residents use all or a portion of the proceeds from  
7 the sale of their home to pay the entrance fee."

8 37. Thus, once the entrance fee is paid in exchange for the promise of lifetime health  
9 care, the already vulnerable elderly residents become even more vulnerable, because they  
10 typically cannot afford to move out, forfeit their substantial entrance fees, and pay an additional  
11 entrance fee to a different CCRC or other nursing home facility.

12 38. Entrance fees are fully refundable for 90 days after residency, and then only  
13 partially refundable on a declining schedule over 50 months, at which time the entrance fee for  
14 most residents is completely non-refundable. Thus, the longer the defendants are able to entice  
15 residents to remain, financial options decrease for the elderly residents.

16 39. In other words, most La Jolla Village Towers residents depend on the defendants  
17 to treat them fairly, and have no realistic alternative if they are cheated financially or mistreated.

18 40. The defendants also charge residents a "monthly fee," ranging from \$3,000 to  
19 \$5,500.

20 41. The defendants' agents told plaintiffs and residents, both orally and in writing, that  
21 (a) monthly fees would include only the operating expenses of the independent living apartment  
22 building and would not include any operating expenses (or losses) of the care center; and (b) any  
23 future monthly fee increases would be minimized by the defendants' diligent efforts at managing  
24 all expenses. Reasonable interest earnings from the trust fund entrance fees would have more  
25 than covered the defendants' alleged care center losses. The defendants' written statements  
26 included: (1) "[p]lease be assured that we are looking at all our expenses and systems to find  
27 ways of reducing the impact of such [monthly fee] increases"; (2) "[p]lease rest assured that we  
28 will work diligently to manage expenses and that, as an affiliate of Hyatt Corporation, La Jolla

1 Village Towers will reap the benefits of group purchasing volume discounts”; and (3) “we are as  
2 sensitive about [monthly fee] increases as you are. We are working diligently to ensure La Jolla  
3 Village Towers operates efficiently . . . .”

4 42. Section 1771.8 imposes limits on monthly fee increases, and requires the  
5 defendants to share financial information with residents whose input must be considered before  
6 any fee increase decision is made. The defendants failed to do this.

7 43. Prospective residents, such as plaintiffs, were attracted by the defendants’  
8 advertising and marketing brochures, as well as oral representations from the defendants’ agents.

9 44. Every promise made by the defendants’ agents, “whether contained in any  
10 advertisement, brochure, or other material, either written or oral, is a continuing care promise.”  
11 (§ 1771, subd. (c)(10).)

12 45. The defendants’ continuing care promises included: (1) creating a trust fund for  
13 pre-paid lifetime health care, (2) assuring the “high quality”—and lack of additional cost—of that  
14 health care,<sup>5</sup> (3) specifying services and facilities which would be provided to residents, (4)  
15 expanding the common law covenant of quiet enjoyment,<sup>6</sup> and (5) assuring that the defendants  
16 would diligently seek to minimize the necessity of any future monthly fee increases.

17 46. Each of these continuing care promises has been abandoned by the defendants.

18 47. Defendants also created a “marketing committee” of residents, and requested that  
19 these residents accompany defendants’ agents to make presentations at meetings of prospective  
20 residents. Thus, many of the continuing care promises made to residents, such as in letters and  
21 memoranda during residency, were repeated by resident marketing committee residents to elderly  
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23 <sup>5</sup> The defendants promised: “[p]erhaps most important of all, La Jolla Village  
24 Towers offers . . . the peace of mind that comes from knowing your potential long-term care  
25 needs will be expertly met at our on-site care center at virtually no extra cost” and “La Jolla  
26 Village Towers residents will be able to move to our on-site care center, offering *high-quality*  
assisted living, memory support/Alzheimer’s care and skilled nursing care . . . at virtually no  
increase in their monthly fee.” (Italics added.)

27 <sup>6</sup> Among other things, the defendants promised: “gracious retirement living,”  
28 “luxury senior living at its finest,” “a relaxed, easy going lifestyle,” “luxurious surroundings,”  
and “almost unlimited opportunities for relaxation,” and peace and quiet.

1 persons who, relying on these statements made in the presence of defendants' agents at sales  
2 meetings, became residents.

3 48. Instead of using residents' trust fund entrance fees for pre-paid lifetime health  
4 care, the defendants have disbursed approximately \$85 million from the trust fund to themselves  
5 in the form of an interest-free loan not due until December 31, 2044.

6 49. Some of the proceeds from this loan have been used to make cash disbursements to  
7 individual owners.

8 50. No entrance fees paid by La Jolla Village Towers residents remain to be used for  
9 pre-paid lifetime health care.

10 51. The quality of the care provided at the care center is far lower than the "expert"  
11 and "high quality" standard promised.

12 52. Many of the nurses and caregiver staff do not speak or understand English fluently,  
13 requiring those residents who can afford it to pay for additional private nursing care for their  
14 spouses.

15 53. Several independent living residents who temporarily transferred to the care center  
16 have been horrified at the substandard care they received.<sup>7</sup>

17 54. Medical professionals have observed that the care center lacks adequate training  
18 and supervision of its caregiver staff.

19 55. The care center's director has recently admitted to residents that the care center is  
20 "understaffed."

21 56. Despite this lower-than-promised level of care, residents are being forced to  
22 subsidize the care center, contrary to express representations made by the defendants, because  
23 care center operating losses are charged as a component of independent living monthly fees.

24 57. The defendants also have abandoned their continuing care promises regarding  
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26 <sup>7</sup> Three recent compelling examples are of a resident whose adult diapers were not  
27 checked for five days after being given laxatives, a resident who was not given her correct  
28 medications despite typing up specific instructions and providing them to care center staff before  
admission, and a resident who suffered a stroke and for whom emergency assistance was not  
summoned for more than four hours.



1 specific services and facilities.

2 58. The defendants promised that residents of the independent living apartment  
3 building would receive 24-hour emergency medical response from nursing staff.

4 59. However, residents are being provided only 24-hour emergency medical response  
5 from a concierge or a security guard and are told to call 911 for medical emergencies.

6 60. An indoor swimming pool promised by the defendants has been closed.

7 61. Exercise facilities promised by the defendants have been reduced.

8 62. Other health-related recreational facilities promised by the defendants have been  
9 closed.

10 63. Despite promising residents “luxurious surroundings,” “a relaxed, easy-going  
11 lifestyle,” “luxury senior living at its finest,” “and almost unlimited opportunities for relaxation,”  
12 the defendants have embarked on a three-year expansion plan to build a second high-rise tower  
13 adjoining La Jolla Village Towers, converting the area into a construction war zone.

14 64. La Jolla Village Towers’ once beautiful front entry—with lush landscaping and  
15 easy access to walking paths to the surrounding neighborhood and shopping—has been closed  
16 and replaced with a large crane operating at least 8 hours per day.

17 65. Residents are forced to use a narrow, back alley-way, congested with residents’  
18 cars, visitor’s cars, delivery trucks, care center cars, busses, construction trucks, trash trucks, mail  
19 trucks and emergency vehicles, making ingress and egress very difficult.

20 66. Water to apartments has been interrupted frequently, often for hours at a time.

21 67. Construction noise—jack hammers, welding torches, steel erection, cranes, dump  
22 trucks and power tools—awaken residents at 7:00 a.m.

23 68. Balconies promised by the defendants have been rendered useless from  
24 construction dust and noise.

25 69. Numerous common-area rooms promised by the defendants have been closed.

26 70. The first floor, which includes the lobby, mail room, and a (now much smaller)  
27 living room, are often exposed to the elements causing interior temperatures to drop into the 50s.

28 71. Construction dust has caused residents with even minor respiratory ailments to

1 suffer enormously.

2 72. Despite abandoning numerous continuing care promises, the defendants have  
3 increased monthly fees charged to residents substantially over the past eight years, and have not  
4 diligently managed expenses to minimize monthly fee increases.

5 73. Unknown to residents, on April 28, 1998, the very same day the defendants  
6 delivered a memorandum encouraging residents not to leave, stating “[p]lease rest assured that we  
7 will work diligently to manage expenses and that, as an affiliate of Hyatt Corporation, La Jolla  
8 Village Towers will reap the benefits of group purchasing volume discounts,” the defendants  
9 entered into a sweetheart 50-year contract with a Hyatt affiliate which effectively allows the  
10 defendants’ owners to funnel residents’ cash to themselves under the guise of “necessary  
11 operating expenses.”

12 74. For more than nine years, the defendants have charged residents—and paid  
13 themselves—management, marketing, and administrative fees and costs in excess of the  
14 prevailing market rates.

15 75. Despite statutory, contractual and fiduciary obligations to disclose this and other  
16 financial information to residents, the defendants have concealed this information and have  
17 steadfastly refused to provide it to the residents.

18 **CLASS ACTION ALLEGATIONS**

19 76. This action is brought under Code of Civil Procedure sections 382 and/or 1781.

20 77. The plaintiff class consists of all past and present residents of the La Jolla Village  
21 Towers.

22 78. This action is properly brought and maintained as a class action because:

- 23 (a) the questions and issues of law and fact raised are of common and general  
24 interest affecting the class;
- 25 (b) the plaintiff class is estimated to contain in excess of 200 individuals and it  
26 is impractical to bring all members of the class individually before the  
27 court;
- 28 (c) each of the members of the class paid the defendants a substantial

1 “entrance fee,” in excess of \$100,000, in exchange for the defendants’  
2 promise to provide the plaintiff class “luxury” living accommodations and  
3 continuing health care for the remainder of their lives. The entrance fee  
4 typically constituted a significant portion of the life savings of each  
5 resident, making it impractical for these individuals to relocate to another  
6 facility or sue individually.

7 (d) the questions of law or fact common to the class are substantially similar  
8 and predominate over those questions that affect individual members.

9 These common questions include:

- 10 (i) whether the defendants violated provisions of the Health and Safety  
11 Code expressly designed for the protection of the plaintiff and the  
12 plaintiff class;
- 13 (ii) whether the defendants’ representations to residents were false;
- 14 (iii) whether the defendants have filed false financial statements and  
15 provided other false information to the Department of Social  
16 Services in order to gain a license to operate the La Jolla Village  
17 Towers;
- 18 (iv) whether the defendants have provided false financial statements and  
19 provided other false information to residents in order to justify  
20 monthly fee increases;
- 21 (v) whether the defendants have purposely entered into a number of  
22 transactions with related entities in order to obfuscate and carry out  
23 a scheme to defraud the residents of La Jolla Village Towers;
- 24 (vi) whether the plaintiff class is entitled to injunctive relief;
- 25 (vii) whether the defendants breached a fiduciary duty to the plaintiff  
26 class;
- 27 (viii) whether the plaintiff class is entitled to pre-judgment interest; and
- 28 (ix) whether the plaintiff class is entitled to attorney fees.

- (e) the claims of the representative plaintiffs are typical of those of the class;
- (f) the representative plaintiffs will fairly and adequately protect the interests of the class, have no interests which conflict with the class, and have retained attorneys experienced in the prosecution of class and multi-plaintiff litigation to represent the defined class;
- (g) the prosecution of separate actions by individual members of the class will create a risk of:
  - (i) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for defendants; or
  - (ii) adjudications with respect to some individual members which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications; or
  - (iii) adjudications which would substantially impair or impede the ability of individual members to protect their interests;
- (h) a plaintiff class action is superior to other available methods for the fair and efficient adjudication of the claims presented in this complaint, and will prevent the undue financial, administrative and procedural burdens on the parties and on this Court which individual litigants and litigations would impose.

79. Proof of a common or single practice by the defendants will establish the right of each of the members of the plaintiff class to recover on the causes of actions herein alleged.

80. The defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

81. All of the members of the plaintiff class were subject to a systematic course and pattern of practice and were thereby treated by the defendants in a similar manner, as is specifically alleged elsewhere in this complaint.

82. The plaintiff class is entitled in common to a specific fund with respect to the

monies paid by or on the behalf of the plaintiff class to the defendants for services in connection with the legal representation of plaintiff class. The plaintiff class is entitled in common to damages for which the defendants are liable. This action is brought for the benefit of the entire class. The representative plaintiffs will expend efforts and expense to prevail in this action from which other members of the plaintiff class will derive benefits. This action will result in the conferral of substantial benefits to the plaintiff class, of both a pecuniary and a non-pecuniary nature.

### **FIRST CAUSE OF ACTION - FRAUD AND DECEIT**

#### **INTENTIONAL MISREPRESENTATION**

#### **(All Plaintiffs Against All Named Defendants and DOES 11-20)**

83. Plaintiffs incorporate by reference and realleges paragraphs 1 through 82 as though fully set forth herein.

84. In numerous publications and advertisements, the defendants made continuing care promises to plaintiffs, within the meaning of Health and Safety Code section 1771, subdivision c(10).

85. These continuing care promises, or representations, were repeated by the defendants' sales and marketing personnel over several years.

86. One such representation was made on April 28, 1998, by Mary G. Leary in her capacity as chief operating officer for one or more of the defendants. In a memorandum addressed to all residents she wrote that the monthly fees charged to residents would only increase if necessary to pay for operating expenses and that residents should "rest assured that [defendants will] work diligently to manage expenses [and keep operating expenses down]." (Exhibit 1 ("Exh. 1").)

87. Another such representation was made in August, 1998, by Mary G. Leary in her capacity as chief operating officer for one or more of the defendants. In a memorandum addressed to all residents she wrote that the monthly fees charged to residents would not include any operating losses from the care center. "The Care Center will be treated as a separate entity for budgeting purposes. CC-Development Group, Inc., will fund any shortfalls which occur in the

1 day-to-day operation of Care Center.” (Exh. 2.)

2 88. Another representation was made on December 26, 2001, in a letter to all residents  
3 written by James H. Hayes, in his capacity as executive director for one or more of the  
4 defendants. In announcing a six percent increase in monthly fees paid by residents, Mr. Hayes  
5 informed the residents that “[p]lease be assured that we are looking at all our expenses and  
6 systems to find ways of reducing the impact of such increases . . . .” (Exh. 3.)

7 89. Another representation was made on November 14, 2000, in a memorandum to all  
8 residents written by Carolyn Zuehl, in her capacity as director of accounting for one or more of  
9 the defendants. Ms. Zuehl informed the residents that between 8 percent and 23 percent of  
10 residents’ entrance fees was deductible for income tax purposes because it was for “pre-paid Long  
11 Term Care.” (Exh. 4.)

12 90. Another representation was made on December 6, 2001, in a memorandum to all  
13 residents written by Carolyn Zuehl, in her capacity as director of accounting for one or more of  
14 the defendants. Ms Zuehl informed the residents that between 8 percent and 23 percent of  
15 residents’ entrance fees was deductible for income tax purposes because it was for “pre-paid Long  
16 Term Care.” (Exh. 5.)

17 91. Another representation was made on February 7, 2003, in a memorandum to all  
18 residents from Carolyn Zuehl, in her capacity as director of accounting for one or more of the  
19 defendants. Ms Zuehl informed the residents that between 8 percent and 23 percent of residents’  
20 entrance fees was deductible for income tax purposes because it was for “pre-paid Long Term  
21 Care.” (Exh. 6.)

22 92. Another representation was made on February 28, 2007, in a memorandum to all  
23 residents from Michael Krieger, executive director for one or more of the defendants, informing  
24 residents that 47.73% of any entrance fees paid in 2006, was deductible for pre-paid lifetime  
25 health care.

26 93. Another representation made from 1998 through sometime in 2002 in the  
27 defendants’ marketing brochures provided to all plaintiffs and residents was that “[o]ur wellness  
28 center staff [under the supervision of a licensed vocational nurse] is also available around the

1 clock to respond to medical emergencies.” (Exh. 7.)

2 94. Another representation made by defendants’ agents on August 6, 2003, was that  
3 “[d]uring non-office hours and on weekends, licensed nurses are on call.” (Exh. 8.)

4 95. Each of the plaintiffs’ residency agreements expressly states that residents would  
5 “receive . . . as part of Your Monthly Fee . . . ‘emergency call response, twenty-four (24) hours  
6 per day.’”

7 96. Each of the plaintiffs and residents was expressly told in defendants’  
8 advertisements and marketing brochures that the living accommodations would be peaceful and  
9 quiet, that the living accommodations would be luxurious, and that residents could enjoy an on-  
10 site pool, spa and self-parking garage.

11 97. Based on information and belief, the defendants also made numerous  
12 representations to plaintiffs, other residents, and the Department of Social Services regarding  
13 financial information pertaining to the operation of La Jolla Village Towers and the necessity for  
14 increases in the monthly fees paid by plaintiff and other residents to the defendants. These  
15 representations included that all operating expenses were reasonable and necessarily incurred by  
16 the defendants.

17 98. Another representation was made by defendants in marketing brochures provided  
18 to plaintiffs, residents, and prospective residents from 2000 through 2005, which stated: “because  
19 La Jolla Village Towers operates as a Continuing Care Retirement Community, residents receive  
20 long-term care benefits to help defray the cost of care. Under our continuing care plans, residents  
21 will be able to move to our on-site care center, offering high-quality assisted living, memory  
22 support/Alzheimer’s care, and skilled nursing care if the need should arise, at virtually no  
23 increase in their monthly fee.” (Exh. 9.) Similar statements were made in defendants internet  
24 advertising. (Exhs. 10-12.)

25 99. Another representation made to residents was that “fee increases, if any, will take  
26 place once a year. This has been Hyatt’s experience with their other [CCRC]. In some cases  
27 there has been a refund but no increase over 3 [percent].”

28 100. Another representation was made in March 2003, in a memorandum to all

1 residents and prospective residents from Jeff Tipton, director of sales for one or more of the  
2 defendants, stating that “[p]erhaps most important of all, La Jolla Village Towers offers a vibrant,  
3 active lifestyle with the peace of mind that comes from knowing your potential long-term care  
4 needs will be expertly met at our on-site care center at virtually no extra cost.” (Exh. 13.)

5 101. The promises and representations described in paragraphs 100 through 113 were  
6 false.

7 102. The defendants knew that the promises and representations were false when they  
8 made them.

9 103. The defendants intended the plaintiffs and other similarly situated residents to rely  
10 on these statements and seek admission to La Jolla Village Towers, to remain as residents during  
11 the period of time that their entrance fees were refundable, and to pay increases in monthly fees.

12 104. Plaintiffs and other residents of La Jolla Village Towers reasonably relied on these  
13 statements to their detriment by applying for admission to La Jolla Village Towers. All plaintiffs  
14 and residents relied on the promises and representations to pay substantial entrance fees. All  
15 plaintiffs and residents relied on the promises and representations by not seeking refunds of their  
16 entrance fees when such refunds were available and in continuing to pay increases in monthly  
17 fees.

18 105. Plaintiffs and other residents similarly situated were harmed by the defendants’  
19 misrepresentations by paying entrance fees and monthly fees they would not have otherwise paid.

20 106. Plaintiffs’ reliance on the defendants’ representations was a substantial factor in  
21 causing harm to them.

22 107. The conduct of the defendants as described herein, was despicable and was carried  
23 on by them with wilful and conscious disregard for the rights of the plaintiffs and other residents  
24 similarly situated. The defendants were aware of the probable dangerous consequences of their  
25 conduct and wilfully and deliberately failed to avoid those consequences. This conduct  
26 constitutes malice, oppression and fraud such that the plaintiff are entitled pursuant to California  
27 Civil Code section 3294 to recover punitive damages in an amount sufficient to punish and set an  
28 example of these defendants.



1                                   **SECOND CAUSE OF ACTION - FRAUD AND DECEIT**

2                                   **NEGLIGENT MISREPRESENTATION**

3                                   **(Against CC-La Jolla, Inc., the L.L.C., and DOES 21-30)**

4           108.   Plaintiffs incorporate by reference and reallege paragraphs 1 through 82 as though  
5 fully set forth herein.

6           109.   In numerous publications and advertisements, the defendants made continuing care  
7 promises to plaintiffs, within the meaning of Health and Safety Code section 1771, subdivision  
8 c(10).

9           110.   These continuing care promises, or representations, were repeated by the  
10 defendants' sales and marketing personnel over several years.

11          111.   One such representation was made on April 28, 1998, by Mary G. Leary in her  
12 capacity as chief operating officer for one or more of the defendants. In a memorandum  
13 addressed to all residents she wrote that the monthly fees charged to residents would only  
14 increase if necessary to pay for operating expenses and that residents should "rest assured that  
15 [defendants will] work diligently to manage expenses [and keep operating expenses down]."  
16 (Exh. 1.)

17          112.   Another such representation was made in August, 1998, by Mary G. Leary in her  
18 capacity as chief operating officer for one or more of the defendants. In a memorandum  
19 addressed to all residents she wrote that the monthly fees charged to residents would not include  
20 any operating losses from the care center. "The Care Center will be treated as a separate entity  
21 for budgeting purposes. CC-Development Group, Inc., will fund any shortfalls which occur in the  
22 day-to-day operation of Care Center." (Exh. 2.)

23          113.   Another representation was made on December 26, 2001, in a letter to all residents  
24 written by James H. Hayes, in his capacity as executive director for one or more of the  
25 defendants. In announcing a six percent increase in monthly fees paid by residents, Mr. Hayes  
26 informed the residents that "[p]lease be assured that we are looking at all our expenses and  
27 systems to find ways of reducing the impact of such increases . . . ." (Exh. 3.)

28          114.   Another representation was made on November 14, 2000, in a memorandum to all

1 residents written by Carolyn Zuehl, in her capacity as director of accounting for one or more of  
2 the defendants. Ms. Zuehl informed the residents that between 8 percent and 23 percent of  
3 residents' entrance fees was deductible for income tax purposes because it was for "pre-paid Long  
4 Term Care." (Exh. 4.)

5 115. Another representation was made on December 6, 2001, in a memorandum to all  
6 residents written by Carolyn Zuehl, in her capacity as director of accounting for one or more of  
7 the defendants. Ms Zuehl informed the residents that between 8 percent and 23 percent of  
8 residents' entrance fees was deductible for income tax purposes because it was for "pre-paid Long  
9 Term Care." (Exh. 5.)

10 116. Another representation was made on February 7, 2003, in a memorandum to all  
11 residents from Carolyn Zuehl, in her capacity as director of accounting for one or more of the  
12 defendants. Ms Zuehl informed the residents that between 8 percent and 23 percent of residents'  
13 entrance fees was deductible for income tax purposes because it was for "pre-paid Long Term  
14 Care." (Exh. 6.)

15 117. Another representation was made on February 28, 2007, in a memorandum to all  
16 residents from Michael Krieger, executive director for one or more of the defendants, informing  
17 residents that 47.73% of any entrance fees paid in 2006, was deductible for pre-paid lifetime  
18 health care.

19 118. Another representation made from 1998 through sometime in 2002 in the  
20 defendants' marketing brochures provided to all plaintiffs and residents was that "[o]ur wellness  
21 center staff [under the supervision of a licensed vocational nurse] is also available around the  
22 clock to respond to medical emergencies." (Exh. 7.)

23 119. Another representation made by defendants' agents on August 6, 2003, was that  
24 "[d]uring non-office hours and on weekends, licensed nurses are on call." (Exh. 8.)

25 120. Each of the plaintiffs' residency agreements expressly states that residents would  
26 "receive . . . as part of Your Monthly Fee . . . 'emergency call response, twenty-four (24) hours  
27 per day.'"

28 121. Each of the plaintiffs and residents were expressly told in defendants'

1 advertisements and marketing brochures that the living accommodations would be peaceful and  
2 quiet, that the living accommodations would be luxurious, and that residents could enjoy an on-  
3 site pool, spa and self-parking garage.

4 122. Based on information and belief, the defendants also made numerous  
5 representations to plaintiffs, other residents, and the Department of Social Services regarding  
6 financial information pertaining to the operation of La Jolla Village Towers and the necessity for  
7 increases in the monthly fees paid by plaintiff and other residents to the defendants. These  
8 representations included that all operating expenses were reasonable and necessarily incurred by  
9 the defendants.

10 123. Another representation was made by defendants in marketing brochures provided  
11 to plaintiffs, residents, and prospective residents from 2000 through 2005, which stated: "because  
12 La Jolla Village Towers operates as a Continuing Care Retirement Community, residents receive  
13 long-term care benefits to help defray the cost of care. Under our continuing care plans, residents  
14 will be able to move to our on-site care center, offering high-quality assisted living, memory  
15 support/Alzheimer's care, and skilled nursing care if the need should arise, at virtually no  
16 increase in their monthly fee." (Exh. 9.) Similar statements were made in defendants internet  
17 advertising. (Exhs. 10-12.)

18 124. Another representation made to residents was that "fee increases, if any, will take  
19 place once a year. This has been Hyatt's experience with their other [CCRCs]. In some cases  
20 there has been a refund but no increase over 3 [percent]."

21 125. Another representation was made in March 2003, in a memorandum to all  
22 residents and prospective residents from Jeff Tipton, director of sales for one or more of the  
23 defendants, stating that "[p]erhaps most important of all, La Jolla Village Towers offers a vibrant,  
24 active lifestyle with the peace of mind that comes from knowing your potential long-term care  
25 needs will be expertly met at our on-site care center at virtually no extra cost." (Exh. 13.)

26 126. The promises and representations described in paragraphs 124 to 138 were not  
27 true.

28 127. The defendants had no reasonable grounds for believing the representations were

1 true when they made them.

2 128. The defendants intended the plaintiffs and other similarly situated residents to rely  
3 on these statements and seek admission to La Jolla Village Towers.

4 129. Plaintiffs and other residents of La Jolla Village Towers reasonably relied on these  
5 statements to their detriment by applying for admission to La Jolla Village Towers. All plaintiffs  
6 and residents relied on the promises and representations to pay substantial entrance fees. All  
7 plaintiffs and residents relied on the promises and representations by not seeking refunds of their  
8 entrance fees when such refunds were available.

9 130. Plaintiffs and other residents similarly situated were harmed by the defendants'  
10 misrepresentations by paying entrance fees and monthly fees they would not have otherwise paid.

11 131. Plaintiffs' reliance on the defendants' representations was a substantial factor in  
12 causing harm to them.

13 **THIRD OF ACTION - FRAUD AND DECEIT**

14 **CONCEALMENT**

15 **(All Plaintiffs Against All Named Defendants and DOES 31-40)**

16 132. Plaintiffs incorporate by reference and reallege paragraphs 1 through 82 as though  
17 fully set forth herein.

18 133. The defendants intentionally failed to disclose material facts to plaintiffs and  
19 others similarly situated and those facts were known only to the defendants. Those facts  
20 included:

- 21 a. On April 28, 1998, the very same day the defendants delivered a memorandum  
22 encouraging residents not to leave, stating "[p]lease rest assured that we will work  
23 diligently to manage expenses and that, as an affiliate of Hyatt Corporation, La  
24 Jolla Village Towers will reap the benefits of group purchasing volume discounts,"  
25 the defendants entered into a sweetheart 50-year contract with a Hyatt affiliate  
26 which effectively allows the defendants' owners to funnel residents' cash to  
27 themselves under the guise of "necessary operating expenses";  
28 b. That one of the "necessary operating expenses" defendants charge plaintiffs as part

1 of their monthly fee is a management fee which is charged as six percent of the  
2 monthly fees. Thus, every time the defendants increase the monthly fees, they also  
3 increase the management fees they charge residents by six percent of the amount  
4 of the total monthly fee increase;

5 c. That defendants had failed to leave any money in the trust fund established for pre-  
6 paid lifetime health care;

7 d. That defendants had loaned themselves approximately \$80 million interest free for  
8 50 years from the trust fund, constituting the entire balance of the trust fund;

9 e. That defendants intended to require independent living residents to subsidize care  
10 center operating losses by increasing monthly fees; and

11 f. That after obtaining residents' entrance fees, the defendants intended on  
12 embarking on construction of an adjacent 21-story building in a manner that would  
13 result in a substantial disruption of residents' enjoyment and use of their  
14 apartments and common areas and the closure of numerous facilities.

15 134. Plaintiff and others similarly situated could not have discovered those facts.

16 135. Plaintiff and others similarly situated did not discover those facts.

17 136. The defendants intended to deceive plaintiffs and others similarly situated by  
18 concealing these facts.

19 137. Plaintiffs and other residents similarly situated were harmed by the defendants'  
20 concealment by paying entrance fees and monthly fee increases they would not have otherwise  
21 paid.

22 138. If plaintiffs and others similarly situated had known the true facts they would not  
23 have paid entrance fees, remained at La Jolla Village Towers beyond the period of time that their  
24 entrance fees were fully refundable, or paid increased monthly fees.

25 139. Plaintiffs' reliance on the defendants' concealment was a substantial factor in  
26 causing harm to them.

27 140. The conduct of the defendants as described herein, was despicable and was carried  
28 on by them with wilful and conscious disregard for the rights of the plaintiffs and other residents

1 similarly situated. The defendants were aware of the probable dangerous consequences of their  
2 conduct and wilfully and deliberately failed to avoid those consequences. This conduct  
3 constitutes malice, oppression and fraud such that the plaintiff are entitled pursuant to California  
4 Civil Code section 3294 to recover punitive damages in an amount sufficient to punish and set an  
5 example of these defendants.

6 **FOURTH CAUSE OF ACTION - ELDER ABUSE**

7 **(All Plaintiffs Against All Defendants and DOES 41-50)**

8 141. Plaintiffs incorporate by reference and realleges paragraphs 1 through 82, 84  
9 through 107, 109 through 131, and 133 through 140, as though fully set forth herein.

10 142. Defendants appropriated and retained the property of plaintiffs and others similarly  
11 situated, namely, entrance fees and monthly fees.

12 143. Plaintiffs and others similarly situated were over 65 of age at the time of the  
13 defendants' conduct.

14 144. The defendants appropriated and retained plaintiffs' property for wrongful use and  
15 or with an intent to defraud in violation of Welfare and Institutions Code sections 15610.07 and  
16 15610.30.

17 145. The use was wrongful because none of the approximately \$80 million paid to  
18 defendants in entrance fees was set aside to pay for pre-paid lifetime health care and a large  
19 portion of the monthly fees were a scheme by the defendants to defraud money from the plaintiffs  
20 and other residents under the false claim of necessary operating expenses.

21 146. The defendants' use was with an intent to defraud because the defendants never  
22 planned on setting aside any portion of the entrance fees to pay for lifetime health care, and  
23 instead intended to take the entrance fees and monthly fee increases for their own use. Further,  
24 the defendants knew that they were paying themselves exorbitant management fees, commissions,  
25 marketing fees and administrative expenses and deceiving the elderly plaintiffs and other  
26 residents that monthly fees and monthly fee increases were necessary and proper.

27 147. Plaintiffs and others similarly situated were harmed by the defendants' deception,  
28 and such harm includes mental suffering withing the meaning of Welfare and Institutions Code

1 section 15610.53.

2 148. Plaintiffs' reliance on defendants' representations was a substantial factor in  
3 causing harm to them.

4 149. The conduct of defendants as described herein, was despicable and was carried on  
5 by them with wilful and conscious disregard for the rights of the plaintiff and others similarly  
6 situated. The defendants were aware of the probable dangerous consequences of their conduct  
7 and wilfully and deliberately failed to avoid those consequences. This conduct constitutes malice,  
8 oppression and fraud such that the plaintiff are entitled pursuant to California Civil Code section  
9 3294 to recover punitive damages in an amount sufficient to punish and set an example of these  
10 defendants.

11 **FIFTH OF ACTION - VIOLATION OF CONSUMER**  
12 **LEGAL REMEDIES ACT**

13 **(All Plaintiffs Except Don Short and Patty Westervelt Against CC-La Jolla, the L.L.C.,**  
14 **Classic, and DOES 51-60)**

15 150. Plaintiffs incorporate by reference and realleges paragraphs 1 through 82, 84  
16 through 107, 109 through 131, and 133 through 140, as though fully set forth herein.

17 151. Civil Code section 1770, subdivision (a), provides in relevant part:

18 "The following unfair methods of competition and unfair or deceptive acts or  
19 practices undertaken by any person in a transaction intended to result or which  
results in the sale or lease of goods or services to any consumer are unlawful:

- 20 ... (5) Representing that goods or services have . . . characteristics . . . [or]  
21 . . . benefits . . . which they do not have . . . .
- 22 (7) Representing that goods or services are of a particular standard,  
quality, or grade . . . if they are of another . . . .
- 23 (9) Advertising goods or services with intent not to sell them as  
24 advertised . . . .
- 25 (14) Representing that a transaction confers or involves rights, remedies,  
or obligations which it does not have or involve . . . .
- 26 (16) Representing that the subject of a transaction has been supplied in  
27 accordance with a previous representation when it has not."

28 152. Defendants CC-La Jolla, L.L.C., Classic, and DOES 51-60 violated these

1 provisions with regard to the following transactions:

- 2 a. Representing that the health care provided in the care center is of “high quality”  
3 and “expert.” In fact, the care provided is substandard because: (a) many care  
4 providers do not understand or speak English fluently, (b) the training, supervision  
5 and care provided in the care center is below the standard of care, and (c)  
6 defendants are understaffed.
- 7 b. Representing that entrance fees paid by independent living residents would be used  
8 to fund pre-paid lifetime health care. In fact, none of the entrance fees have been  
9 set aside to be used for this purpose.
- 10 c. Representing that independent living residents could move to the care center with  
11 no extra cost, except the cost of one additional meal per day. Instead, residents  
12 who move from defendants’ independent living facility to the care center have  
13 been charged substantial additional costs for the care they receive, such as nursing  
14 care, because the nurses provided by defendants are unable to communicate  
15 effectively in English.
- 16 d. Representing that monthly fees charged to residents in the independent living  
17 facility would not include any operating loss of the care center. Instead,  
18 defendants have charged the operating losses of the care center to monthly fees  
19 assessed to independent living residents.
- 20 e. Representing the availability of 24-hour emergency medical response to the  
21 residents of the independent living facility and that the wellness center staff is  
22 available to independent living residents “around the clock to respond to medical  
23 emergencies.” Neither of these vital continuing care promises are being fulfilled.
- 24 f. Representing that La Jolla Village Towers would provide “gracious retirement  
25 living,” “luxury senior living at its finest,” “a relaxed, easy going lifestyle,”  
26 “luxurious surroundings,” and “almost unlimited opportunities for relaxation,” and  
27 peace and quiet. In fact, due to the manner in which defendants have engaged in  
28 construction of a new high-rise on the property, the living environment is





1 extremely noisy, dusty, cold, and disruptive. Moreover, numerous important  
2 health-related facilities, such as the indoor swimming pool and the exercise room  
3 have been eliminated or reduced.

4 g. Representing that defendants would “work diligently to manage expenses,” that  
5 residents would “reap the benefits of group purchasing,” and that residents could  
6 “rest assured that [you] are looking at all of [your] expenses and systems to find  
7 ways of reducing the impact of [monthly fee] increases.” Instead, defendants have  
8 entered into transactions with related parties for expenses such as management,  
9 marketing, and administration that are well above market rates for those expenses  
10 in order to gouge elderly residents with unnecessary monthly fees and conceal  
11 defendants’ practice as simply passing along normal operating expenses.

12 153. Each of the plaintiffs for this cause of action complied with the notice  
13 requirements of Civil Code section 1782, subdivision (a).

14 154. Plaintiffs and others similarly situated, who are entitled to additional statutory  
15 protection due to their age (Civ. Code § 1780, subd. (b)) were harmed by the defendants’  
16 violations.

17 155. Plaintiffs’ reliance on defendants’ representations was a substantial factor in  
18 causing harm to them.

19 156. The conduct of defendants as described herein, was despicable and was carried on  
20 by them with wilful and conscious disregard for the rights of the plaintiffs and others similarly  
21 situated. The defendants were aware of the probable dangerous consequences of their conduct  
22 and wilfully and deliberately failed to avoid those consequences. This conduct constitutes malice,  
23 oppression and fraud such that the plaintiffs are entitled pursuant to California Civil Code section  
24 3294 to recover punitive damages in an amount sufficient to punish and set an example of these  
25 defendants.

26 **SIXTH CAUSE OF ACTION - BREACH OF FIDUCIARY DUTY**

27 **(All Plaintiffs Against All Named Defendants and DOES 61-70)**

28 157. Plaintiffs incorporate by reference and paragraph 1 through 82, 84 through 107,

109 through 131, and 133 through 140, as though fully set forth herein.

158. The defendants created an original Master Trust Agreement in which First Union National Bank, or its successor, was the trustee. Under the Master Trust Agreement, the defendants had the right to borrow trust funds at no interest to themselves. Acting as agents for the trustee, the defendants encouraged the plaintiffs and others similarly situated to execute, as grantors, documents entitled Joinder in Master Trust Agreement ("Joinders") under which the plaintiffs and others similarly situated agreed to contribute money to the Master Trust and be bound by the Master Trust Agreement. In soliciting the Joinders on behalf of the trustees and themselves, the defendants failed to provide the plaintiffs and others similarly situated with copies of the Master Trust Agreement, failed to fairly disclose the terms of that trust, and misrepresented that the terms of the Master Trust included provisions that would guarantee that portions of the funds contributed to the trust would be retained to provide for the lifetime health care of the plaintiffs and others similarly situated. By soliciting the Joinders, a *de jure* fiduciary relationship of trust and confidence existed between the defendants, as agents for the trustee, and the plaintiffs and others similarly situated, as beneficiaries.

159. A *de facto* fiduciary relationship of trust and confidence existed between the defendants and the plaintiffs and others similarly situated as a result of the following facts:

(a) as a result of their advanced age, the plaintiffs and others similarly situated are vulnerable persons<sup>8</sup>;

(b) by offering and entering into continuing care contracts with the plaintiffs and others similarly situated, the defendants solicited and accepted control over the plaintiffs, by agreeing to provide them with shelter, food, and health care for the rest of their lives;

(c) the defendants encouraged the plaintiffs and others similarly situated to repose trust and confidence in the defendants by making representations such as, "[twenty-three percent]

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<sup>8</sup> The Legislature has expressly recognized this disparity in enacting various protective legislation. (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; Health & Saf. Code, 1770; Civ. Code, §§ 1780, subd. (b)(1), 3345.)

1 of your total entrance fee paid is considered to be for pre-paid Long Term Care, as well as the  
2 entire \$18,000 for the second person covered;" "[t]he entrance fee includes . . . the promise of  
3 temporary or long-term care in our . . . care center;"; and "[t]he most important element of  
4 retirement living is your health and the peace of mind that comes from knowing your potential  
5 long-term care needs will be met";

6 (d) as a result of their agreement to enter into continuing care contracts with the  
7 defendants and become residents of La Jolla Village Towers, the plaintiffs and others similarly  
8 situated are vulnerable, because they are dependent on the defendants to provide them with  
9 shelter, food, and health care for the rest of their lives;

10 (e) because the plaintiffs and others similarly situated paid substantial entrance fees  
11 which are only partially refundable after 90 days and non-refundable after 50 months, they cannot  
12 readily enter into alternative continuing care contracts; they cannot protect themselves; and they  
13 are financially vulnerable to the defendants;

14 (f) the plaintiffs reposed trust and confidence in the defendants to perform their  
15 continuing care promises; and

16 (g) there is an unequal relationship between parties in which the plaintiffs and others  
17 similarly situated have surrendered control to the defendants because of the trust and confidence  
18 which they reposed in the defendants.

19 160. The defendants have breached the fiduciary duty they owe to the plaintiffs and  
20 other similarly situated by, among other things, diverting trust assets for their own benefit,  
21 loaning trust assets without interest, violating statutes which establish mandatory procedures for  
22 raising monthly fees, failing to disclose to plaintiffs and others similarly situated the true costs of  
23 the services being provided, using related entities to supply promised services at costs above  
24 market, excessively increasing monthly fees, failing to provide promised health care services, and  
25 failing to adequately secure their continuing care obligations.

26 161. The defendants' breaches of fiduciary duty were substantial factors in causing  
27 harm to the plaintiffs and others similarly situated, in amounts to be proved at trial.

28 162. The conduct of defendants as described herein, was despicable and was carried on

1 by them with wilful and conscious disregard for the rights of the plaintiffs and others similarly  
2 situated. The defendants were aware of the probable dangerous consequences of their conduct  
3 and wilfully and deliberately failed to avoid those consequences. This conduct constitutes malice,  
4 oppression and fraud such that the plaintiff are entitled pursuant to California Civil Code section  
5 3294 to recover punitive damages in an amount sufficient to punish and set an example of these  
6 defendants.

7 **SEVENTH CAUSE OF ACTION - BUSINESS AND PROFESSIONS CODE § 17200**

8 **(All Plaintiffs Against All Named Defendants and DOES 71-80)**

9 163. Plaintiffs incorporate by reference and reallege paragraphs 1 through 82, 84  
10 through 107, 109 through 131, 133 through 140, 151 through 156, and 158 through 162, as  
11 though fully set forth herein.

12 164. By committing the violations of statute and other unlawful acts set forth herein, the  
13 defendants have engaged in unfair competition.

14 165. These violations and unlawful acts have harmed the plaintiffs and others similarly  
15 situated, and this harm outweighs the utility of defendants' business practices, which therefore  
16 constitute an unfair business act or practice within the meaning of Business and Professions Code  
17 sections 17200.

18 166. Plaintiffs seek both full restitution, including a refund of their entrance fees and  
19 their monthly fees, with pre-judgment interest.

20 167. To prohibit future statutory violations and unlawful acts, plaintiffs seek an  
21 injunction be issued against defendants enjoining such violations and unlawful acts.

22 **EIGHTH CAUSE OF ACTION - BREACH OF CONTRACT**

23 **(All Plaintiffs Against All Named Defendants and DOES 81-90)**

24 168. Plaintiffs incorporate by reference and reallege paragraphs 1 through 82, 84  
25 through 107, 109 through 131, 133 through 140, 151 through 156, and 158 through 162, as  
26 though fully set forth herein.

27 169. Each of the plaintiffs entered into a continuing care contract, as defined by section  
28 1771, subdivision (c)(8), with the defendants.

1           170. The continuing care contract consisted of several “continuing care promises,” as  
2 defined by section 1771, subdivision (c)(1), which provides:

3  
4           ““Continuing care promise”” means a promise, expressed or implied, by a provider  
5 to provide one or more elements of care to an elderly resident for the duration of  
6 his or her life or for a term in excess of one year. Any such promise or  
7 representation, whether part of a [1] continuing care contract, [2] other agreement,  
8 or series of agreements, or [3] contained in any advertisement, brochure, or other  
9 material, either written or oral, is a continuing care promise.”

10           171. Each of defendants’ continuing care promises was made in several documents and  
11 orally to plaintiffs and other residents. Each of these promises was made in (a) residency  
12 agreements (and their incorporated documents), a partial exemplar of which is attached at Exhibit  
13 14, (b) written documents intended to supplement residency agreements, (c) brochures and other  
14 literature, and (d) oral statements. The substance of these continuing care promises was that:

- 15           a. a portion of plaintiffs’ entrance fees constituted pre-paid long-term care and that  
16 plaintiffs would not be charged additional amounts for that care;  
17           b. defendants would provide plaintiff and other residents with 24-hour emergency  
18 medical response from an on-site nurse;  
19           c. the health care provided by defendants would be of exceptional quality, far above  
20 the standard of care;  
21           d. defendants would provide various, specific health care-related facilities, including a  
22 swimming pool, exercise room, billiards room, and other amenities;  
23           e. defendants would diligently work at keeping expenses to be included in residents’  
24 monthly fees at a minimum, and continually review all expenses to find ways of  
25 avoiding the necessity of any increases in monthly fees; and  
26           f. defendants would provide a living environment which would be peaceful, quiet,  
27 and exceptionally luxurious.

28           172. All of the continuing care promises made by the defendants are supported by  
adequate consideration paid by plaintiffs and other residents to defendants.

173. Plaintiffs performed all obligations on their part to be performed under their

1 continuing care contracts.

2 174. Defendants breached the continuing care contracts, including the implied  
3 covenants of good faith and fair dealing and quiet enjoyment by, among other things:

- 4 a. failing to set aside a portion of plaintiffs' entrance fees for pre-paid long-term care  
5 and charging plaintiffs and all other residents substantial additional amounts for  
6 that care;
- 7 b. failing to provide plaintiff and other residents with 24-hour emergency medical  
8 response from an on-site nurse;
- 9 c. failing to provide health care of exceptional quality, far above the standard of care;
- 10 d. failing to provide various and specific health care-related facilities, including  
11 recreational facilities, including a swimming pool, exercise room, billiards room,  
12 and other amenities;
- 13 e. failing to diligently work at keeping expenses to be included in residents' monthly  
14 fees at a minimum, and failing to continually review all expenses to find ways of  
15 avoiding the necessity of any increases in monthly fees; and
- 16 f. failing to provide a living environment which is peaceful, quiet, and exceptionally  
17 luxurious.

18 175. As the proximate result of defendants' breaches, the plaintiffs and others similarly  
19 situated have been damaged in amounts to be proved at trial.

20 **NINTH CAUSE OF ACTION - CONSTRUCTIVE FRAUD**

21 **(All Plaintiffs Against All Named Defendants and DOES 91-100)**

22 176. Plaintiffs incorporate by reference and reallege paragraphs 1 through 82, 84  
23 through 107, 109 through 131, and 133 through 140, 151 through 156, and 158 through 162, as  
24 though fully set forth herein.

25 177. "Constructive fraud consists: 1. In any breach of duty which, without an actually  
26 fraudulent intent, gains an advantage to the person in fault, or anyone claiming under him, by  
27 misleading another to his prejudice, or to the prejudice of anyone claiming under him; or, 2. In  
28 any such act or omission as the law specially declares to be fraudulent, without respect to actual

1 fraud.” (Civ. Code, § 1573.)

2 178. ““In its generic sense, constructive fraud comprises all acts, omissions and  
3 concealments involving a breach of legal or equitable duty, trust, or confidence, and resulting in  
4 damages to another. [Citations.] Constructive fraud exists in cases in which conduct, although  
5 not actually fraudulent, ought to be so treated—that is, in which such conduct is a constructive or  
6 quasi fraud, having all the actual consequences and all the legal effects of actual fraud.’  
7 [Citation.] Constructive fraud usually arises from a breach of duty where a relation of trust and  
8 confidence exists. [Citation.] Confidential and fiduciary relations are in law, synonymous and  
9 may be said to exist whenever trust and confidence is reposed by one person in another.” (*Barrett*  
10 *v. Bank of America* (1986) 183 Cal.App.3d 1362, 1368-1369.)

11 179. The previously alleged acts and omissions of the defendants constitute constructive  
12 fraud.

13 180. As a result of the defendants’ constructive fraud, the defendants have unlawfully  
14 profited by using trust funds and unlawful monthly fee increases for their own benefit and caused  
15 the plaintiffs and others similarly situated to suffer damages, in amounts to be proved at trial.

16 181. The conduct of defendants as described herein, was despicable and was carried on  
17 by them with wilful and conscious disregard for the rights of the plaintiffs and others similarly  
18 situated. The defendants were aware of the probable dangerous consequences of their conduct  
19 and wilfully and deliberately failed to avoid those consequences. This conduct constitutes malice,  
20 oppression and fraud such that the plaintiffs are entitled pursuant to California Civil Code section  
21 3294 to recover punitive damages in an amount sufficient to punish and set an example of these  
22 defendants.

23 **TENTH CAUSE OF ACTION - VIOLATIONS OF**

24 **HEALTH AND SAFETY CODE SECTION 1793.5**

25 **(All Plaintiffs Against All Named Defendants and DOES 101-110)**

26 182. Plaintiffs incorporate by reference and reallege paragraphs 1 through 82,84  
27 through 107, 109 through 131, and 133 through 140, 151 through 156, and 158 through 162, 169  
28 through 175, and 177 through 181, as though fully set forth herein.



1 183. Section 1793.5, subdivision (d), provides: "[a]n entity that abandons . . . its  
2 obligations under a continuing care contract . . . shall be liable to the injured resident for treble  
3 the amount of damages in a civil action brought by or on behalf of the resident in any court  
4 having proper jurisdiction."

5 184. The defendants have violated section 1793.5, subdivision (d) by the numerous  
6 statutory violations, acts of fraud, breaches of fiduciary duty, breaches of contract, and other  
7 unlawful acts as alleged in this complaint.

8 185. Plaintiffs are entitled and seek to recover treble damages assessed in this action,  
9 and an award of reasonable attorney fees.

10 **WHEREFORE, Plaintiffs pray that they and the class of those past and present**  
11 **residents of La Jolla Village Towers be awarded:**

- 12 1. general and special damages according to proof;
- 13 2. punitive damages on the first, third, fourth, fifth, sixth, and ninth causes of action;
- 14 3. injunctive relief on the fifth and seventh causes of action;
- 15 4. statutory damages under Civil Code section 1780, subdivision (b), for the fifth  
16 cause of action;
- 17 5. statutory damages under section 1793.5, subdivision (d), in an amount three times  
18 the damages assessed in the other causes of action;
- 19 6. attorney fees on the fourth, fifth, and tenth causes of action;
- 20 7. costs; and
- 21 8. such other and further relief as the court determines necessary and proper.

22 Dated: August 28, 2007

**LAW OFFICE OF MICHAEL A. CONGER**

23  
24 By:



Michael A. Conger  
Attorney for Plaintiffs

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27  
28 Jury trial demanded.