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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 **BURTON RICHTER**, an individual;
11 **LINDA COLLINS CORK**, an
individual; **GEORGIA L. MAY**, an
12 individual; **THOMAS MERIGAN**, an
individual; **ALFRED SPIVACK**, an
13 individual; and **JANICE R.**
ANDERSON, an individual; on behalf of
14 themselves and all others similarly
situated, and derivatively on behalf of
15 **CC-PALO ALTO, INC.**

16 Plaintiffs,

17 v.

18 **CC-PALO ALTO, INC.**, a Delaware
corporation; **CLASSIC RESIDENCE**
19 **MANAGEMENT LIMITED**
PARTNERSHIP, an Illinois limited
20 partnership; and **CC-DEVELOPMENT**
GROUP, INC., a Delaware corporation,
21 **PENNY PRITZKER**, an individual,
NICHOLAS J. PRITZKER, an
22 individual, **JOHN KEVIN**
POORMAN, an individual, **GARY**
23 **SMITH**, an individual, **STEPHANIE**
FIELDS, an individual, and **BILL**
24 **SCIORTINO** an individual

25 Defendants.

26 v.

27 **CC-PALO ALTO, INC.**, a Delaware
corporation,

28 Nominal Defendant.

Case No. C14-00750

**VERIFIED FIRST AMENDED
DIRECT CLASS ACTION AND
CREDITOR DERIVATIVE COMPLAINT:**

1. **FINANCIAL ABUSE OF ELDERS**
2. **CONCEALMENT**
3. **NEGLIGENT MISREPRESENTATION**
4. **BREACH OF FIDUCIARY DUTY AND
CONSTRUCTIVE TRUST**
5. **VIOLATION OF CALIFORNIA CIVIL
CODE §§ 1750, et seq.**
6. **VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS CODE
§§ 17200, et seq. – RESTITUTION AND
DISGORGMENT**
7. **VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS CODE
§§ 17200, et seq. – INJUNCTIVE
RELIEF**
8. **BREACH OF CONTRACT**

**VERIFIED FIRST AMENDED DIRECT CLASS ACTION AND CREDITOR
DERIVATIVE COMPLAINT**

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**9. BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING**

10. DECLARATORY RELIEF

**11. CREDITOR CLAIM FOR BREACH OF
FIDUCIARY DUTIES AGAINST THE
DIRECTOR DEFENDANTS**

**12. CREDITOR CLAIM FOR BREACH OF
FIDUCIARY DUTIES OR IN THE
ALTERNATIVE AIDING AND
ABETTING THE DIRECTOR
DEFENDANTS' BREACHES OF
FIDUCIARY DUTIES**

**13. PAYMENT OF UNLAWFUL
DIVIDENDS**

**14. FRAUDULENT TRANSFER OF
ASSETS**

15. CORPORATE WASTE

DEMAND FOR JURY TRIAL

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1 Plaintiffs Burton Richter, Linda Collins Cork, Georgia L. May, Thomas Merigan, Alfred
2 Spivack, and Janice R. Anderson, individually, and on behalf of a proposed class demand a jury
3 trial bring this action against Defendants CC-Palo Alto (“CC-PA”) CC-Development Group
4 (“CC-DG”); Classic Residence Management Limited Partnership (“CRMLP”); and CC-PA’s
5 board of director members Penny Pritzker, Nicholas J. Pritzker, John Kevin Poorman, Gary
6 Smith, Stephanie Fields, and Bill Sciortino (the “Director Defendants”) (collectively,
7 “Defendants”), and derivatively as creditors of nominal party CC-PA allege as follows:

8 **I. INTRODUCTION**

9 1. The Plaintiffs in this case are senior citizens who carefully planned for retirement,
10 diligently saved money to pay for retirement, and who chose to spend the last years of their lives
11 at the Vi at Palo Alto– a Continuing Care Retirement Community (“CCRC”) located on land
12 Defendants have leased from Stanford University (“Stanford University”). The Proposed Class
13 consists of all individuals who resided at the Vi at Palo Alto between January 1, 2005 and the
14 present (“Plaintiffs” or “the Class”). Plaintiffs were deceived by Defendants. Plaintiffs paid for
15 financial security. Instead, their money vanished, and Defendants tell them not to worry about it.
16 The law prohibits such a scam from being perpetrated on elders.

17 2. The Defendants also breached their contracts with Plaintiffs and their fiduciary
18 obligations to Plaintiffs in, among other respects, (a) by CC-PA illegally distributing, as
19 dividends to CC-DG, hundreds of millions of dollars of its liquid reserves; (b) by failing to
20 establish the refund reserve required by statute that was incorporated in their contracts with
21 Plaintiffs; (c) by otherwise failing to maintain prudent reserves in CC-PA; (d) by using their
22 power to allocate expenses to Plaintiffs, to allocate their own expenses to the Plaintiffs under the
23 guise that they were “costs of operating the Community”; and (e) by otherwise failing to deal
24 with Plaintiffs fairly and in good faith.

25 3. Plaintiffs have suffered actual harm insofar as they did not get what they paid for
26 and were promised, and Defendants have operated CC-PA in violation of California and
27 Delaware law. In addition, certain theories of recovery do not require actual harm. For
28 injunctive relief Plaintiffs must show threatened future injury that is real and imminent. For

1 declaratory relief Plaintiffs need demonstrate only the existence of an actual controversy, they
2 need not show present damages. Plaintiffs' have suffered present injury in fact and have
3 demonstrated imminent future harm. In addition, Plaintiffs derivative claims have shown present
4 injury in fact to CC-PA.

5 4. CCRCs are a specialized type of retirement community in that they offer a
6 continuum of care as residents age. In-coming residents initially live independently in their
7 apartments and as their needs require they move to higher levels of care, including on-site
8 assisted living, memory support and skilled nursing ("SNF") facilities.

9 5. To induce Plaintiffs to enter the Vi at Palo Alto, CC-PA advertised to prospective
10 residents that they would be joining a financially sound community and that they would enjoy
11 financial security. Marketing materials highlighted ties to the Pritzker family, the Hyatt brand
12 and Stanford University.

13 6. CC-PA required that as a condition to entering the Community, in-coming
14 residents must loan to CC-PA substantial "Entrance Fees" in consideration of a promise that CC-
15 PA would **refund** the major portion of their Entrance Fees when they left the Vi at Palo Alto or
16 died (the earlier of when their apartment was "resold" or after 10 years). The Vi at Palo Alto
17 regularly used the term "refundable" and "refund" in explaining to prospective residents and
18 residents that they would be repaid the majority of their Entrance Fees. *See*, Discussion at
19 Section: IV (D); *see also*, statement by Barry Johnson of the CC-PA to the Stanford Report, Ex.
20 1, page 20). The fact that a substantial part of the Entrance Fees would be refundable was a key
21 element of Defendants' plan to borrow hundreds of millions of dollars from prospective residents
22 as a condition to allowing them to enter the Community.

23 7. Residents reasonably expected that the hundreds of millions of dollars that they
24 were paying in Entrance Fees would add to the financial security and stability of CC-PA. They
25 also reasonably expected that CC-PA would maintain cash reserves to secure the company's
26 significant repayment obligations and to ensure prudent operation of Vi at Palo Alto and the
27 residents' financial security. These expectations were reasonable because of the extent to which
28 the Vi at Palo Alto was marketed as a financially secure choice, because California state law

1 requires CCRCs to maintain cash reserves, and because California state law requires CCRCs to
2 disclose in writing if refundable entrance fees are not secured by cash reserves (no such
3 disclosures were made by CC-PA). Defendants breached their own promises and violated the
4 law, causing injury in fact to Plaintiffs and the Class.

5 8. CC-DG developed and at all times has operated CC-PA under a business plan to
6 use CC-PA as a device to return all of CC-DG's invested capital in CC-PA and to funnel the
7 proceeds of Entrance Fees to CC-DG on a non-recourse basis, for CC-DG's and its shareholders'
8 benefit. Defendants concealed their true intentions from the residents of the Vi at Palo Alto.
9 Instead of using Entrance Fees to operate CC-PA in a financially sound manner, in compliance
10 with State statutory reserve requirements and to provide financial security for the residents,
11 Defendants siphoned off nearly all of CC-PA's liquid assets through unlawful dividends of funds
12 to CC-DG. As a result of this upstreaming, CC-PA has become insolvent, and can pay its debts
13 only by securing periodic, voluntary cash infusions from CC-DG. At the same time, CC-DG has
14 told the residents in writing that CC-DG disclaims any obligation to repay the proceeds of
15 Entrance Fees loaned to CC-PA. This situation violates the fundamental pillar of corporate law
16 that a corporation should maintain sufficient capital to pay its creditors. Compounding the
17 situation, CC-PA has been assessed millions in extra taxes due to its upstreaming and CC-PA
18 plans to pass on the increased taxes to the residents.

19 9. Defendants' actions also violate California's Elder Abuse and Dependent Adult
20 Civil Protection Act ("EADACPA") which prohibits Defendants from obtaining or retaining
21 property of an elder when they "knew or should have known that [their] conduct *is likely to be*
22 *harmful to the elder...*" (Welfare & Inst. Code § 15610.30)(Emphasis added.).

23 10. Plaintiffs seek damages equal to their proportionate shares of the upstreamed
24 funds, or the return of the upstreamed funds to CC-PA and the creation of a refund reserve as
25 required by law to cover CC-PA's financial obligations and to enable it to operate in a financially
26 sound manner as CC-PA promised to its entering residents.

27 11. The illegal upstreaming of funds from CC-PA to CC-DG through the payment of
28 dividends to CC-DG has caused CC-PA to be insolvent. Therefore, Plaintiffs also bring this

1 action derivatively on behalf of CC-PA (as a nominal defendant) against the CC-PA directors for
2 breach of their fiduciary duties to Plaintiffs. As alleged herein, as the result of its borrowings
3 from Plaintiffs, CC-PA owes Plaintiffs, as its primary creditors, hundreds of millions of dollars
4 in refundable Entrance Fees. Plaintiffs assert the claim derivatively under Delaware law as
5 creditors of CC-PA.

6 12. Defendants' financial improprieties extend beyond bleeding CC-PA of most of its
7 liquid funds – Defendants have also overcharged Plaintiffs and the Class by improperly
8 allocating increased tax assessments, earthquake insurance charges, and marketing costs that
9 were properly expenses of CC-PA as Vi at Palo Alto's operating expenses, and passing on these
10 charges to the residents as inflated monthly fees.

11 13. These actions present a serious impairment of Plaintiffs' financial security, and
12 violate the laws of California and Delaware.

13 14. Plaintiffs' allegations are based upon personal knowledge with respect to
14 themselves and upon information and belief based upon, *inter alia*, a review of public filings,
15 reports, Defendants' initial production of documents, and investigations undertaken by their
16 counsel, as to all other allegations.

17 **A. Entrance Fees**

18 15. Prior to entering the Vi at Palo Alto, each resident is required to enter into a
19 continuing care contract (a "Refundable Residency Contract") under which they agree to "loan"
20 CC-PA several hundred thousand dollars (or more – up to several million dollars) in the form of
21 an "Entrance Fee" pursuant to the terms of an Entrance Fee Note (the "Entrance Fee Note").
22 Each of the Plaintiffs has loaned the Entrance Fee to CC-PA and has received an Entrance Fee
23 Note. Since the Vi at Palo Alto's opening in 2005, Plaintiffs have collectively loaned
24 Defendants over \$460 million in Entrance Fees pursuant to these Refundable Residency
25 Contracts and Entrance Fee Notes. *See* CC-PA's 2013 Consolidated Financials (Ex. 2) at 3.

26 16. CC-PA requires that a percentage of the loan to it under the Entrance Fee Note be
27 forfeited to CC-PA ratably over the first 10 months of the resident's occupancy of his apartment
28 in the Community, ranging from 10% of the loan, charged to the first residents entering the

1 Community, to 30% of the loan currently being charged to later residents. This means that 70%
2 to 90% of the Entrance Fee loans are refundable to residents, depending on the year they entered
3 the Community. CC-PA unconditionally agrees that upon termination of the Residency
4 Agreement, it will repay the balance of the Entrance Fee Note upon the first to occur of 14 days
5 following the earlier of reoccupancy of the departed resident's apartment or 10 years after
6 termination of the Residency Contract. The entering resident is not afforded the opportunity to
7 negotiate the terms of the Refundable Residency Contract, the loan or the Entrance Fee Note.

8 17. Plaintiffs and the Class were willing to enter into these Residency Contracts
9 because they were promised that 70%-90% of the Entrance Fees would be unconditionally
10 refunded to their heirs or estates after they passed away, or directly to them if they left the Vi at
11 Palo Alto before they passed away. Plaintiffs and the Class were informed that CC-PA was a
12 reputable company that had the financial ability to refund their Entrance Fees, and that their
13 investments would be secure.

14 18. Under California Law, a CCRC contract that includes an unconditional promise to
15 refund entrance fees is a "refundable contract." See California Health & Safety Code
16 §1771(r)(2). CC-PA's Residency Contract and its Entrance Fee Note together promise to refund
17 the bulk of the Entrance Fee paid by the entering residents of the Community. This refund
18 promise provides for **unconditional payment of the refund**: either 14 days after reoccupancy of
19 the resident's apartment or, in all events, 10 years after termination of the Residency Contract.
20 CC-PA's refund promise is not conditioned upon reoccupancy or resale of the apartment and
21 extends beyond the resident's sixth year of residency in the Community. Therefore, CC-PA's
22 Residency Contract and Entrance Fee Note together constitute a "refundable contract" under
23 Section 1771(r)(2).

24 19. California Law requires CCRC providers that enter into refundable contracts to
25 maintain reserves to act as security for repayment of the Entrance Fees they collect. See
26 California Health & Safety Code §§1792.6, 1793. This reserve requirement constitutes a
27 security interest provided by statute to residents who enter into refundable CCRC contracts. A
28

violation of California’s CCRC marketing and advertising laws is a per se violation of Business and Professional Code §17200. *See* California Health & Safety Code §§1793.5(h).

20. In marketing materials Defendants have acknowledged this requirement:

The California DSS continues to regulate the community after the release of the funds and requires the community to maintain certain cash reserves in amounts sufficient to meet State requirements.

See Ex. 3 (Hyatt in Palo Alto Brochure, circa 2005)(emphasis added).¹

21. Instead of maintaining these statutorily required reserves, CC-PA has, as of December 2013, transferred over \$219 million upstream to CC-DG, its corporate parent. Ex. 2 (“Distributions of Excess Paid-in Capital” line item). As a result of this unlawful upstreaming, CC-PA is insolvent, and financially incapable of honoring its debts to the Plaintiffs and the Class. *See* Milliman Statement of Actuarial Opinion (Ex. 4) at 1 (describing the upstream payments as “distributions in excess of paid-in capital”). These concerns have also been raised by the Department of Social Services (“DSS”). *See* Letter from Robert Thompson, dated August 2, 2012 (Ex. 5) at 2. (“CC-PA’s cash will not be sufficient to make the entrance fee repayment due.”). By failing to maintain these statutorily required reserves, the Defendants’ have unlawfully impaired Plaintiffs’ security interest in their Residency Contracts. This constitutes present and ongoing harm to Plaintiffs.

22. CC-PA has taken the position that CC-PA is the “sole entity responsible” for the refund of Plaintiffs’ Entrance Fees, and therefore CC-DG has no such responsibility. *See* Letter from Stephanie Fields, dated March 15, 2012 (Ex. 6) at 1. CC-DG has intentionally diverted the Entrance Fees that flowed through CC-PA—the entity that the contract holds liable for refunding substantial portions of the Entrance Fees to residents—to itself—the entity that Defendants claim is exempt from liability for such refunding. Through this conduct, Defendants have impaired the

¹ The community is defined as “Classic Residence by Hyatt in Palo Alto,” which now operates as Vi at Palo Alto. *Id.*

1 security interest underlying the loans made to CC-PA by Plaintiffs and the Class, and have
2 depleted the assets of CC-PA, thus rendering it insolvent.

3 23. Plaintiffs were never informed by Defendants that CC-PA intended to upstream
4 their Entrance Fees to CC-DG. The fact that they were not so informed is incredibly significant
5 given that CC-PA now has a deficit of more than \$310 million and owes Plaintiffs over \$460
6 million. See Ex. 2 (“Total Stockholders’ Deficit” line item). In the face of this huge deficit and
7 debt, CC-PA has failed to establish State-mandated reserves. The financial cupboard is bare and
8 Plaintiffs will only be repaid if CC-DG voluntarily chooses to pay the obligations of CC-PA.
9 However, CC-DG has stated in writing that they have no obligation to do so, and no financial
10 obligations by CC-DG to CC-PA appear on the CC-PA’s audited year-end financial statements.
11 See Letter from Stephanie Fields, dated March 15, 2012 (Ex. 6) at 1.

12 **B. Monthly Fees**

13 24. In addition to these sizeable Entrance Fees, Plaintiffs and the Class paid and
14 continue to pay to CC-PA sizeable, and ever increasing, monthly fees. These monthly fees have
15 been artificially inflated due to improper charges levied by Defendants. They have also been
16 inflated to the extent Entrance Fees were upstreamed instead of used locally by CC-PA to provide
17 services and to establish cash reserves (which is what Plaintiffs and the Class were promised).

18 25. The Refundable Residency Contracts state that the residents are to pay the “costs
19 of operating the Community,” i.e., the costs of operating the CCRC where they reside. CC-PA
20 has at every turn allocated to and imposed on the residents, not only its costs of operating the
21 Community, but also its costs of owning the Community, and other operating costs unrelated to
22 operation of the Community. The unfairness of this situation has been compounded by
23 Defendants’ use of CC-PA as an engine to generate Entrance Fees to be illegally upstreamed to
24 CC-DG—an intent that was concealed from Plaintiffs. Plaintiffs should not be forced to bear the
25 costs of operating this corporate shell game.

26 26. Plaintiffs take issue with the following three allocations of costs to the residents on
27 the grounds that they are either costs of CC-PA’s ownership of the Community and not of
28 operation of the Community, or costs of CC-PA’s other operations:

1 27. First, directly due to the illegal upstreaming, CC-PA has been assessed millions of
2 dollars of increased property taxes. Such increased taxes resulting from CC-PA's unilateral
3 upstreaming of its funds to CC-DG are CC-PA's own costs, and not "costs of operating the
4 Community." This would be the meaning that a layperson would ordinarily attach to the
5 language of the Refundable Residency Contracts. Nevertheless, CC-PA has indicated it will
6 allocate these increased taxes to Plaintiffs and the Class. In the past, CC-PA has implemented
7 this improper allocation of its own increased property tax cost by fixing the Community's
8 operating budgets to generate Community "operating surpluses," thus requiring that residents pay
9 monthly fees in excess of that reasonably necessary to cover the costs of operating the
10 Community. CC-PA has then failed to return such surpluses to the residents pursuant to its 2005
11 "Policy on Surpluses and Deficits," in order to create a fund for payment of these increased
12 property taxes. However, CC-PA subsequently, after this complaint was filed, modified this
13 "policy" and agreed with the residents to return Community operating surpluses in excess of
14 certain levels. CC-PA has violated that policy by withholding Community operating surpluses
15 above levels permitted by that policy as a result of its appeal of the increased property tax
16 assessments against it. Ex. 7.

17 28. Second, Defendants have improperly allocated earthquake insurance premiums to
18 Plaintiffs. It is wrong for CC-PA to allocate to the residents all of its costs of insuring its
19 buildings and improvements, in which the residents have no ownership, leasehold or other
20 interest. A prospective resident of the Community would not have understood that the "costs of
21 operating the Community" would fairly have included the costs of insuring CC-PA's buildings
22 and improvements. Under the terms of the Refundable Residency Contract Plaintiffs and the
23 Class should not incur insurance charges attributable to anything other than furniture, fixtures,
24 and equipment that are fairly required to operate the Community. Insurance premiums and
25 deductibles attributable to anything other than furniture, fixtures, and equipment should be borne
26 by CC-PA and not by the Plaintiffs.

27 29. Third, under the guise of pointing to "marketing costs" as "costs of operating the
28 Community" in the Residency Contracts, Defendants have improperly allocated to Plaintiffs costs

1 designed to benefit CC-DG. A prospective resident of the Community would have understood
2 that the “costs of operating the Community” would fairly include the reasonable costs to market
3 and resell residents’ apartments in the normal course of operating the Community. A layperson
4 would not have understood that the “costs of operating the community” would include CC-PA’s
5 costs of borrowing hundreds of millions of dollars in which the Community would have no
6 participation. As the major part of their business plan, Defendants incur millions of dollars of
7 marketing costs nationwide to churn over apartments as a profit engine for CC-DG. Since the
8 marketing is designed to generate Entrance Fees to be funneled to CC-DG, the marketing costs
9 are not a “cost of operating the community.” They are a corporate cost for CC-DG. Plaintiffs
10 should be responsible only for marketing costs that are necessary to operate the Community (*i.e.*,
11 the CCRC in Palo Alto), not marketing costs that are incurred solely to line Defendants’ pockets
12 with Entrance Fees that do not benefit the Community.

13 30. Plaintiffs and the Class seek relief from this unlawful conduct.

14 **II. JURISDICTION AND VENUE**

15 31. This Court has jurisdiction over the instant matter pursuant to 28 U.S.C. § 1332(d)
16 and the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1711, et seq., which vest
17 original jurisdiction in the district courts of the United States for any class action where the
18 aggregate amount in controversy exceeds \$5 million and where the citizenship of any member of
19 the class of Plaintiffs is different from that of any Defendant. The \$5 million amount-in-
20 controversy and diverse citizenship requirements of CAFA are satisfied in this case.

21 32. Venue is appropriate in this district under 28 U.S.C. § 1391(b) and (c). During the
22 Class Period the Defendants transacted business, were found, or had agents in this district, and a
23 substantial portion of the conduct giving rise to the claims described herein occurred in this
24 district.

25 33. This Court has personal jurisdiction over each Defendant because, inter alia, each
26 Defendant: (a) transacted business in this district; (b) participated in illegal conduct in this
27 district; (c) had substantial contacts with the United States, including in this district; and/or (d)
28 caused injury to persons residing in, located in this district.

1 34. As described throughout this Complaint, CC-PA, which is a Delaware Corporation
2 with its principle place of business in California, injured Plaintiffs, who are also located in
3 California, by illegally upstreaming millions of dollars in refundable entrance fees to CC-DG, its
4 corporate parent, which is a Delaware Corporation with its principal place of business in Chicago.
5 CC-DG also injured Plaintiffs by requiring that CC-PA dividend to CC-DG the funds CC-PA
6 needed to conduct ongoing operations. CC-PA was forced to pass on these costs to Plaintiffs in
7 the form of inflated monthly fees that should have instead been paid out of CC-PA's operating
8 budget.

9 **III. THE PARTIES**

10 **A. Defendants**

11 **1. CC-PA**

12 35. CC-PA is a Delaware corporation that owns and operates the CCRC known as the
13 Vi at Palo Alto. Its principal place of business is Palo Alto, California.

14 **2. CC-DG**

15 36. CC-DG is CC-PA's parent company, and is also a Delaware corporation. Its
16 principal place of business is Chicago, Illinois. CC-DG was formed by Penny Pritzker (now U.S.
17 Secretary of Commerce) in 1987. In addition to the Vi at Palo Alto, CC-DG currently operates
18 nine other continuing care retirement communities throughout the United States. These facilities
19 previously operated under the trade name "Classic Residence by Hyatt" and now operate under
20 the "Vi" brand.

21 **3. Director Defendants**

22 37. The following individuals sat on CC-PA's board of directors during the relevant
23 time period and are referred to collectively as the "Director Defendants."

24 38. Defendant Penny Pritzker ("Ms. Pritzker") served as a CC-PA director during
25 2005, 2006, 2007, and 2010. At all times from 2005 through 2011, Ms. Pritzker served as
26 Chairperson of CC-PA, the highest ranking corporate officer of CC-PA. At all relevant times,
27 Ms. Pritzker participated in the operation and management of CC-PA, and conducted and
28

1 culpably participated, directly and indirectly, in the conduct of CC-PA's business affairs. Upon
2 information and belief, Ms. Pritzker is a resident of Illinois.

3 39. Defendant Nicholas J. Pritzker ("Mr. Pritzker") served as a CC-PA director during,
4 2005, 2007, and 2010. At all relevant times, Mr. Pritzker participated in the operation and
5 management of CC-PA, and conducted and culpably participated, directly and indirectly, in the
6 conduct of CC-PA's business affairs. Upon information and belief, Mr. Pritzker is a resident of
7 Illinois.

8 40. Defendant John Kevin Poorman ("Mr. Poorman") served as a CC-PA director
9 during 2005, 2007, 2010 and 2013, and upon information and belief, continues to serve as a
10 director of CC-PA through the present day. From 2005 through 2011, Mr. Poorman served as
11 Vice Chairman of CC-PA, and from 2012 through the present day, Mr. Poorman has served as
12 Executive Chairman, the highest ranking corporate officer of CC-Palo Alto. At all relevant times,
13 Mr. Poorman participated in the operation and management of CC-PA, and conducted and
14 culpably participated, directly and indirectly, in the conduct of CC-PA's business affairs. Upon
15 information and belief, Mr. Poorman is a resident of Illinois.

16 41. Defendant Gary Smith ("Mr. Smith") served as a CC-PA director during 2008,
17 2009, and at all relevant times in 2011 through 2013, and upon information and belief, continues
18 to serve as a director of CC-PA through the present day. On information and belief, from 2005
19 through the present day, Mr. Smith has served as Vice President, Treasurer, and Assistant
20 Secretary of CC-PA. At all relevant times, Mr. Smith participated in the operation and
21 management of CC-PA, and conducted and culpably participated, directly and indirectly, in the
22 conduct of CC-PA's business affairs. Upon information and belief, Mr. Smith is a resident of
23 Illinois.

24 42. Defendant Stephanie Fields ("Ms. Fields") served as a CC-PA director during
25 2008, 2009, and at all relevant times from 2011 through 2013, and upon information and belief,
26 continues to serve as a director of CC-PA through the present day. On information and belief,
27 from 2005 through the present day, Ms. Fields has served as Vice President and Secretary of CC-
28 PA. At all relevant times, Ms. Fields participated in the operation and management of CC-PA,

1 and conducted and culpably participated, directly and indirectly, in the conduct of CC-PA's
2 business affairs. Upon information and belief, Ms. Fields is a resident of Illinois.

3 43. Defendant Bill Sciortino ("Mr. Sciortino") served as a CC-PA director during
4 2008, 2009, 2011 and 2012. At all relevant times, Mr. Sciortino participated in the operation and
5 management of CC-PA, and conducted and culpably participated, directly and indirectly, in the
6 conduct of CC-PA's business affairs. Upon information and belief, Mr. Sciortino is a resident of
7 Illinois.

8 44. By virtue of their positions as directors, and/or officers of CC-PA and/or their
9 exercise of control and ownership over the business and corporate affairs of CC-PA, the Director
10 Defendants have, and at all relevant times had, the power to control and influence and did control
11 and influence and cause CC-PA to engage in the practices complained of herein, including
12 specifically the upstreaming of funds from CC-PA to CC-DG that caused the insolvency of CC-
13 PA. Each Director Defendant owed and owes CC-PA and its creditors fiduciary obligations and
14 were and are required to: (1) use their ability to control and manage CC-PA in a fair, just and
15 equitable manner; (2) act in furtherance of the best interests of CC-PA and its creditors; (3) act to
16 abide by all statutes designed to ensure the financial stability of CC-PA; (4) act to avoid the
17 insolvency of CC-PA; (5) refrain from abusing their positions of control; and (6) not favor their
18 own interests at the expense of CC-PA and its creditors.

19 45. Each Director Defendant herein is sued individually and as an aider and abettor
20 and in his capacity as a director of CC-PA. The liability of each of the Director Defendants arises
21 from the fact that they have engaged in all or part of the unlawful acts, plans, schemes, or
22 transactions complained of herein.

23
24 **4. Classic Residence Management Limited Partnership (CRMLP)**

25 46. On information and belief, CC-DG is the general partner of CRMLP and otherwise
26 controls CRMLP. CRMLP is also based in Chicago, Illinois. CRMLP provides the day-to-day
27 management and operation at the Vi at Palo Alto and sets its budgets with input from CC-DG.
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1 **B. Conspiracy**

2 47. Defendants entered into a conspiracy in furtherance of the wrongful acts alleged
3 in this Complaint. Each Defendant was aware that the other Defendants planned to commit these
4 wrongful acts. Each Defendant agreed with the other Defendants, and intended that these acts be
5 committed.

6 **C. Aiding and Abetting**

7 48. Each Defendant aided and abetted the other Defendants in their commission of the
8 wrongful acts alleged in this Complaint. Each Defendant knew that the wrongful acts alleged in
9 this complaint were being committed by the other Defendants against Plaintiffs and the Class.
10 Each Defendant gave substantial assistance and encouragement to the other Defendants in
11 furtherance of these alleged acts. Each Defendant's conduct was a substantial factor in causing
12 harm to Plaintiffs and the class.

13 **D. Alter Ego**

14 49. CC-PA acted as the alter ego of CC-DG. CC-PA was so controlled by CC-DG,
15 directly and through CRMLP, that it ceased to exist as a separate entity.

16 50. The Director Defendants were not independent, took direction from and acted only
17 for the benefit of CC-DG and, at all times relevant to the complaint, relied on CC-DG for
18 financial compensation.

19 **E. The Proposed Class**

20 51. The Proposed Class consists of all residents of the Vi at Palo Alto from January 1,
21 2005 to the present.

22 52. As of 2013, approximately 500 residents were located in the Vi at Palo Alto's
23 independent living facility, and the balance resided in the Care Center. Each of these residents
24 loaned CC-PA substantial Entrance Fees that have not been repaid, and each continues to pay CC-
25 PA monthly fees. The average age of the current residents at the Vi at Palo Alto is approximately
26 85.
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1 53. Four hundred sixty residents demanded mediation under the terms of their
2 Refundable Residency Contracts with CC-PA. Prior to filing this case, the Parties participated in
3 a mediation session with The Honorable Justice Panelli (Ret.). Mediation efforts failed.

4 **F. The Representative Plaintiffs**

5 **1. Burton Richter**

6 54. Burton Richter, Ph.D. moved to the Vi at Palo Alto in July, 2005, and he currently
7 resides there with his wife, Laurose Richter. Dr. Richter's Entrance Fee was \$1,590,100. *See*
8 Richter Refundable Residency Contract. (Ex. 8) at 6. Under the terms of his Promissory Note,
9 90% of his Entrance Fee is refundable and he is currently owed \$1,431,090. *See* Richter
10 Promissory Note (Ex. 9) at 2.

11 55. Dr. Richter was never informed that CC-PA intended to transfer his Entrance Fees
12 upstream to CC-DG. Nor was he informed that CC-PA did not intend to maintain cash reserves
13 to cover its Entrance Fee refund obligations. Dr. Richter expected that CC-PA would maintain
14 sufficient reserves. Dr. Richter was also never informed that he would be charged for earthquake
15 insurance costs related to anything other than furniture, fixtures, and equipment at the Vi at Palo
16 Alto, or that he would be charged for marketing fees used to generate Entrance Fees to upstream
17 to CC-DG. The failure to disclose these important facts was a substantial factor in causing harm
18 to Dr. Richter.

19 56. Dr. Richter is 82 years old. Dr. Richter is the immediately former Chair of the Vi
20 at Palo Alto's Resident Advisory Council ("RAC"). Dr. Richter is a Nobel Laureate in Physics
21 (1976), and a member of the National Academy of Sciences. He is also a member of the
22 American Philosophical Society and the American Academy of Arts and Sciences. He was
23 Chairman of the National Research Council's Board on Physics and Astronomy, President of the
24 American Physical Society, and President of the International Union of Pure and Applied Physics.
25 He is the author of over 350 scientific papers, many short pieces aimed at the public and the
26 recent book "Beyond Smoke and Mirrors: Energy and Climate in the 21st Century" which won
27 the Phi Beta Kappa award as best science book of the year.
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2. **Linda Collins Cork**

57. Linda Collins Cork, D.V.M., Ph.D. moved to the Vi at Palo Alto in August 2005, and that is where she currently resides. Dr. Cork's Entrance Fee was \$674,400. *See* Cork Refundable Residency Contract (Ex. 10) at 6. Under the terms of her Promissory Note, 90% of her Entrance Fee is refundable, and she is currently owed \$606,960. *See* Cork Promissory Note (Ex. 11) at 2.

58. Dr. Cork was never informed that CC-PA intended to transfer her Entrance Fees upstream to CC-DG. Nor was she informed that CC-PA did not intend to maintain cash reserves to cover its Entrance Fee refund obligations. Dr. Cork expected that CC-PA would maintain sufficient reserves. Dr. Cork was also never informed that she would be charged for earthquake insurance costs related to anything other than furniture, fixtures, and equipment at the Vi at Palo Alto, or that she would be charged for marketing fees used to generate Entrance Fees to upstream to CC-DG. The failure to disclose these important facts was a substantial factor in causing harm to Dr. Cork.

59. Dr. Cork is 77 years old. Dr. Cork is the Chair of the Vi at Palo Alto's Resident Advisory Council. Dr. Cork received her D.V.M. from Texas A&M College of Veterinary Medicine (1970), a Ph.D. from Washington State University (1974), and was certified as a Diplomate of the American College of Veterinary Pathologists (ACVP) in 1975. Dr. Cork was a Professor at the Johns Hopkins University School of Medicine prior to moving to Stanford University in 1994 where she became Chairman of the Department of Comparative Medicine in the School of Medicine. Dr. Cork retired as Chair in September, 2009, and became an *emerita* in 2012. Dr. Cork has served on advisory and review boards for the National Institutes of Health and the National Academy of Sciences and she is a member of the Institute of Medicine. She is the author of more than 150 scientific papers.

3. **Georgia Lee May**

60. Georgia Lee May moved to the Vi at Palo Alto in November 2005, and she currently resides there. Ms. May's entrance fee was \$633,200. *See* May Refundable Residency

1 Contract (Ex. 12) at 6. Under the terms of her Promissory Note, 90% of her Entrance Fee is
2 refundable, and she is currently owed \$569,880. *See* May Promissory Note (Ex. 13) at 2.

3 61. Ms. May was never informed that CC-PA intended to transfer her Entrance Fees
4 upstream to CC-DG. Ms. May was never informed that CC-PA did not intend to maintain cash
5 reserves to cover its Entrance Fee refund obligations. Ms. May expected that CC-PA would
6 maintain sufficient reserves. Ms. May was never informed that she would be charged for
7 earthquake insurance costs related to anything other than furniture, fixtures, and equipment at the
8 Vi at Palo Alto, or that she would be charged for marketing fees used to generate Entrance Fees to
9 upstream to CC-DG. The failure to disclose these important facts was a substantial factor in
10 causing harm to Ms. May.

11 62. Ms. May is 87 years old. She received her Bachelor of Science in Occupational
12 Therapy from Washington University School of Medicine, where she was an intern, and later an
13 employee, of Karl A. Menninger. She is certified in Clinical Philosophy and was among the first
14 to practice this discipline. In recognition of her achievements in her field, she received an
15 honorary doctorate from Saybrook University in San Francisco.

16 **4. Thomas Merigan, M.D.**

17 63. Dr. Thomas Merigan moved to the Vi at Palo Alto in June 2011, and he currently
18 resides there with his wife, Sue Merigan. Dr. Merigan's entrance fee was \$1,223,900. *See*
19 Merigan Refundable Residency Contract (Ex. 14) at 6. Under the terms of his Promissory Note,
20 80% of his Entrance Fee is refundable, and he is currently owed \$979,120 on this fee.² *See*
21 Merigan Promissory Note (Ex. 15) at 2.

22 64. Dr. Merigan was never informed that CC-PA intended to transfer his Entrance
23 Fees upstream to CC-DG. Nor was he informed that CC-PA did not intend to maintain cash
24 reserves to cover its Entrance Fee refund obligations. Dr. Merigan expected that CC-PA would
25 maintain sufficient reserves. He was also never informed that he would be charged for earthquake
26 insurance costs related to the buildings at the Vi at Palo Alto, used to generate Entrance Fees to
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28 ² Dr. Merigan put forward an additional Entrance Fee in the amount of approximately \$1.2 million when he moved
to a larger unit, and 75% of this amount is refundable. He is currently owed over \$900,000 on this fee.

upstream to CC-DG. The failure to disclose these important facts was a substantial factor in causing harm to Dr. Merigan.

65. Dr. Merigan is 80 years old. He obtained his Bachelor's Degree at the University of California in Berkeley, and graduated from medical school at UC San Francisco in 1958. His internship and residency were at Harvard Medical Services at Boston City Hospital.

66. Dr. Merigan continued his career at the National Institutes of Health studying protein chemistry and bacteriophage genetics. He became an Assistant Professor of Medicine at Stanford University in 1963, subsequently heading the Division of Infectious Disease and founding the Diagnostic Virology Laboratory at Stanford. After becoming the first faculty member to hold the Becker Chair in Medicine in 1980, he established an AIDS research unit. Eighteen years ago, Dr. Merigan became principal investigator of the NIAID AIDS Clinical Trials Unit, and founded the Center for AIDS Research at Stanford in 1988. Dr. Merigan has edited over twenty books, published over 560 papers and holds twelve patents. These contributions made Dr. Merigan one of 200 most cited scientists in clinical medicine over the last 20 years. He was elected to the Institute of Medicine of the National Academy of Sciences in 1980.

5. Alfred Spivack, M.D.

67. Dr. Alfred Spivack moved to the Vi at Palo Alto on or about July 11, 2012, and he currently resides there. Dr. Spivack's entrance fee was \$2,005,600. *See* Spivack Refundable Residency Contract (Ex. 16) at 6. Under the terms of his Promissory Note, 80% of his Entrance Fee is refundable, and he is currently owed \$1,604,480. *See* Spivack's Promissory Note (Ex. 17) at 2.

68. Dr. Spivack was never informed that CC-PA intended to transfer his Entrance Fees upstream to CC-DG. Nor was he informed that CC-PA did not intend to maintain cash reserves to cover its Entrance Fee refund obligations. Dr. Spivack expected that CC-PA would maintain sufficient reserves. Dr. Spivack was never informed that he would be charged for earthquake insurance costs other than furniture, fixtures and equipment at the Vi at Palo Alto, or that he would be charged for marketing fees used to generate Entrance Fees to upstream to CC-DG. The failure to disclose these important facts was a substantial factor in causing harm to Dr. Spivack.

1 69. Dr. Spivack is 86 years old. He was widowed in 2000. He had been married to his
2 wife Anita Jaron since 1959. Dr. Spivack was a Clinical Professor of Medicine at Stanford
3 starting in 1959 when he moved to the Bay Area. He practiced as a cardiologist. In 1993 he left
4 the practice of medicine and joined a small pharmaceutical company. He was the director of
5 medical services at that pharmaceutical company until 2000 when he became a consultant.

6 **6. Janice Robb Anderson**

7 70. Janice Anderson moved to the Vi at Palo Alto on August 29, 2005, and she
8 currently resides there with her husband William S. Anderson. Ms. Anderson's Entrance Fee
9 was \$1,856,400. *See* Anderson's Refundable Residency Contract (Ex. 18) at 6. Under the terms
10 of her Promissory Note, 90% of her Entrance Fee is refundable, and she is currently owed
11 \$1,670,760. *See* Anderson Promissory Note (Ex. 19) at 2.

12 71. Ms. Anderson was never informed that CC-PA intended to transfer her Entrance
13 Fees upstream to CC-DG. Nor was she informed that CC-PA did not intend to maintain cash
14 reserves to cover its Entrance Fee refund obligations. Ms. Anderson expected that CC-PA would
15 maintain sufficient reserves. Ms. Anderson was never informed that she would be charged for
16 earthquake insurance costs other than furniture, fixtures, and equipment at the Vi at Palo Alto, or
17 that she would be charged for marketing fees used to generate Entrance Fees to upstream to CC-
18 DG. The failure to disclose these important facts was a substantial factor in causing harm to Ms.
19 Anderson.

20 72. Ms. Anderson is 93 years old. Ms. Anderson had a varied and full career which
21 included work for IBM, work as a reporter for Stars and Stripes and work in Japan during the
22 occupation, where she and her husband lived for twelve years.

23 **IV. FACTUAL BACKGROUND**

24 **A. The Vi at Palo Alto**

25 73. The Vi at Palo Alto is located on approximately 22.41 acres of land, leased under
26 a 75-year Ground Lease (the "Ground Lease") from Stanford University and whose street
27 addresses are 600 and 620 Sand Hill Road, Palo Alto, California (Ex. 20).

28 74. The Vi at Palo Alto consists of the following facilities:

- 1 (a) An Independent Living Facility consisting of 388 apartments along with
2 dining and activity facilities and other common areas; and
3 (b) A 106-unit Care Center consisting of assisted living, memory support and
4 skilled nursing units.

5 **B. The Refundable Residency Contracts**

6 75. Prior to entering the Vi at Palo Alto, the Plaintiffs and the Class provided
7 personal, financial and medical information to CC-PA, and entered into Refundable Residency
8 Contracts with CC-PA. Since Vi-PA contracts were “refundable” Defendants violated the law
9 by not keeping legally required reserves and not disclosing lack of reserves.

10 76. These Refundable Residency Contracts were prepared by Defendants and their
11 counsel long before the first residents were admitted to the Community. They are contracts of
12 adhesion that are provided on a “take-it-or-leave-it” basis that does not permit negotiation. This
13 adhesive quality coupled with the emphasis on the extensive waiting list for the Vi at Palo Alto,
14 the limited-time availability of apartments, and the risk that the elderly prospective resident may
15 unexpectedly become disqualified by illness, all create substantial pressure on prospective
16 residents to sign the Refundable Residency Contract quickly or lose the opportunity to become
17 residents of the Community.

18 **C. Plaintiffs Loaned Substantial Entrance Fees to CC-PA**

19 77. The Entrance Fees provided to CC-PA by Plaintiffs and the Class are in the form
20 of “loan[s]” to CC-PA, as provided by their Refundable Residency Contracts. *See, e.g.*, Ex. 8 at
21 Section 8.5. The terms of each loan is governed by California law and a Promissory Note that is
22 incorporated by reference in the Refundable Residency Contract. *Id.*; *see also, e.g.*, Ex. 9.
23 Plaintiffs made these loans because they were promised that 70%-90% of these fees were
24 refundable upon their departure from the Vi at Palo Alto.

25 78. The percentage of the Entrance Fee that must be refunded under the terms of
26 Plaintiffs’ Promissory Notes is based on the date the resident loans the Entrance Fee. Over time,
27 the percentage of the Entrance Fee that is refundable has decreased.

79. Over time, the Entrance Fees at Vi at Palo Alto have increased, but they have always been substantial. Below is the fee structure as of 2014:

| Type of Apartment | Entrance Fees Starting At | Monthly Fees Starting At |
|------------------------|---------------------------|--------------------------|
| One Bedroom | \$745,500 | \$4,320 |
| One Bedroom with Den | \$1,124,800 | \$5,100 |
| Two Bedroom | \$1,247,900 | \$5,550 |
| Two Bedroom with Den | \$1,986,200 | \$6,780 |
| Three Bedroom with Den | \$4,620,800 | \$9,320 |

D. CC-Palo Failed to Maintain Financial Reserves Sufficient to Refund the Amounts Owed on Plaintiffs' Entrance Fees

80. Plaintiffs' Refundable Residency Contracts are "refundable contract[s]" within the meaning of California Health & Safety Code §1771(r)(2). This provision is provided below in full:

"Refundable contract" means a continuing care contract that includes a promise, expressed or implied, by the provider to pay an entrance fee refund or to repurchase the transferor's unit, membership, stock, or other interest in the continuing care retirement community when the promise to refund some or all of the initial entrance fee extends beyond the resident's sixth year of residency. Providers that enter into refundable contracts shall be subject to the refund reserve requirements of Section 1792.6. A continuing care contract that includes a promise to repay all or a portion of an entrance fee that is conditioned upon reoccupancy or resale of the unit previously occupied by the resident shall not be considered a refundable contract for purposes of the refund reserve requirements of Section 1792.6, provided that this conditional promise of repayment is not referred to by the applicant or provider as a "refund."

81. Under the terms of the Refundable Residency Contracts and the Promissory Notes, the principal of the Note is due when the contract has been terminated (either by the Resident leaving the Community, or dying), and either (a) 14 days after resale of the resident's apartment, or (b) 10 years after termination of the Agreement, whichever occurs first. (*See, e.g.*, Ex. 8 at Sections 8.2, 8.3 and 9.1.2). The refund obligation is thus not contingent on resale or reoccupancy of the apartment, and the agreement is a "refundable contract" within the meaning of California Health & Safety Code § 1771(r)(2). The contract is not contingent on resale because CC-PA's refund obligation is not contingent on resale of the apartment: even if the apartment were never resold, the refund obligation would be due 10 years after termination of the

1 Agreement. The refund obligation extends beyond the residents' sixth year of residency because
2 under the Vi at Palo Alto Refundable Residency Contracts the refund obligation remains in place
3 regardless of how many years the resident remains. In other words, it does not matter if a
4 resident stays two years or fifteen years – they are still owed the same refund. These facts taken
5 alone are sufficient to find that the Vi at Palo Alto contracts constitute “refundable contracts”
6 within the meaning of the California Health and Safety Code. Indeed, CC-PA regularly refers to
7 the obligation as a “refund” obligation. Prior to signing their Refundable Residency Contracts
8 Plaintiffs were told that a large portion of their Entrance Fee would be “refundable.” One agent
9 who made widespread statements about the refundable nature of the Entrance Fees was Barry
10 Johnson, Senior Sales Director for Classic Residence by Hyatt in Palo Alto (now known as CC-
11 PA). For example, Barry Johnson made the following statement about the refundable nature of
12 the Entrance Fees to the Stanford Report (as published May 23, 2001):

13
14 Rates are structured so that residents pay an “entrance fee” ranging from
15 \$600,000 to \$1.7 million, Johnson said. Ninety percent of the entrance fee will be
16 refunded to residents when they leave the senior living center or will be refunded
to their estates, he said.

17 See, Ex. 1, at page 20. Classic Residence by Hyatt (CC-PA) published a guidebook for
18 prospective residents entitled “Your Guide to Navigating Continuing Care and Life Care
19 Retirement Communities” which contained the following tip:

20 ***Do CCRCs refund the entrance fee?***

21 Many, but not all, CCRCs make the entrance fee partially refundable if the
22 resident leaves the community after a specified period of time...

23 See Ex. 21

24 82. On June 12, 2005 SFGate published an article with quotes from Barry Johnson,
25 which again described ***refundable*** entrance fees. See, Ex. 22, *Hyatt's gonna keep 'em down on*
26 *The Farm / Upscale senior living opening next to Stanford*, dated June 12, 2005.

27 83. The Refundable Residency Contracts refer to “refunds” throughout the contract.
28 See e.g., Ex. 23, at Sections 3.1.6 (“refund” used three times), 6.1 (“refund” used four times), 6.2

1 (“refund” used three times), 6.3 (“refund” used three times), 7.4, 8.4, 8.4.5, 9.1, 9.2, 9.3, 9.4, 9.5,
2 9.6. In this same contract financials are attached that reflect “refunds” made to residents, not
3 “repayments.” *See*, Ex. 23, attached Consolidated Statements of Cash Flows, Years ended
4 December 31, 2009 and 2008, which account for “refunds paid” as a line item and also refer to
5 “proceeds from entrance fees net of certain refunds” in the notes. A layperson reading the
6 Refundable Residency Contracts would have seen all the references to “refunds” and understood
7 that they were entitled to a “refund” when they vacated their apartment. Similarly in a letter
8 dated August 31, 2012 to potential residents of the Vi at Palo Alto, Randal Richardson, President
9 of CC-DG, referred to “CC-Palo Alto’s obligation to **refund** a significant portion of the entrance
10 fee when the resident departs the project and his or her unit is resold.” (Ex. 24). (Emphasis
11 added).

12 84. California law requires that CC-PA retain sufficient reserves to cover its refund
13 obligations. Specifically, California Health & Safety Code § 1792.6(a) states that “[a]ny provider
14 offering a refundable contract, or other entity assuming responsibility for **refundable** contracts,
15 **shall maintain a refund reserve fund in trust for the residents.**” Section 1793(a) similarly
16 states that a “provider offering a refundable contract, or other entity assuming responsibility for
17 refundable contracts, shall maintain a refund reserve fund in trust for the residents.” Finally,
18 section 1793(f) states that “[a]ll continuing care retirement communities offering refundable
19 entrance fees that are not secured by cash reserves, except those facilities that were issued a
20 certificate of authority prior to May 31, 1995, shall clearly disclose this fact in all marketing
21 materials and continuing care contracts.” In sum, these provisions require CCRC providers, such
22 as CC-PA, to maintain a certain level of cash reserves for payments due on the Refundable
23 Residency Contracts and to disclose their failure to do so.

24 85. Despite these clear requirements, Defendants admit that “there is no entrance fee
25 repayment reserve.” Ex. 6 at 1 (emphasis added). Moreover, CC-DG takes the position that it
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1 does not have any obligation to refund Plaintiffs or the Class the amounts due under their
2 Promissory Notes. (*See* Ex. 6 at 1).³

3 86. CC-PA also never disclosed to Plaintiffs or the Class that it did not maintain cash
4 reserves, nor did it disclose that it was not in compliance with California law. In fact, CC-PA
5 expressly told in-coming residents that the money they paid would remain at the Provider in Palo
6 Alto. For example, CC-PA, through its employee Barry Johnson, told Plaintiff Linda Cork prior
7 to the date that she signed her Refundable Residency Contract that her Entrance Fee payment
8 would remain locally with CC-PA, and would not be transferred between entities or otherwise.
9 CC-PA, including through Barry Johnson, told incoming residents that "Hyatt" did not make any
10 profit on operations -- that operations were a break even proposition for them. Mr. Johnson was
11 available to Stanford faculty and emeriti faculty as an "advisor" with an office on Cowper Street
12 in Palo Alto. He was described as someone who could advise potential residents about the
13 financial structure of the contracts. In addition, prior to the Vi at Palo Alto opening there was an
14 open meeting held on Stanford Campus in which Mr. Johnson came and made a presentation, the
15 purpose of which was to drum up interest in CC-PA.

16 87. CC-PA's failure to maintain sufficient cash reserves to refund the Entrance Fees,
17 and non-disclosure of this fact, is a direct and ongoing violation of Health & Safety Code §§
18 1972.6 and 1973, an impairment of Plaintiffs' security interest, and a breach of the implied
19 reserve requirement term of the Refundable Residency Contracts and Promissory Notes.

20 88. Defendants' failure to disclose the absence of a refund reserve constitutes financial
21 elder abuse and fraud. None of the marketing materials that CC-PA used to lure Plaintiffs and
22 other residents contained a disclosure that the refundable entrance fee was unsecured by a cash
23 reserve, or that CC-PA intended to funnel entrance fees to CC-DG. Further, the Refundable
24 Residency Contracts conceal the fact that there is no cash reserve. This was a materially
25 important disclosure for in-coming residents, including Plaintiffs, because these Entrance Fees
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28 ³ CC-Palo Alto established a reserve for refunds of Entrance Fees for residents entering the Community after June 1, 2012 (the "Post-June 2012 Residents"); however, these reserves represent only approximately 6% of the Entrance Fee refunds due to the Post-June 2012 residents, and does not cover the rest of the residents at all.

1 represent a significant portion of Plaintiffs' estates, and, as a consequence, of the funds they
2 properly anticipated would be conveyed to their heirs.

3 89. The reserve requirement and the fact that CC-PA never disclosed that there were
4 no reserves created clear expectations on behalf of the Plaintiffs and the Class that the refundable
5 portion of their Entrance Fees would be secured by cash reserves.

6 **E. CC-PA Falsely Represented to Plaintiffs' That Their Entrance Fees Would be**
7 **Secure**

8 90. CC-PA's promotional materials for the Vi at Palo Alto touted to prospective
9 residents a sense of security and reduced financial worries, including the following statements:

10 [Residents experience] a sense of security, knowing they have made a good
11 choice. They know their entrance fee refund will not fluctuate with changes in
12 the market.... Our residents enjoy a vibrant and enriching lifestyle with the
knowledge that they have planned wisely to secure their future.

13 (Ex. 18, Letter dated October 9, 2008 from Classic Residence by Hyatt to Residents).

14 91. Attached as Ex. 26 is another marketing brochure provided to prospective
15 residents, which contains the following representations:

16 Another key difference between CCRCs and rental communities is that
17 rental communities are not subject to the same State of California oversight
18 and regulations, which are designed to ensure that strong financial
management is in place at CCRCs.

19 ***Why is there an entrance fee? What does it cover?***

20 To have the financial resources needed to operate as a CCRC, retirement
21 communities in California typically need to charge an entrance fee and a
22 monthly fee. The fees cover independent living; services such as dining,
23 housekeeping, 24-hour concierge service, and maintenance of the grounds
24 and homes; access to community amenities; and the benefits of the
25 continuing care program.

26 ***Why is there an entrance fee for a second person?***

27 An additional entrance fee is charged for a second person to help cover the
28 cost of services and continuing care benefits for that person.

1 *Who monitors or regulates CCRCs and the fees collected by these communities?*
2 *What guarantee do I have that my reservation deposit and my entrance fee are*
3 *secure?*

4 The California DSS continues to regulate the community after the release of
5 the funds and requires the community to maintain certain cash reserves in
6 amounts sufficient to meet State requirements. The CCRC must also file
7 annual reports with the State that demonstrate continuing strong fiscal
8 management and financial solvency.

9 See Ex. 26.

10 92. The above quoted statements from Ex. 26 portray to residents that their Entrance
11 Fees were guaranteed to be secure (CC-PA even used the term “guarantee”), that CC-PA would
12 abide by State requirements including requirements for cash reserves, CC-PA would have
13 “strong financial management,” and that the Entrance Fees would be used to help cover the costs
14 of services and benefits delivered to residents of CC-PA. What happened instead is CC-PA has
15 deliberately flaunted statutory requirements, has bled CC-PA dry to the point the company is
16 insolvent, and has treated Entrance Fees as profits to be upstreamed to CC-DG.

17 93. The essence of CC-PA’s offering to prospective residents – most entering in their
18 80s – has been that it will take care of them and enhance the last chapter of their lives, and that Vi
19 will be their home for the remainder of their lives. The use of Penny Pritzker’s name and the
20 Hyatt name in connection with the sales and promotion of the CC-PA also strongly suggested that
21 CC-PA was a stable institution, and that Plaintiffs’ Entrance Fees would be secure.

22 94. Behind these appearances however, CC-PA’s transactions with CC-DG, paint a
23 troubling picture. Due to CC- Palo Alto’s illegal upstreaming of funds to CC-DG, it has a deficit
24 of over \$300 million and outstanding obligations to Plaintiffs of over \$460 million. Nowhere in
25 CC-PA’s advertising and promotional materials, or in its Contract, or in its continuing disclosures
26 to its residents, does it discuss any of the above-referenced transactions or financial difficulties.
27 CC-PA never disclosed that it would be transferring the Entrance Fees to CC-DG. Plaintiffs
28 reasonably expected that CC-PA would hold the Entrance Fees. (Since the filing of the complaint,
29 CC-PA has amended and supplemented its documentation in an attempt to disclose its business
30 plan to distribute cash reserves to CC-DG.)

1 95. Neither prospective nor existing residents are provided with any financial records
2 of CC-DG. This includes the concealment of CC-DG's obligations to its other continuing care
3 facilities, and how these obligations might affect its continued ability to support CC-PA.

4 96. The effect of these practices is to shift all financial risk to the resident, which
5 substantially impairs the value of Plaintiffs' security interest.
6

7 **F. Over Time the Stanford Ground Lease Will Reduce CC-PA's Ability to**
8 **Refund Plaintiffs' Entrance Fees**

9 97. The 75-year term of the Stanford Ground Lease runs from July 1, 2005 to June
10 30, 2080, when it expires. Under the Ground Lease, CC-PA's ability to require new Entrance
11 Fees is reduced over time, and is eventually eliminated as shown in Table 1 below:

| Restriction Begins After: | Elimination of Refundable Portion of Entrance Fee and of Provider's CCRC Program Before the End of the Term |
|--------------------------------------|--|
| July 1, 2035 | Maximum Refundable Entrance Fee is reduced to 50% |
| July 1, 2050 | Further Refundable Entrance Fee offering is prohibited |
| July 1, 2065 | Provider may no longer enter into CCRC Contracts, and may offer only year-to-year occupancy and separate private-pay terms in the Care Center. |

12 98. As a result, CC-PA's ability to raise the funds necessary to refund earlier
13 residents' Entrance Fees by borrowing new Entrance Fees from incoming residents will be
14 gradually eliminated. CC-PA will require new sources of funds for its continuing obligations,
15 but will have no reserves set aside and cannot rely on CC-DG, which denies any obligation to
16 invest or loan additional capital to CC-PA.

17 **G. Insolvency of CC-PA Resulting from CC-DG Business Plan**

18 99. At all relevant times since CC-PA admitted the first residents to the Community
19 in 2005, CC-PA's liabilities have exceeded a reasonable market value of its assets, and according
20 to CC-PA's audited year-end financial statements, its "Total Stockholder's Deficit" (i.e.,
21 negative net worth) has increased from (\$106,317,195) at December 31, 2005 to (\$310,105,928)
22 at December 31, 2013. At the same time, during the period from 2005 through December 31,
23
24
25
26
27
28

1 2013, CC-PA's obligations to residents entering the Community under CC-PA's Entrance Fee
2 Notes have increased from approximately \$307,288, 000, at December 31, 2005, to
3 approximately \$463,649,000, at December 31, 2013.

4 100. In 2005, using Entrance Fees borrowed from entering residents, CC-PA repaid to
5 CC-DG all of the \$23,234,499 of capital that CC-DG had invested as capital in CC-PA. Since
6 that time, CC-DG has never invested additional capital in CC-PA. As the result, since 2005,
7 following receipt of Entrance Fees from the first residents entering the Community, CC-PA has
8 had no paid-in equity capital; CC-DG has had no capital investment in CC-PA; and CC-DG, as
9 CC-PA's sole shareholder, has had no capital at risk from its ownership and operation of CC-PA.

10 101. From 2005 through 2013, CC-PA has had no surplus within the meaning of
11 Section 170 and 173 of the Delaware General Corporation Law.

12 102. In each year from 2005 through 2013, CC-PA has had insufficient funds to repay
13 its borrowing from residents in the Care Center as its obligations to such residents have matured
14 upon death or departure of such residents. As the result, CC-PA has been required to ask for
15 cash from CC-DG to enable CC-PA to pay its maturing obligations. CC-DG has voluntarily
16 made such advances, but denies that it had any obligation to do so in the future. The situation
17 affecting the Care Center residents is especially egregious because CC-PA has resold their
18 apartments and, instead of keeping the proceeds from the Entrance Fee paid by the new resident
19 in order to repay the Care Center resident, CC-PA has upstreamed the money. Thus, Plaintiffs
20 and the Class must hope CC-DG is still around and will voluntarily pay when their refunds come
21 due.

22 103. Beginning in 2005, following receipt of borrowed Entrance Fees from the first
23 residents entering the Community, and in each year thereafter, through 2013, CC-PA distributed
24 to CC-DG, net of voluntary advances from CC-DG, millions of dollars in dividends of CC-PA's
25 liquid funds from borrowed Entrance Fees, even though in each of such years, CC-PA had no
26 earnings, and indeed had a net loss from its operations, and had a need for a large amount of cash
27 as required for statutorily required and prudent business reserves. As a result of these
28 distributions, from 2005 through December 31, 2013, CC-DG received from CC-PA an

1 aggregate of approximately \$219,243,000 of CC-PA's liquid funds. On information and belief,
2 in 2014, CC-PA has continued to make such distributions to CC-DG. CC-DG denies any
3 obligation to return these distributions, regardless of CC-PA's financial condition or needs.

4 104. Such distributions by CC-PA to CC-DG were made, and have continued in each
5 year pursuant to a business plan of CC-DG to exercise its control over CC-PA to use CC-PA as a
6 source of cash for CC-DG's business needs. CC-DG and CC-PA conspired to conceal this
7 business plan from prospective residents.

8 105. CC-PA's distributions of its liquid assets to CC-DG pursuant to CC-DG's
9 business plan: (a) have materially contributed to CC-PA's negative net worth; (b) have caused
10 CC-PA to fail to establish statutorily required refund reserves to secure its obligations to the
11 residents, as its creditors, as they matured; (c) have caused CC-PA to fail to establish prudent
12 reserves for major operating contingencies, such as damage or destruction to the Community
13 from natural or man-made disasters; (d) have caused CC-PA to be unable to pay its obligations to
14 Care Center residents as they matured without financial assistance from CC-DG; and (e) have
15 caused CC-PA improperly to allocate its ownership and operating costs to the residents.

16 **H. Violation of the Obligations of CC-PA's Board of Directors**

17 106. At all relevant times from the first residents' entry into the Community in 2005, to
18 the current time, the CC-PA Board of Directors has never addressed: (a) CC-PA's increasing
19 negative net worth; (b) CC-PA's inability to pay its obligations owed to residents under its
20 outstanding Entrance Fee Notes as they matured without payments from CC-DG; (c) whether
21 CC-PA had sufficient surplus from which to pay dividends to CC-DG; or (d) the other matters
22 complained of in this Complaint.

23 107. During the period from the first residents' entry into the Community in 2005, to
24 the current time, CC-PA has never held a Board Meeting at all. In lieu of any meetings of the
25 Board, once each year, the Directors of CC-PA have taken action by unanimous written consent
26 pertaining to the matters affecting CC-PA. From 2005 through 2011, such action by unanimous
27 written consent of the CC-PA Board includes only boilerplate resolutions in substantially the
28 following form:

1
2 “FURTHER RESOLVED, that all distribution, dividend and/or capital
3 contribution transactions between the Corporation and its stockholders that have
4 been recorded in the books and records and tax returns of the Corporation from
5 time to time, if any, shall be, and they are hereby, authorized, ratified, confirmed
6 and approved for all purposes and in all respects;”

7 “FURTHER RESOLVED, that all acts and deeds of the Chairperson, Vice
8 Chairman, President, Vice President, Secretary, Assistant Secretary or any other
9 officer of the Corporation taken prior to the date hereof to carry out the intent and
10 accomplish the purpose of the foregoing resolutions are hereby approved,
11 adopted, ratified and confirmed in all respects as the acts and deeds of the
12 Corporation;”

13 *See, Ex. 27.*

14 108. Since 2011, the unanimous written consent of the CC-PA Directors has omitted the
15 above boilerplate resolutions in favor of a shorter, simpler resolution:

16 “FURTHER RESOLVED, that any document heretofore executed and any action
17 heretofore taken by any director or proper officer of the Corporation in
18 furtherance of the business of the Corporation otherwise permitted under or
19 contemplated by these resolutions be, and each of them hereby is, ratified,
20 confirmed and approved for all purposes and in all respects.”

21 *See, Ex. 28.*

22 109. Under Section 170 of the Delaware General Corporation Law, only the Board of
23 Directors of CC-PA is granted the authority, after having satisfied its statutory responsibilities, to
24 declare and authorize CC-PA to pay legal dividends to CC-DG, CC-PA’s sole shareholder. None
25 of the dividends paid by CC-PA officers to CC-DG during the period from 2005 through the
26 present day, were paid by them following CC-PA’s Board of Directors consideration of the
27 economic stability of CC-PA.

28 110. The above boilerplate resolutions of CC-PA’s Board of Directors represent an
attempt, made after the fact, to “legalize” illegal actions that had been taken by CC-PA officers to
pay dividends to CC-PA without prior, legally effective action of the CC-PA Board of Directors.
Such boilerplate resolutions after the fact of such dividend payments do not satisfy the required
duty of care and the required actions of a Board of Directors to declare a valid dividend under

1 Delaware law. The CC-PA Board's motive is transparent. As a puppet of CC-DG, to whom all
2 of the CC-PA Directors owe their positions in the companies, the Board of Directors has preferred
3 the interests of CC-DG over the interests of CC-PA and of the residents as its primary creditors.

4 111. In making such distributions for the sole benefit of CC-DG, and to the economic
5 detriment of CC-PA, and in failing to comply with Sections 170, 173 and 174 of the Delaware
6 General Corporation Law, the CC-PA Directors have violated their obligations to CC-PA and to
7 the residents, as its creditors. Such actions and inactions of the CC-PA Board were not taken in
8 good faith and involve a knowing violation of law, including California Health and Safety Code
9 Section 1792.6.

10 112. In § 1771.8(a) of the California Health & Safety Code, the Legislature recognizes
11 that:

12 “(1) The residents of continuing care retirement communities have a
13 unique and valuable perspective on the operations of and services
14 provided in the community in which they live.

15 (2) Resident input into decisions made by the provider is an important
16 factor in creating an environment of cooperation, reducing conflict, and
17 ensuring timely response and resolution to issues that may arise.”

18 To implement the policies evidenced by the above recognition of the need for adequate
19 resident input into provider decision making, Health & Safety Code § 1771.8(j) requires that CC-
20 DG, as a “multi-CCRC provider,” afford the residents the opportunity to designate at least one
21 nonvoting resident representative to CC-DG's board of directors for each California-based
22 [CCRC] the provider operates” Under Health & Safety Code § 1771.8 (m)(1) with only
23 exceptions for executive sessions of the governing body *not related* to matters other than annual
24 budgets, increases in monthly fees and other matters affecting the residents, such “resident
25 representative shall receive the same notice of board meetings, board packets, minutes, and other
26 materials as members and shall be permitted to attend, speak, and participate in all meetings of
27 the board.”

28 113. CC-DG and CC-PA have never complied with these requirements of § 1771.8;
have never permitted a representative of the residents to participate in CC-DG's or CC-PA's

1 Board Meetings; and by causing CC-PA not to hold meetings of its Board, have deprived
2 residents of their rights under § 1771.8(m), to appear and be heard about why CC-PA's
3 distribution of its cash reserves to CC-DG was in violation of law, was a violation of CC-PA's
4 obligations to the residents under its Refundable Residency Contracts, and was against the
5 financial interests of CC-PA and the residents, in their capacities a residents and creditors of CC-
6 PA.

7 114. CC-DG's and CC-PA's violation of their obligations under § 1771.8 further
8 evidences their intent to deprive the residents of their rights under California law and to conceal
9 from them, CC-DG's and CC-PA's plan to distribute to CC-DG, CC-PA's cash reserves on a non-
10 recourse basis.

11 **I. Defendants Have Charged Plaintiffs Inflated Monthly Fees**

12 **1. CC-PA Improperly Allocated Property Tax Liabilities to Plaintiffs**

13 115. CC-PA's upstreaming of its cash resources to CC-DG has caused the Santa Clara
14 County Tax Assessor ("Assessor") to increase its property tax assessment for CC-PA's property.
15 Defendants have indicated that they will pass these taxes onto Plaintiffs and the Class in the form
16 of higher monthly fees and a reduced operating surplus.

17 116. The Vi at Palo Alto consists of two Assessor's Parcel Numbers: one for the Care
18 Center (APN 142-02-021) and one for the Independent Living Facility (APN 142-02-020).
19 Stanford University leased these parcels to CC-PA on August 1, 2000 for a term of 75 years. On
20 April 1, 2011, the Assessor served CC-PA with a 10-day raise letter. Ex. 29. The raise letter
21 provided formal notice of the Assessor's intent to seek an additional increase in the total assessed
22 value of the Vi at Palo Alto of approximately **\$51 million**. Ex. 29.⁴ The letter was written in
23 advance of a previously scheduled hearing in front of the Assessment Appeals Board ("AAB").

24 117. After the hearing, the AAB found that CC-PA's upstream transfer of over \$174
25 million to CC-DG constituted "**Entrepreneurial Profit**," which the AAB included as taxable in
26 its property tax appraisal. *See* the AAB's Findings and Conclusions (Ex. 30) at 3, 5, 8, and 11.

27
28 ⁴ The letter increased the assessment to the independent living facility parcel in the amount of \$43,130,145 and increased the assessment for the continuing care parcel in the amount \$8,088,277 for a total of over \$51 million.

1 Defendants have since determined that this will amount to an increase in back taxes in “excess of
2 \$12 million,” and in additional tax assessments of \$1.9 million annually. *See* Letter from Randal
3 Richardson, dated August 31, 2012 (Ex. 24) at 1.

4 118. On September 5, 2012, CC-PA filed a complaint and petition for writ of mandate
5 in Santa Clara County Superior Court against the County of Santa Clara and the AAB. The
6 appeal is pending in an early stage.

7 119. Defendants have indicated that they will pay the “back taxes” until conclusion of
8 their appeal of the AAB decision, but that Plaintiffs will bear ultimate responsibility for those
9 taxes. Moreover, Defendants have indicated that Plaintiffs and the Class will pay any increased
10 property taxes confirmed in the appeal for all years following conclusion of the appeal. *Id.*

11 120. Prior to admission of the first residents to the Community, CC-PA adopted, and
12 attempted to make a part of the Residency Contracts, its 2005 “Policy on Surpluses and
13 Deficits,” under which CC-PA could unilaterally elect to retain monthly fees paid by the
14 residents (in reliance upon CC-PA’s operating budgets) that were in excess of the costs actually
15 incurred to operate the Community. Ex. 23. However, in its “Proposed Guidelines Regarding
16 Cumulative Operating Surplus (COS) 3/12/09,” CC-PA subsequently agreed with the residents to
17 modify that policy to require that CC-PA return to the residents any such operating surpluses
18 over a formula amount reasonably necessary to provide for operating contingencies, “unless then
19 available information indicates that greater retention may be necessary because of significant
20 unanticipated expenses or loss of revenue for the current year.” Ex. 7.

21 121. The unanticipated, materially increased property tax assessments resulting from
22 CC-PA’s unlawful dividend distributions of its cash reserves to CC-DG is not properly a “cost of
23 operating the Community.” It is unfair for CC-PA to claim that these are “costs of operating the
24 Community. Further, CC-PA had no authority under its Residency Contracts to withhold excess
25 operating surpluses from the Residents under the 3/12/09 “Proposed Guidelines,” referenced
26 above. Nevertheless, in an attempt to accumulate funds as security for CC-PA’s intention to
27 charge the residents for future increased property tax from CC-PA’s upstreaming of its cash
28 reserves, CC-PA (a) suspended its compliance with the 3/12/09 Proposed Guidelines; (b)

1 retained previously accumulated COS surplus due to the residents under the 3/12/09 Proposed
2 Guidelines; and (c) adopted operating budgets for the Community designed to result in additional
3 operating surplus to retain in the COS. By its August 31, 2013 letter, Defendants gave notice to
4 the residents of its intention to “suspend the crediting to residents of any excess amounts in the
5 Cumulative Operating Surplus ... until appeal of the base year assessment is completed.” *Id.*

6 122. Given that CC-PA’s upstreaming activities caused this increase in the property
7 taxes, the increase in taxes attributable to those activities should be borne entirely by Defendants.
8 Plaintiffs and the Class should not be penalized by Defendants’ decision to upstream these funds.
9 Plaintiffs never agreed to permit CC-PA to deplete its operating surplus to pay increased taxes on
10 entrepreneurial profit and Defendants should bear the consequences of their illicit activities.

11 123. Following institution of this litigation, CC-PA has partially returned to the
12 residents a portion of the COS funds that it had been improperly withholding. Nevertheless, CC-
13 PA breached its Residency Contracts and caused damage to the residents by wrongfully
14 collecting and withholding resident funds in excess of the reasonable costs of operating the
15 Community and in excess of the operating reserve permitted by CC-PA’s agreed operating
16 policy.

17 **2. CC-PA Improperly Allocated Earthquake Insurance Charges to**
18 **Plaintiffs**

19 124. Under the Stanford Lease, CC-PA is obligated to maintain earthquake insurance
20 coverage. The residents are denied any right to participate in decisions with respect to CC-PA’s
21 insurance coverages. CC-PA has stated that CC-DG currently carries \$50 million of insurance
22 coverage for earthquake damage to all of its facilities, with a required deductible of 5% of the
23 replacement value of each “structure” at the time of the loss, and allocates the costs of such
24 coverage among its several CCRC operations as it determines.

25 125. Under the Refundable Residency Contracts, “the costs of insurance policies” are
26 included in the “costs of operating the Community.” *See. e.g.*, Ex. 8 at 3.3.2. However, that
27 same provision limits these costs to “maintenance, repairs, and replacements of **capital items**
28 (including furnishings, fixtures and equipment.” *Id.* at 3.3.3. (Emphasis added). The Residency
Contracts emphasize that by entering into the Contracts, the residents acquire no real property

1 interest of any kind, in the buildings and improvements of the Community. *See* Ex. 8, at 11.6.
2 CC-PA’s “Policy for Capital Expenditure Responsibility at Classic Residence by Hyatt in Palo
3 Alto,” dated March 1, 2005 (before the Community opened to the first residents) confirms that
4 CC-PA is to retain financial responsibility for damage or destruction to the buildings and
5 improvements to the Community. *See* Ex. 32.

6 126. Plaintiffs reasonably expected that the residents’ obligations for the costs of
7 insurance policies would extend to coverage of those operating assets, such as furniture and
8 equipment, that are necessary to operate the Community—not the cost of insuring or replacing
9 CC-PA’s buildings and improvements (which residents are denied an interest in). The latter are
10 not “costs of operating the Community.”

11 127. In short, under a fair interpretation of the allocation of costs between CC-PA and
12 the residents, the Refundable Residency Contract requires that Defendants pay its costs of
13 ownership of its buildings and improvements, including to insure the buildings, and that the
14 residents pay to insure the Community’s furniture, fixtures and equipment (*i.e.* “capital items”)
15 which relate to its operations.. On that basis, all earthquake insurance costs (*i.e.* premiums and
16 deductibles) should be allocated in the same manner.

17 **3. CC-PA Improperly Allocates Marketing Costs to Plaintiffs**

18 128. The Refundable Residency Contract provides that monthly fees are “intended to
19 pay all costs of operating the Community” which include, in subpart (ix), “marketing costs.” *See*
20 *e.g.* Ex. 8 at 3.3.3. The Contract does not define the term “marketing costs.” The overarching
21 scheme by which Defendants repeatedly turn over apartments to generate Entrance Fees to be
22 upstreamed to CC-DG makes the full allocation of marketing fees to the residents
23 unconscionable.

24 129. These costs have been substantial. Plaintiffs have paid in excess of \$5.5 million
25 of marketing costs from March 2006 through 2013. A portion of these costs are attributable to
26 CC-DG’s national marketing campaign, and a portion to the upstreaming scheme. Plaintiffs
27 were never informed they would have to pay marketing costs associated with the promotion of
28

1 facilities other than Vi at Palo Alto. The imposition of these costs is improper, and Plaintiffs and
2 the Class are entitled to return of these funds.

3 **J. CC-PA Breached Its Fiduciary Duty to Plaintiffs**

4 130. The Vi at Palo Alto is home to nearly 600 Plaintiffs, approximately all of whom
5 intend to remain there for the rest of their lives. The average age of these residents is nearly 85,
6 and many of them are over 90. Over time, as their health deteriorates, Plaintiffs become less and
7 less physically, emotionally, and cognitively able to move out of the Vi at Palo Alto. CC-PA
8 was entrusted with large sums of money that Plaintiffs set aside for their retirement. CC-PA
9 asserts the unilateral right to determine the cost of residents' homes and their living environment
10 and denies the residents any right to participate in CC-PA's decisions about these essential
11 matters. The circumstances described herein give rise to a fiduciary duty to the residents on the
12 part of Defendants. CC-PA assumed the role of caregiver and business partner to Plaintiffs and
13 the Class. CC-PA therefore owes them duties of reasonable care, candor, manifest fairness, and
14 undivided loyalty. CC-PA had a duty to look out for the best interests of Plaintiffs and the Class
15 by maintaining the necessary reserves to refund their fees, and by fairly allocating to them its
16 costs of operating the Community.

17 131. Due to its fidelity to CC-DG, CC-PA failed to act as a fiduciary would have acted
18 in similar circumstances. It was incumbent on CC-PA to hold reserves sufficient to refund
19 Entrance Fees it borrowed from Plaintiffs and the Class. Instead, CC-PA transferred hundreds of
20 millions of dollars to CC-DG with no assurances that these fees would ever be refunded. CC-
21 DG has now disavowed any obligation to refund Plaintiffs and Class members the amounts due
22 on their Entrance Fees.

23 132. CC-PA owed a fiduciary duty to its creditors (*i.e.* the Plaintiffs) to use due care
24 and maintain reserves sufficient to cover its debts. CC-PA is insolvent.

25 133. CC-PA breached its duty of undivided loyalty to Plaintiffs and the Class through
26 this same conduct. CC-PA's financial transfers to its corporate parent drained it of the resources
27 necessary to refund Plaintiffs' Entrance Fees. These transfers were plainly against the interests
28 of Plaintiffs and the Class.

1 134. In sum, due to CC-PA's upstreaming activity, Plaintiffs' Entrance Fees have been
2 placed at risk, their security interest has been impaired, their contracts have been breached, they
3 have been defrauded, and they have been subjected to increased monthly fees, and improper
4 retention of surpluses that should have been returned to them and improper allocation of tax
5 assessments. The residents' monthly fees have been further inflated by Defendants' improper
6 allocations of earthquake insurance and marketing costs as "costs of operating the Community,"
7 which properly were Defendants' own costs. Each of these acts constitutes a breach of
8 Defendants' fiduciary duties to Plaintiffs and the Class.

9 135. Defendants harmed Plaintiffs in the following ways:

- 10 a. Upstreaming Plaintiffs' Entrance Fees to CC-DG;
- 11 b. Depleting CC-PA's liquid capital and hindering its ability to refund
12 Plaintiffs' Entrance Fees;
- 13 c. Maintaining reserves below the levels required by California law;
- 14 d. Impairing Plaintiffs' security interests underlying their Promissory Notes;
- 15 e. Concealing their intention to upstream Plaintiffs' Entrance Fees;
- 16 f. Failing to provide transparency in their financial decisions about the
17 operation of the Community;
- 18 g. Incurring a deficit of over \$300 million at CC-PA;
- 19 h. Improperly allocating costs to Plaintiffs for tax assessments, marketing
20 expenses and deductibles for earthquake insurance on the buildings of the
21 Vi at Palo Alto; and,
- 22 i. By transferring complete control over CC-PA to CC-DG with the result
23 that CC-PA disregards its duties to protect its assets and obligations and
24 the security of its creditor-residents.

25 26 **V. CLASS ALLEGATIONS**

27 136. Plaintiffs incorporate by reference all preceding allegations as though fully set
28 forth herein.

1 137. Plaintiffs bring this action as a class action against Defendants pursuant to Rule
2 23 of the Federal Rules of Civil Procedure.

3 138. CC-PA uses materially identical contracts for all residents, and makes the same
4 representations to each.

5 139. The named Plaintiffs seek to represent the following class:

- 6 (1) All residents of the Vi at Palo Alto from January 1, 2005 to the present
7 (the “Class”);
8 (2) Excluded from the Class are: Defendants, their officers, directors and
9 employees, and any entity in which Defendants have a controlling interest,
10 their agents, affiliates, legal representatives, heirs, attorneys at law,
11 attorneys in fact or assignees thereof.

12 140. Throughout discovery, Plaintiffs may find it appropriate or necessary to amend
13 the definition of the Class. Plaintiffs will formally define and designate a class definition when
14 they seek to certify the Class alleged herein.

15 141. **Numerosity.** The members of the defined class are so numerous that individual
16 joinder of all members of the Class is impracticable. Plaintiffs are informed and believe, and on
17 that basis allege, that there are hundreds of members in the Class. The identities of Class
18 Members are readily discernible using information contained in records in the possession or
19 control of Defendants.

20 142. **Commonality.** Class-wide common questions of law and fact exist and
21 predominate over questions affecting only individual Class members. Common questions
22 include, but are not limited to:

- 23 a. Whether Defendants participated in and pursued the course of conduct
24 complained of;
25 b. Whether Defendants’ conduct constitutes a breach of contract;
26 c. Whether Defendants’ conduct violated Delaware law;
27 d. Whether Defendants’ conduct violated Delaware Code, Title 8, §§ 170,
28 173, and/or 174;

- e. Whether Defendants' conduct violated California law;
- f. Whether Defendants' conduct constitutes unfair and/or unlawful business practices under California Business and Professions Code §17200;
- g. Whether Defendants conduct violates California Health & Safety Code §§ 1792.6, 1793 and 1793.5;
- h. Whether the Refundable Residency Contracts at issue in this case are "refundable contracts" under California Health & Safety Code §1771(r)(2).
- i. Whether Defendants conduct violates California Health & Safety Code § 1771.8;
- j. Whether Defendants' conduct violated California's Consumer Legal Remedies Act;
- k. Whether Defendants' conduct constituted financial elder abuse;
- l. Whether Defendants' conduct violated Welfare & Institutions Code § 15610.30;
- m. Whether Defendants engaged in misrepresentations or fraudulent concealment;
- n. Whether the Defendants breached their fiduciary duties to Plaintiffs and the Class;
- o. Whether Plaintiffs and the Class have sustained damages, and if so, the proper measure of damages;
- p. Whether the Plaintiffs and the Class are entitled to injunctive relief.

143. **Typicality.** The Plaintiffs' claims are typical of the claims of the Proposed Class. Plaintiffs and the Class were subject to the same promotional campaign by Defendants and the same facts were concealed from each of them. The security of the Plaintiffs and the Class has been impaired, and they have been charged additional costs. The Plaintiffs and the Class all paid inflated monthly fees. The Plaintiffs are entitled to the same types of damages, penalties, and

1 other relief. Plaintiffs' claims rest on the same theories and legal grounds as the members of the
2 class they seek to represent.

3 144. **Adequacy of Representation.** Plaintiffs are adequate representatives of the
4 Class because (a) their interests do not conflict with the interests of the individual Class members
5 they seeks to represent; (b) they have retained counsel who are competent and experienced in
6 complex class action litigation; and (c) they intend to prosecute this action vigorously. Plaintiffs
7 and their counsel will fairly and adequately protect the interests of the Class.

8 145. **Superiority of Class Action.** A class action is superior to other available means
9 for the fair and efficient adjudication of the claims of Plaintiffs and the Class. Each proposed
10 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
11 unlawful and unfair practices set forth above. Class action treatment will allow those similarly
12 situated persons to litigate their claims in the manner that is most efficient and economical for
13 the parties and the judicial system.

14 146. This case is maintainable as a class action under Fed. R. Civ. P. 23 (b)(2) because
15 Defendants acted or refused to act on grounds that apply generally to the class, so that final
16 injunctive or declaratory relief is appropriate respecting the class as a whole.

17 147. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because
18 questions of law and fact common to the proposed Class predominate over any questions
19 affecting only individual members of the proposed Class, and because a class action is superior
20 to other available methods for fair and efficient adjudication of this litigation.

21 148. Defendants' common and uniform practices subjected the proposed Class to
22 excessive and unauthorized costs and financial risk.

23 149. The individual claims of the members of the proposed Class are too small to
24 practically permit pursuit on an individual basis, even though the rights of the members of the
25 Class have been violated by Defendants' practices.

26 150. Class treatment is superior because it will obviate the need for unduly duplicative
27 litigation that might result in inconsistent judgments against Defendants' practices.
28

1 151. The Class is ascertainable because its members can be determined from
2 Defendants' business records, and the definition of the Class provided above is sufficient to
3 enable members of the Class to identify themselves.

4 **VI. FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS**

5 152. By reason of Director Defendants' positions with CC-PA as officers and/or
6 directors, said individuals are in a fiduciary relationship with CC-PA and owe a duty of highest
7 good faith, fair dealing, loyalty and full, candid and adequate disclosure to CC-PA. Furthermore,
8 due to the insolvency of CC-PA, Plaintiffs have standing to bring a derivative action on behalf of
9 CC-PA.

10 153. The derivative claims asserted herein are brought under Delaware state law which
11 requires every corporate director to act in good faith, in the best interests of a corporation.

12 154. Plaintiffs allege herein that the Director Defendants, separately and together,
13 violated the fiduciary duties that they owed to CC-PA, including their duties of loyalty, good
14 faith and independence, insofar as they have acted against the best interests of CC-PA by
15 upstreaming hundreds of millions of dollars out of CC-PA and to CC-DG thereby causing the
16 insolvency of CC-PA.

17 155. Plaintiffs allege herein that the Director Defendants, separately and together,
18 violated the fiduciary duties that they owed to CC-PA, including their duties of loyalty, good
19 faith and independence, insofar as they have acted against the best interests of CC-PA by
20 upstreaming hundreds of millions of dollars out of CC-PA and to CC-DG thereby causing the
21 insolvency of CC-PA.

22 **VII. DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

23 **A. General Derivative Allegations**

24 156. Plaintiffs bring this action derivatively in the right and for the benefit of CC-PA to
25 redress injuries suffered and to be suffered by CC-PA as a direct result of the breaches of
26 fiduciary duty by the Director Defendants. CC-PA is named as a nominal party solely in a
27 derivative capacity, as to Counts 11-13 and 15.⁵

28

⁵ CC-PA is named as a direct defendant as to the Class Action and declaratory relief Counts and Count 14.

1 157. Plaintiffs will adequately and fairly represent the interests of CC-PA in enforcing
2 and prosecuting its rights to a return of improperly upstreamed funds. Plaintiffs are creditors of
3 CC-PA and were creditors of CC-PA during all times relevant to the Director Defendants’
4 wrongful course of conduct as alleged herein.

5 158. In bringing the derivative action, Plaintiffs have satisfied all of the governing
6 statutory requirements of Delaware, CC-PA’s state of incorporation. First, Plaintiffs have
7 demonstrated their standing to bring the derivative action as creditors at the time the acts and
8 omissions complained of herein occurred, and they continue to be creditors of CC-PA. Second,
9 Plaintiffs will fairly and adequately represent the interests of CC-PA in enforcing the rights of
10 CC-PA against the Director Defendants and CC-DG, as detailed herein to pursue the return of
11 improperly upstreamed funds to CC-DG. Third, this derivative action is not being used by
12 Plaintiffs to gain any personal advantage, nor do Plaintiffs maintain any personal agenda other
13 than seeking to correct the wrongs that have been done to CC-PA in connection with the
14 upstreaming of funds. To this end, Plaintiffs have taken steps to file this action and have retained
15 counsel experienced in derivative litigation.

16 **B. Demand Futility**

17 **1. Plaintiffs’ Efforts to Address the Complained Of Conduct**

18 159. The residents, through their appointed resident representatives, have made
19 numerous attempts to resolve the issues raised by this Complaint, including particularly, the
20 illegal dividends that CC-PA has paid to CC-DG and the absence of reserves for CC-PA’s
21 contractual and statutory refund obligations to the residents. CC-PA’s Board of Directors and
22 officers have rebuffed all of such attempts. This provides direct evidence of demand futility.

23 **160. The Attempts to Resolve the Upstreaming and Resulting Tax Assessment.**
24 From April through August, 2012, representatives of the residents—the Resident Advisory
25 Council (“RAC”) and the Resident Finance Committee—engaged in numerous private
26 discussions with the Community’s Executive Director, an employee of CC-PA and CRMLP, and
27 held an April 12 meeting, an April 23 conference call, and an August 9 meeting with the
28 President and Senior Vice President and Chief Financial Officer of CC-DG and CC-PA

1 regarding the residents' concerns over upstreaming. During those meetings and conference call,
2 and in an August 31 letter from the Executive Director to the residents, the CC-DG and CC-PA
3 representatives confirmed that in reliance upon the residents' obligations to pay "all costs of
4 operating the Community" under the terms of their Residency Contracts, CC-PA would allocate
5 to the residents all future increased property taxes resulting from CC-PA's dividend distributions
6 to CC-DG following the conclusion of CC-PA's appeal of the increased assessment. (*See* Ex.
7 24).

8 161. During 2011 and 2012, the RAC also sent written communications to CC-PA—
9 including an April 27 letter from the RAC to the President and Chief Financial Officer of CC-
10 DG and CC-PA (*See* Ex. 33); a June 15 email from the RAC Chair to the CC-PA Board (*See* Ex.
11 34); and a September 7, 2012 letter from the RAC to the President of CC-PA (*See* Ex. 35)
12 objecting to any allocation of increased property taxes resulting from CC-PA's unilateral actions
13 in upstreaming money to CC-DG, and stating that increase in CC-PA's property taxes arising
14 solely from such distributions were not "costs of operating the Community."

15 162. As evidenced by the August 31, 2012, letter from the Community's Executive
16 Director to the residents (*See* Ex. 24),⁶ and by the September 25, 2012, response of the President
17 of CC-PA to the RAC's September 7, 2012 letter (*See* Ex. 36), CC-PA refused to bear all of the
18 increased property taxes found to have resulted from its dividend distributions to CC-DG;
19 confirmed its intention to charge the residents for such increased property taxes following
20 resolution of its appeal; and refused the residents' request for certain agreements protecting the
21 residents, including, but not limited to, a tolling of the statute of limitations on the residents'
22 claims, while the assessment was being appealed. To this day, CC-PA has never retracted its
23 insistence that under its unilateral, unrestricted right to allocate costs to the residents under their
24 Residency Contracts, unless restrained from doing so, it would allocate to the residents any
25

26 ⁶ Throughout the dialogue on the issues raised in this action, CC-PA and CC-DG have sought to intimidate the
27 Residents. At times, instead of responding directly to the RAC, Defendants individually delivered letters to each of
28 the residents' cubbies. At one point of time Defendants sought to meet in small groups with residents to convince
them to back down. This caused fear among the residents. Instead the Defendants convened a town hall where they
brought their attorneys to speak to the residents.

1 future increased property taxes resulting from its upstream distributions to CC-DG following
2 conclusion of its appeal.

3 163. **The February 28, 2013 Request for Private Negotiations.** By the RAC's
4 February 28, 2013 letter to Mr. Richardson, the President of CC-DG and CC-PA, the RAC
5 requested private negotiations with CC-DG and CC-PA about the matters that are the subject of
6 this litigation, including particularly, the failure of CC-PA to establish a reserve for its refund
7 obligations to the Residents and its persistence in allocating future increased property taxes
8 attributable to CC-PA's entrepreneurial profit to the residents. (*See* Ex. 37) By his March 13,
9 2013 letter on behalf of CC-DG and CC-PA, Mr. Richardson emphatically refused to engage in
10 any such private negotiations and accused the residents of attempting to change the terms of the
11 Residency Contracts. (*See* Ex. 38)

12 164. **The Request for Intervention by Penny Pritzker.** Following receipt of Mr.
13 Richardson's letter confirming CC-DG's and CC-PA's refusal to participate in private
14 negotiations, the RAC authorized a resident having a prior personal relationship with Ms.
15 Pritzker, to contact Ms. Pritzker privately, to request that she hear the residents' concerns and
16 that she provide her assistance in causing CC-DG and CC-PA to participate in private
17 negotiations. In early May, 2013, the resident who had contacted Ms. Pritzker confirmed that
18 she had declined to hear the residents' concerns or to intervene to cause CC-DG and CC-PA to
19 engage in negotiations.

20 165. **The Residents' Requested Mediation.** Having been rebuffed in the residents'
21 request for private negotiations, the only remaining avenue for resolution of the residents'
22 concerns, other than litigation, was the opportunity to request the formal mediation afforded to
23 the residents under their Refundable Residency Contracts. By on or about June 7, 2013, over
24 450 residents, representing over 90% of the independent living residents and over 75% of the
25 total residents then living in the Community, requested non-binding mediation of their concerns.

26 166. By its June 24, 2013 (*See* Ex. 39) and July 16, 2013 letters (*See* Ex. 40) to each of
27 the Vi at Palo Alto residents, CC-DG attempted to deter the residents from mediating their
28 concerns, first contending that their request was not in proper form and did not follow certain

1 technical procedures, and then suggesting, among other things, that senior officers of CC-PA
2 from Chicago hold private meetings with small groups of residents, without their advisors, to
3 convince them that their concerns were not proper under their Residency Contracts. In his July
4 19, 2013 letter to Messrs. Poorman and Richardson, Dr. Richter, on behalf of the RAC,
5 responded to the technical objections and other attempts to deter the residents from mediating
6 their concerns in CC-DG's June 24 and July 16 letters. *See*, Ex. 41. Not until its July 25 letter,
7 in response to Dr. Richardson's July 19 letter did CC-DG agreed to mediation (*See* Ex. 42).

8 167. Between July 12 and September 10, a 13-member "Mediation Committee,"
9 consisting of the 7 members of the RAC, and 6 other residents chosen to represent broad
10 spectrum of the residents' views, met on 12 occasions to develop the residents' mediation
11 positions. The Mediation Committee prepared a detailed Mediation Statement, setting out in
12 detail the residents' concerns and opening mediation positions. The Mediation Committee
13 provided a copy of the residents' Mediation Statement to CC-DG, CC-PA, and their counsel
14 prior to the mediation.

15 168. On September 12, 2013, formal mediation between the Mediation Committee and
16 CC-DG and CC-PA was held before retired California Supreme Court Justice Edward Panelli.

17 169. Mediation was unsuccessful. No agreement was reached.

18 170. As evidenced by the foregoing, the attitudes and communications of the CC-DG
19 representatives and of the CC-PA Board of Directors and officers reflect persistent unwillingness
20 to consider and opposition to the residents' concerns.

21 171. Based on this history of events a formal demand on the Board of CC-PA would be
22 futile.

23
24 **2. Efforts By Plaintiffs to Make a Demand on the Current Directors**
25 **Would Be Futile**

26 172. Plaintiffs are under no legal obligation to make a formal demand on CC-PA's
27 Board of Directors because they are able to show that such demand would be futile. Delaware
28 law allows recognizes demand futility. Making a demand on the CC-PA Board of Directors to

1 assert the claims alleged herein would be a wasteful and futile act. Nonetheless, Plaintiffs and
2 the Class have expended significant efforts to seek redress from the board of CC-PA, and
3 generally from Defendants.

4 173. At the time Plaintiffs filed this action, CC-PA's Board of Directors consisted of
5 three directors, including Defendants Ms. Fields, Mr. Smith and Mr. Sciortino. Because the
6 Board consists of an odd number of directors, Plaintiffs need only allege that demand is futile as
7 to two of the three current directors in order to establish demand futility. The entirety of the
8 Board of the CC-PA is beholden to CC-DG. The CC-PA Board also had conflicts of interest in
9 fact then sacrificed CC-PA's financial health to benefit CC-DG, while the directors were
10 affiliated with both organizations.

11 174. Ms. Fields is Senior Vice President and General Counsel of CC-DG. On
12 information and belief, Ms. Fields has been in this role since before Vi at Palo Alto opened.
13 Prior to joining Classic Residence by Hyatt, Ms. Fields served as assistant vice president and
14 senior counsel for Hyatt Hotels Corporation. Ms. Fields has expressly rejected Plaintiffs'
15 positions. Ms. Fields sent a letter dated March 15, 2012 (Ex.6, at 1) to the Resident Advisory
16 Committee asserting CC-DG's position that CC-PA is the "sole entity responsible" for the refund
17 of Plaintiffs' Entrance Fees, and therefore CC-DG has no such responsibility. *See* Letter from
18 Stephanie Fields, dated March 15, 2012 (Ex. 6 at 1.) Mr. Smith and Mr. Sciortino were included
19 by carbon copy on Ms. Fields's letter.

20 175. Mr. Smith has been Chief Financial Officer ("CFO") of CC-DG since September
21 2001. As such he is not just beholden to his primary employer, CC-DG, but he is responsible for
22 the financial health of CC-DG. Smith authorizes the upstreaming of funds from CC-PA to CC-
23 DG.

24 176. Mr. Sciortino has been Senior Vice President of Operations for CC-DG since
25 March 2003. From July 2001 to March 2003 he was Chief Operations Officer of CC-DG. At all
26 times Mr. Sciortino's decisions were to benefit CC-DG.

27 177. Prior directors of CC-PA include Defendants Penny Pritzker, Nicholas J. Pritzker
28 and John Kevin Poorman.

C. CC-PA Director Defendants' Also Had Influential Positions at CC-DG

178. On information and belief, Ms. Pritzker was the founder of CC-DG. At all relevant times from 2005 through the present day, Ms. Pritzker and Mr. Pritzker owned, directly or indirectly, substantial equity interests in and together controlled CC-DG. At all relevant times from 2005 through 2010, Ms. Pritzker was the Chairperson of the Board of Directors of CC-DG and acted as Chief Executive Officer of CC-DG. At all relevant times from 2005 through 2010, Mr. Pritzker was a member of the Board of Directors of CC-DG.

179. On information and belief, during 2005, and at all relevant times from 2006 through the present day, Mr. Poorman was a member of the Board of Directors of CC-DG, and since 2011 has served as the Chairman of the Board and Chief Executive Officer of CC-DG.

180. On information and belief, at all relevant times from 2005 through the present day, Mr. Smith has served as the Senior Vice President and Chief Financial Officer of CC-DG and in 2011 was a member of the Board of Directors of CC-DG.

181. On information and belief, at all relevant times from 2005 through the present day, Mr. Sciortino has served as the Senior Vice President of Operations of CC-DG.

182. On information and belief, at all relevant times from 2005 through the present day, Ms. Fields has served as the Senior Vice President and General Counsel of CC-DG.

183. As between CC-PA and CC-DG, at all relevant times, Ms. Pritzker, Mr. Pritzker, Mr. Poorman, Mr. Smith, Mr. Sciortino and Ms. Fields' was to bring about the financial success of CC-DG and its business plan to receive entrance fees and management fees from CC-PA.

184. Through their dual directorships and their positions as executive officers of CC-DG and CC-PA, Ms. Pritzker, Mr. Pritzker, Mr. Poorman, Mr. Smith, Mr. Sciortino and Ms Fields controlled CC-PA, and operated CC-PA for the benefit of CC-DG and to the financial detriment of CC-PA.

VIII. CAUSES OF ACTION

COUNT ONE

FINANCIAL ABUSE OF ELDERS

(CALIFORNIA WELFARE AND INSTITUTIONS CODE §§ 15600, *et seq.*)

(Against All Defendants)

191. Plaintiffs hereby incorporate by reference the allegations set above, as though set forth in full herein.

192. Defendants, by virtue of the actions alleged herein, violated California Welfare & Institutions Code sections 15600, *et seq.* Defendants' actions constitute financial abuse as defined by Welfare & Institutions Code § 15610.30.

193. At all times herein mentioned, Plaintiffs and the Class they seek to represent resided in the State of California and were elders within the meaning of the California Welfare & Institutions Code § 15610.27.

194. Defendants took, secreted, appropriated, obtained and/or retained money belonging to Plaintiffs and the Class they seek to represent for a wrongful use and/or with the intent to defraud and when they knew or should have known that this conduct is likely to be harmful to Plaintiffs and the Class. Defendants have wrongfully deprived Plaintiffs and the Class of their personal property by improperly collecting hundreds of millions of dollars in "Entrance Fees" through CC-PA and transferring those funds upstream to CC-PA's corporate parent, CC-DG, thus impairing Plaintiffs' and the Class' security interest in those fees and thus also removing funds from CC-PA that were supposed to have remained at CC-PA to provide cash reserves and services to Plaintiffs and the Class. Defendants have also overcharged Plaintiffs and the Class by improperly allocating increased tax assessments, earthquake insurance charges, and marketing costs to the Vi at Palo Alto's operating expense budgets, and passing on these charges as inflated monthly fees.

195. Defendants assisted one another in taking, secreting, appropriating, obtaining and/or retaining money belonging to Plaintiffs and the Class for a wrongful use and with the intent to defraud and when they knew or should have known that this conduct is likely to be harmful to Plaintiffs and the Class. More specifically, CC-DG created CC-PA for the purpose of inducing Plaintiffs and the Class to loan substantial Entrance Fees to CC-PA, which it would then move upstream to CC-DG. This plan kept CC-PA dangerously underfunded and in a state of financial distress and dependent on voluntary infusions of funds from CC-DG. In addition, all

1 of the Defendants assisted one another in taking, secreting, appropriating, obtaining and/or
2 retaining money belonging to Plaintiffs and the Class for a wrongful use and/or with the intent to
3 defraud and/or when they knew or should have known that this conduct is likely to be harmful to
4 Plaintiffs and the Class when they acted together to charge Plaintiffs and the Class inflated
5 monthly fees.

6 196. By virtue of Defendants' conduct, Plaintiffs and the Class were deprived of a
7 property right, insofar as Plaintiffs' and the Class' Entrance Fees have been placed at risk, their
8 security interest has been impaired, and they face increased tax assessments, which will lead to
9 inflated monthly fees. Defendants' violation of this duty has also resulted in inflated monthly
10 fees charges to Plaintiffs and the Class stemming from their improper allocations for earthquake
11 insurance and marketing costs.

12 197. As a proximate result of all of the Defendants' conduct herein alleged, Plaintiffs
13 and the Class that they seek to represent were damaged including without limitation economic
14 injury related to the loss of retirement funds, reduction in the value of their estates, lost interest,
15 impairment of security interest, and other general and special damages, all in an amount
16 according to proof at time of trial.

17 198. Due to the Defendants' acts of financial abuse, Plaintiffs are further entitled to
18 reasonable attorneys' fees and costs under Welfare & Institutions Code § 15657.5, in an amount
19 according to proof at time of trial.

20 199. The actions taken by Defendants set forth above were in all respects oppressive,
21 fraudulent and malicious. Plaintiffs and the Class they seek to represent are thereby entitled to
22 an award of punitive and exemplary damages, in an amount according to proof at time of trial.

23 200. Plaintiffs and members of the Class who are senior citizens (and/or who are
24 disabled) are further entitled to treble damages pursuant to Civil Code section 3345 because: the
25 Defendants knew or should have known that their conduct was directed to one or more senior
26 citizens or persons who was disabled; and/or (2) Defendant's conduct caused one or more senior
27 citizens or disabled persons to suffer: loss or encumbrance of a primary residence or source of
28 income, or to suffer substantial loss of property set aside for retirement, or for personal or family

1 care and maintenance, or substantial loss of assets essential to the health or welfare of the senior
2 citizen or disabled person; and/or (3) the Plaintiffs and the Class consist of one or more senior
3 citizens or disabled persons who are substantially more vulnerable than other members of the
4 public to the Defendants' conduct because of age, poor health or infirmity, impaired
5 understanding, restricted mobility, or disability, and actually suffered substantial economic
6 damage resulting from the Defendants' conduct.

7 WHEREFORE, Plaintiffs pray as hereinafter set forth.

8 **COUNT TWO**

9 **CONCEALMENT**

10 **(Against All Defendants)**

11 201. Plaintiffs and the Class hereby incorporate by reference the allegations set forth
12 above, as though set forth in full herein.

13 202. Plaintiffs and the Class were harmed because defendants CC-PA and CC-DG
14 concealed information from them.

15 203. Defendants owed a fiduciary duty to Plaintiffs and the Class and intentionally
16 failed to disclose one or more important facts to Plaintiffs and the Class; and/or Defendants
17 disclosed some facts to Plaintiffs and Class but intentionally failed to disclose one or more other
18 important facts, making the disclosure deceptive; and/or Defendants intentionally failed to
19 disclose one or more important facts that were only known to them and that Plaintiffs and the
20 Class could not have discovered; and/or Defendants actively concealed one or more important
21 facts from Plaintiffs and the Class and/or prevented them from discovering the important fact or
22 facts.

23 204. Defendants failed to disclose the following important facts to Plaintiffs and the
24 Class:

- 25 a. CC-PA intended to upstream Plaintiffs' Entrance Fees to CC-DG, and CC-
26 DG planned to disavow any obligation to re-pay the upstreamed funds to
27 Plaintiffs and Class;
28

- 1 b. CC-PA did not have and did not intend to maintain cash reserves to cover
2 its Entrance Fee refund obligations as required by California Health &
3 Safety Code § 1792.6;
4 c. Defendants intended to keep CC-PA dangerously underfunded, running a
5 very large deficit and dependent on voluntary infusions of funds from CC-
6 DG;
7 d. Defendants intended to charge Plaintiffs and the Class for the increased
8 taxes they incurred related to their upstreaming activities;
9 e. CC-PA intended to pass along the full cost of earthquake insurance to
10 Plaintiffs and the Class even though a portion of that cost goes to cover the
11 portions of the buildings of the Vi at Palo Alto, for which Plaintiffs and
12 the Class are not responsible;
13 f. CC-PA planned to charge Plaintiffs and the Class for marketing costs that
14 were properly CC-PA's own costs of soliciting and borrowing hundreds of
15 millions of dollars from entering residents and for advertising costs that
16 benefited facilities other than the Vi at Palo Alto; and which benefitted
17 CC-DG;
18 g. CC-PA intended to disregard its obligations under Health & Safety Code §
19 1771.8.

20 205. Neither Plaintiffs nor the Class knew any of these concealed facts. Defendants
21 intended to deceive Plaintiffs and the Class by concealing these facts. Plaintiffs and the Class
22 reasonably relied on Defendants' actions. Moreover, Plaintiffs and the Class were harmed by
23 Defendants' failure to disclose these important facts, and Defendants concealment was a
24 substantial factor in the harm incurred by Plaintiffs and the Class.

25 206. The actions taken by Defendants set forth above were in all respects malicious,
26 willful and oppressive, and manifested either disregard or contempt for the rights of Plaintiffs
27 and the Class. Plaintiffs and the Class are thereby entitled to an award of punitive and exemplary
28 damages in an amount according to proof at time of trial.

207. Plaintiffs and the members of the Class who are senior citizens (and/or who are disabled) are further entitled to treble damages pursuant to Civil Code section 3345 because: the Defendants knew or should have known that their conduct was directed to one or more senior citizens or persons who was disabled; and/or (2) Defendants' conduct caused one or more senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence or source of income, or to suffer substantial loss of property set aside for retirement, or for personal or family care and maintenance, or substantial loss of assets essential to the health or welfare of the senior citizen or disabled person; and/or (3) the Plaintiffs and the Class consist of one or more senior citizens or disabled persons who are substantially more vulnerable than other members of the public to the Defendants' conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial economic damage resulting from the Defendants' conduct.

WHEREFORE, Plaintiffs pray as hereinafter set forth.

COUNT THREE

NEGLIGENT MISREPRESENTATION

(Against All Defendants)

208. Plaintiffs hereby incorporate by reference the allegations set forth above, as though set forth in full herein.

209. Plaintiffs and the Class were harmed because Defendant CC-PA negligently misrepresented important facts to Plaintiffs and the Class.

210. Defendant CC-PA represented to Plaintiffs and the Class that the following important facts were true:

[Residents experience] a sense of security, knowing they have made a good choice. They know their entrance fee refund will not fluctuate with changes in the market... Our residents enjoy a vibrant and enriching lifestyle with the knowledge that they have planned wisely to secure their future.

(Ex. 18, Letter dated October 9, 2008 from Classic Residence by Hyatt to Residents).

211. Defendant CC-PA represented to Plaintiffs and the Class that their Entrance Fees would be used to provide services.

212. These statements were not true.

213. Defendant made these representations without any reasonable ground for believing them to be true when it made them.

214. Defendant intended for Plaintiffs and the Class to rely on these representations.

215. Plaintiffs and the Class reasonably relied on Defendant's representations. Plaintiffs and the Class were harmed, and their reliance on Defendant's representations was a substantial factor in causing them harm.

WHEREFORE, Plaintiffs pray as hereinafter set forth.

COUNT FOUR

BREACH OF FIDUCIARY DUTY AND CONSTRUCTIVE TRUST

(Against All Defendants)

216. Plaintiffs hereby incorporate by reference the allegations set above, as though set forth in full herein.

217. Plaintiffs and members of the Class were harmed by Defendants' breach of the fiduciary duty that they owed to Plaintiffs and the Class, by virtue of the nature of their relationship whereby Plaintiffs and members of the Class reposed confidence in the integrity of Defendants, which was voluntarily accepted and/or assumed by Defendants, and by virtue of the power Defendants retained over Plaintiffs and over their homes and residential environment.

218. Given the existence of this relationship, CC-PA owed Plaintiffs and the Class the duties of reasonable care, manifest fairness, complete candor and undivided loyalty.

1. Undivided Loyalty

219. Defendants owe Plaintiffs and the Class a duty of undivided loyalty by virtue of the fact that they own and operate the CCRC at which Plaintiffs and the Class reside, and as holder of the money for Plaintiffs and the Class.

220. CC-PA knowingly acted against the interests of Plaintiffs and the Class in connection with the Entrance Fee loan transactions and related Promissory Notes, and in connection with the increased taxes and monthly fees.

1 221. CC-PA acted on behalf of CC-DG, which is a party that was averse to Plaintiffs
2 and the Class in connection with the transactions described herein.

3 222. Plaintiffs and the Class were harmed by CC-PA's and CRMLP's violation of their
4 duty of undivided loyalty.

5 WHEREFORE, Plaintiffs pray as hereinafter set forth.

6 **2. Constructive Trust**

7 223. Defendants' gain resulted from fraud and was in violation of the trust Plaintiffs
8 and the Class reposed in them. It was therefore wrongful and justifies the imposition of a
9 constructive trust in the amount of the refundable portion of Entrance Fees paid and loaned by
10 Plaintiffs and the Class to CC-PA, and distributed by CC-PA to CC-DG, against all property of
11 Defendants.

12 224. The acts and omissions herein set forth have rendered Defendants of those fund
13 trustees.

14 225. Plaintiffs have a security interest in their Entrance Fees to the extent of the
15 amount of the refund reserve that was required by California law.

16 226. Due to CC-PA's upstreaming activities, CC-DG has wrongfully acquired
17 Plaintiffs' Entrance Fees.

18 227. CC-DG is not entitled to those funds, and a constructive trust should be imposed.

19 228. WHEREFORE, the Plaintiffs and the Class are entitled at their option either to
20 enforce a constructive trust on the property so acquired, or to enforce an equitable lien upon it or
21 its proceeds to secure their claims for damages for breach of trust. They are also entitled to
22 equitable relief in the form of a preliminary and permanent injunction restraining Defendants
23 from distributing, paying or otherwise transferring any such money in violation of their fiduciary
24 duties.

25 WHEREFORE, Plaintiffs further pray as hereinafter set forth.

26 **COUNT FIVE**

27 **VIOLATION OF CALIFORNIA CIVIL CODE §§ 1750, *et seq.***

28 **(CONSUMER LEGAL REMEDIES ACT)**

(Against All Defendants)

229. Plaintiffs hereby incorporate by reference the allegations set above, as though set forth in full herein.

230. The Consumers Legal Remedies Act, Civil Code § 1750, *et seq.* (hereinafter “CLRA”) was designed and enacted to protect consumers from unfair and deceptive business practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in Civil Code § 1770.

231. The CLRA applies to Defendants’ actions and conduct described herein because it extends to the sale of services for personal, family or household use.

232. At all relevant times, Plaintiffs and the Class were “consumer[s]” as that term is defined in Civil Code § 1761(d).

233. The transactions at issue involve the sale of financial and retirement services for personal, family or household purposes within the meaning of Civil Code § 1761.

234. Defendants’ practices in connection with the marketing and sale of CCRC residential and financial management services related to Entrance Fees and allocated expenses violate the CLRA in at least the following respects:

- a. In violation of § 1770(a)(5), Defendants knowingly misrepresented the character, uses and benefits of the services they provided;
- b. In violation of § 1770(a)(7), Defendants knowingly misrepresented the standard and quality of the services they provided;
- c. In violation of § 1770(a)(9), Defendants knowingly advertised the services with the intent not to sell them as advertised; and
- d. In violation of § 1770(14), Defendants knowingly misrepresented the legal rights, obligations, and/or remedies associated with their services.

235. Defendants knowingly misrepresented the security of the refundable portion of the Plaintiffs’ Entrance Fees. Defendants also made knowing misrepresentations to Plaintiffs and the Class regarding charges for earthquake insurance and marketing costs.

1 unfair competition under Business & Professions Code § 17200 *et seq.* by operation of California
2 Health & Safety Code § 1793.5(h).

3 244. Defendants issued, delivered and/or published printed matter and advertising
4 material, and made oral representation which did not comply with California Health & Safety
5 Code Division 2, Chapter 10 governing continuing care contracts, including specifically
6 California Health & Safety Code § 1793(f), which constitutes a violation of California Health &
7 Safety Code § 1793.5(f). This is a *per se* act of unfair competition under Business & Professions
8 Code § 17200 *et seq.* by operation of California Health & Safety Code § 1793.5(h).

9 245. Defendants' improper allocation of costs for property taxes, insurance, and
10 marketing expenditures also constitute unlawful and unfair business practices. Plaintiffs and the
11 Class have lost money as a direct result of these practices because they have been overcharged.

12 246. Defendants have engaged in numerous deceptive acts, including insofar as they
13 failed to disclose the following important facts to Plaintiffs and the Class:

- 14 a. CC-PA upstreamed Plaintiffs' Entrance Fees to CC-DG, and CC-DG
15 planned to disavow any obligation to re-pay the upstreamed funds to
16 Plaintiffs and Class;
- 17 b. CC-Palo Alto did not have and did not intend to maintain cash reserves to
18 cover its Entrance Fee refund obligations as required by California Health
19 & Safety Code § 1792.6, the disclosure of which was required by
20 California Health & Safety Code § 1793(f);
- 21 c. Defendants kept CC-PA dangerously underfunded, running a very large
22 deficit and dependent on voluntary infusions of funds from CC-DG;
- 23 d. CC-PA charged Plaintiffs and the Class not just the costs of operating the
24 Community, but also its own costs of owning the Community and certain
25 costs of CC-DG's ownership of other communities;
- 26 e. Defendants stated they would charge Plaintiffs and the Class for the
27 increased taxes they incurred related to their upstreaming activities;
- 28

- 1 f. CC-PA intended to pass along the full cost of earthquake insurance to
2 Plaintiffs and the Class even though a portion of that cost goes to cover the
3 portions of the buildings of the Vi at Palo Alto, for which Plaintiffs and
4 the Class are not responsible;
- 5 g. CC-PA charged Plaintiffs and the Class for marketing costs that were CC-
6 PA's own marketing costs and for marketing costs that benefited facilities
7 other than the Vi at Palo Alto.

8 247. Plaintiffs and the Class have been harmed by Defendants' unfair, unlawful and
9 fraudulent business practices.

10 248. Plaintiffs and the Class have a right to an order requiring Defendants to restore to
11 Plaintiffs and the Class money, property, and interest which may have been acquired by these
12 business practices. This includes but is not limited to the return of Entrance Payments
13 upstreamed to CC-DG, as well as amounts unfairly collected from Plaintiffs and the Class
14 through monthly fees for costs that are properly borne by Defendants.

15 249. Pursuant to Business & Professions Code § 17203, Plaintiffs seek from
16 Defendants, and each of them, restitution and the disgorgement of all earnings, profits,
17 compensation and benefit obtained by Defendants as a result of Defendants' conduct in violation
18 of Business & Professions Code §§ 17200, *et seq.*

19 WHEREFORE, Plaintiffs pray as hereinafter set forth.

20 **COUNT SEVEN**

21 **VIOLATION OF CALIFORNIA BUSINESS AND**
22 **PROFESSIONS CODE §§ 17200, *et seq.* – INJUNCTIVE RELIEF**

23 **(Against All Defendants)**

24 250. Plaintiffs hereby incorporate by reference the allegations set above, as though set
25 forth in full herein.

26 251. Defendants' actions as heretofore alleged are "unlawful" and/or "unfair" and/or
27 "fraudulent" business acts or practices as defined in Business and Professions Code § 17200 *et*
28 *seq.*

1 252. Defendants' practice of refusing to maintain financial reserves sufficient to refund
2 its Entrance Fee obligations and its continuing violation of California Health & Safety Code
3 Section 1792.6 is unlawful and unfair. These business practices impaired the value of the
4 Plaintiffs' and the Class' security interest and Plaintiffs and the Class have lost property as a
5 result.

6 253. Defendants' violations of the Elder Abuse and Dependent Adult Civil Protection
7 Act, Welfare and Institutions Code §§ 15600 *et seq.* are unlawful.

8 254. Defendants' conduct is unlawful and thus violates Business and Professions Code
9 § 17200 *et seq.* insofar as Defendants have violated California Health & Safety Code §§
10 1792.6, 1793, 1793.5, including 1793.5 (d), (f), and 1771.8 and have thus engaged in unlawful
11 conduct.

12 255. Defendants abandoned their obligations under the Refundable Residency
13 Contracts by failing to maintain legally required cash reserves and by charging residents inflated
14 monthly fees, in violation of California Health & Safety Code § 1793.5(d). This is a *per se* act of
15 unfair competition under Business & Professions Code § 17200 *et seq.* by operation of California
16 Health & Safety Code § 1793.5(h).

17 256. Defendants issued, delivered and/or published printed matter and advertising
18 material, and made oral representation which did not comply with California Health & Safety
19 Code Division 2, Chapter 10 governing continuing care contracts, including specifically
20 California Health & Safety Code § 1793(f), which constitutes a violation of California Health &
21 Safety Code § 1793.5(f). This is a *per se* act of unfair competition under Business & Professions
22 Code § 17200 *et seq.* by operation of California Health & Safety Code § 1793.5(h).

23 257. Defendants' improper allocation of costs for property taxes, insurance, and
24 marketing expenditures also constitute unlawful and unfair business practices. Plaintiffs and the
25 Class have lost money as a direct result of these practices because they have been overcharged.

26 258. Defendants have engaged in numerous deceptive acts, including insofar as they
27 failed to disclose the following important facts to Plaintiffs and the Class:
28

- 1 h. CC-PA intended to upstream Plaintiffs' Entrance Fees to CC-DG, and CC-
2 DG planned to disavow any obligation to re-pay the upstreamed funds to
3 Plaintiffs and Class;
4 i. CC-PA did not have and did not intend to maintain cash reserves to cover
5 its Entrance Fee refund obligations as required by California Health &
6 Safety Code § 1792.6, the disclosure of which was required by California
7 Health & Safety Code § 1793(f);
8 j. Defendants intended to keep CC-PA dangerously underfunded, running a
9 very large deficit and dependent on voluntary infusions of funds from CC-
10 DG;
11 k. CC-PA intended to charge Plaintiffs and the Class not just the costs of
12 operating the Community, but also its own costs owning the Community;
13 l. Defendants intended to charge Plaintiffs and the Class for the increased
14 taxes they incurred related to their upstreaming activities;
15 m. CC-PA intended to pass along the full cost of earthquake insurance to
16 Plaintiffs and the Class even though a portion of that cost goes to cover the
17 portions of the buildings of the Vi at Palo Alto, for which Plaintiffs and
18 the Class are not responsible;
19 n. CC-PA planned to charge Plaintiffs and the Class for marketing costs that
20 benefited facilities other than the Vi at Palo Alto; and which benefitted
21 CC-DG.

22 259. Plaintiffs and the Class have been harmed by Defendants' unfair, unlawful and
23 fraudulent business practices.

24 260. Pursuant to Business & Professions Code § 17203, Plaintiffs seek a temporary
25 restraining order to prevent any further upstreaming of funds from CC-PA to CC-DG, and to
26 prevent CC-PA from continuing not to fund cash reserves required by the California Health and
27 Safety Code.

28 WHEREFORE, Plaintiffs pray as hereinafter set forth.

COUNT EIGHT
BREACH OF CONTRACT
(Against CC-PA)

261. Plaintiffs hereby incorporate by reference the allegations set above, as though set forth in full herein.

262. Plaintiffs and the Class entered Refundable Residency Contracts with CC-PA.

263. Plaintiffs and the Class have performed and continue to perform their obligations under the Refundable Residency Contracts.

264. All of the conditions required by law for CC-PA's performance under the Refundable Residency Contracts have occurred.

265. CC-PA breached its obligations regarding refunds Plaintiffs' Entrance Fees by upstreaming funds to CC-DG and failing to maintain financial reserves as required by California Health & Safety Code Section 1792.6, which is incorporated into the contract by operation of law.

266. CC-Palo breached Refundable Residency Contract Section 3.3.2 by improperly allocating the earthquake insurance coverage charges for buildings at the Vi at Palo Alto, and marketing costs to Plaintiffs' and the Class' monthly fees.

267. Plaintiffs and the Class were harmed by this breach.

WHEREFORE, Plaintiffs pray as hereinafter set forth.

COUNT NINE
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Against CC-PA)

191. Plaintiffs hereby incorporate by reference the allegations set above, as though set forth in full herein.

192. Plaintiffs and the Class entered Refundable Residency Contracts with CC-PA.

193. Plaintiffs and the Class have performed and continue to perform their obligations under the Refundable Residency Contracts.

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VIOLATIONS OF CALIFORNIA HEALTH AND SAFETY CODE

- a. The Refundable Residency Contracts at issue in this case qualify as “refundable contracts” under Health & Safety Code Section § 1771(r)(2);
- b. CC-PA breached its obligations to maintain sufficient reserves pursuant to California Health & Safety Code Section § 1792.6;
- c. CC-PA breached its obligations under California Health & Safety Code § 1793(f) to disclose the lack of proper cash reserves in all marketing materials and continuing care contracts;
- d. CC-PA breached its obligations under California Health & Safety Code Section § 1779.4(y)(2)(A) insofar as its indebtedness related to the continuing care retirement community has, at times relevant to this action, exceeded the appraised value of the continuing care retirement community;
- e. CC-PA and CC-DG breached their obligations under California Health & Safety Code Section § 1771.8.

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VIOLATIONS OF DELAWARE CORPORATIONS CODE

- f. The Directors of CC-PA have violated Delaware Code §§ 170, 173 and 174 by causing CC-PA to distribute funds to CC-DG in excess of CC-PA’s surplus and net profits;
- g. The Directors of CC-PA have violated Delaware Code § 170 by failing to fulfill its statutory responsibilities, to declare and authorize CC-PA to pay legal dividends to CC-DG, CC-PA's sole shareholder, including that none of the dividends paid by CC-PA officers to CC-DG during the period from 2005 through the present day, were paid by them following CC-PA's Board of Directors consideration of the economic stability of CC-PA.

1 WHEREFORE, Plaintiffs pray as hereinafter set forth.

2 **COUNT ELEVEN**

3 **CREDITOR CLAIM FOR BREACH OF FIDUCIARY DUTIES**

4 **(Against all Director Defendants)**

5 **DERIVATIVE CLAIM**

6 201. Plaintiffs hereby incorporate by reference the allegations set above, as though set
7 forth in full herein.

8 202. Plaintiffs are creditors of CC-PA.

9 203. As directors and/or officers of CC-PA, the Director Defendants owe and owed
10 CC-PA fiduciary duties of good faith, care and loyalty.

11 204. Because CC-PA has been insolvent throughout the time of the conduct alleged
12 herein, Plaintiffs have standing as creditors of CC-PA to enforce those duties by this derivative
13 action for the benefit of CC-PA.

14 205. Those duties require the Director Defendants to seek reasonably to maximize
15 corporate value, and where, as here, the company is insolvent, to preserve maximum corporate
16 value for distribution to creditors.

17 206. The Director Defendants have breached their duties of good faith, care and loyalty
18 and have committed corporate waste by, among other things:

19 a. Continuing to permit CC-PA to upstream funds received from Entrance Fees to
20 CC-DG;

21 b. Failing to investigate the financial status of CC-PA prior to upstreaming funds;

22 c. Disbursing funds upstream to CC-DG when there was not sufficient surplus
23 and/or net capital.

24 207. Each of the foregoing actions or decisions was so self-interested and one-sided
25 that no person of ordinary, sound judgment could conclude that CC-PA received adequate
26 consideration for the transfer, or that the action or decision was beneficial to CC-PA. The sole
27 beneficiary of each of these complained-of actions CC-DG. These actions or decisions therefore
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1 constitute corporate waste and a breach of the Director Defendants' duties of good faith, care and
2 loyalty.

3 208. In authorizing these actions and decisions, the Director Defendants placed the
4 interests of CC-DG, which dominates and controls the board, ahead of the interests of CC-PA
5 and its stakeholders. On information and belief, the Director Defendants undertook these actions
6 and decisions in consultation with and for the benefit of CC-DG, in bad faith and in breach of
7 their duties of good faith, care and loyalty to CC-PA and its stakeholders.

8 209. As a proximate result of the Director Defendants' breaches of their fiduciary
9 duties, CC-PA and its stakeholders have been damaged, and suffer continuing damages, by the
10 diminution in CC-PA's enterprise value, in an amount to be determined at trial.

11 210. WHEREFORE, Plaintiffs pray as hereinafter set forth.

12 **COUNT TWELVE**

13 **CREDITOR CLAIM FOR BREACH OF FIDUCIARY DUTIES OR IN THE**
14 **ALTERNATIVE AIDING AND ABETTING THE DIRECTOR DEFENDANTS'**
15 **BREACHES OF FIDUCIARY DUTIES**

16 **(Against CC-DG)**

17 **DERIVATIVE CLAIM**

18 211. Plaintiffs hereby incorporate by reference the allegations set above, as though set
19 forth in full herein.

20 212. Plaintiffs are creditors of CC-PA.

21 213. Because CC-PA has been insolvent throughout the time of the conduct alleged
22 herein, Plaintiffs have standing as creditors of CC-PA to enforce the duties alleged in this Count
23 for the benefit of CC-PA.

24 214. CC-DG is the sole owner of CC-PA and entirely controls CC-PA, and therefore
25 owes fiduciary duties of good faith, care and loyalty to CC-PA and derivatively to Plaintiffs as
26 CC-PA's creditors.

27 215. As alleged herein, CC-DG has breached its duties of good faith, care and loyalty.
28

1 216. As directors and/or officers of CC-PA, the Director Defendants owe and owed
2 CC-PA, and derivatively its creditors, fiduciary duties of good faith, care and loyalty.

3 217. As alleged herein, the Director Defendants have breached their duties of good
4 faith, care and loyalty.

5 218. CC-DG exercises effective control of the CC-PA Board of Directors and the CC-
6 PA Board of Directors are management employees of CC-DG, as set forth above.

7 219. CC-DG has used its control of the CC-PA Board of Directors to benefit itself, as
8 an insider, to the detriment of CC-PA and its stakeholders, as set forth above.

9 220. CC-DG's self-dealing constitutes a breach of its fiduciary duties of good faith,
10 care and loyalty to CC-PA.

11 221. CC-DG has caused, directed and knowingly participated in the Director
12 Defendants' breaches of fiduciary duties.

13 222. As a proximate result of CC-DG's breaches of fiduciary duty, or in the
14 alternative, of its aiding and abetting the Director Defendants' breaches of their fiduciary duties,
15 CC-PA has been damaged, and suffers continuing damages, in amount to be determined at trial.

16 223. WHEREFORE, Plaintiffs pray as hereinafter set forth.
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22 **COUNT THIRTEEN**

23 **PAYMENT OF UNLAWFUL DIVIDENDS**

24 **(DELAWARE CODE, TITLE 8, §§ 170, 173 and 174)**

25 **(Against all Director Defendants)**

26 **DERIVATIVE CLAIM**

27 224. Plaintiffs hereby incorporate by reference the allegations set above, as though set
28 forth in full herein.

225. CC-PA and CC-DG are both Delaware Corporations and their internal affairs are governed by Title 8 of the Delaware Code, which pertains to corporations.

226. Plaintiffs and the Class are creditors of CC-PA.

227. The Directors of CC-PA, by virtue of the actions alleged herein, willfully and negligently violated Delaware Code §§ 170, 173 and 174 by causing CC-PA to distribute funds to CC-DG in excess of CC-PA's surplus and net profits.

228. CC-PA was insolvent when it paid these dividends.

229. By causing CC-PA to upstream hundreds of millions of dollars to CC-DG at a time when they knew CC-PA was insolvent and lacked adequate surpluses, the Director Defendants willfully diverted value from CC-PA to CC-DG, and CC-PA has been damaged as a result.

230. Pursuant to 8 Del. C. § 174, each of the Director Defendants is jointly and severally liable to CC-PA (and to the creditor-residents because CC-PA is insolvent) for payment of the alleged dividends, plus interest.

WHEREFORE, Plaintiffs pray as hereinafter set forth.

COUNT FOURTEEN

FRAUDULENT TRANSFER OF ASSETS

(UNIFORM FRAUDULENT TRANSFER ACT AS CODIFIED BY DELAWARE CODE,

TITLE 6, § 1304(a)(1) & 1305(a) AND CALIFORNIA CIVIL CODE §§ 3439.04 &

33439.05)

(Against CC-DG)

231. Plaintiffs hereby incorporate by reference the allegations set above, as though set forth in full herein.

232. As parties to the Refundable Residency Contracts and holders of the Promissory Notes, Plaintiffs and the Class have unmaturing rights to payment by CC-PA, and pursuant to California Civil Code § 3439.01 and Delaware Code, Title 6, § 1301(3) and (4) are creditors with claims against CC-PA.

1 233. CC-DG retains effective control of CC-PA through ownership, whether direct or
2 indirect, of its equity, and is therefore an Insider. 6 Del. C. 1301(7).

3 234. CC-PA's upstreaming conduct, which was controlled by CC-DG, constituted an
4 illegal transfer of assets under California Civil Code §§ 3439.04 and 33439.05.

5 235. CC-PA's upstreaming conduct, which was controlled by CC-DG, constituted an
6 illegal transfer of assets under 6 Del. C. §§ 1304(a)(1) and 1305(a).

7 236. CC-DG directed the transfer with an actual intent to hinder, delay, or defraud
8 Plaintiffs as creditors. This is illustrated by the following factors:

- 9 a. CC-PA did not retain possession of the funds it upstreamed to CC-DG.
10 b. CC-PA did not disclose to Plaintiffs that it had upstreamed these funds.
11 c. CC-PA upstreamed the funds to an Insider (i.e. CC-DG).
12 d. The upstreaming drained CC-PA of substantially all of its liquid assets.
13 e. CC-PA was insolvent at the time of the upstreaming, or became insolvent as a
14 result of the upstreaming.

15 237. CC-DG required CC-PA to engage in the illegal upstreaming without receiving
16 reasonably equivalent value in return from CC-DG.

17 238. CC-PA's illegal upstreaming activities, which were controlled by CC-DG,
18 occurred at a time when CC-PA was engaged in business transactions for which the remaining
19 assets were unreasonably small in relation to those transactions.

20 239. CC-DG reasonably believed, or reasonably should have believed, that CC-PA
21 would incur debts beyond its ability to pay as they became due.

22 240. Through its control, CC-DG has caused CC-PA to make excessive upstream
23 distributions, thus depleting its liquid assets and making it unable to pay its creditors.

24 241. Plaintiffs have been damaged as a result of CC-PA's fraudulent transfer of funds
25 to CC-DG, by which CC-PA intentionally depleted CC-PA of its liquid assets.

26 242. Plaintiffs are entitled to equitable relief and damages in an amount to be
27 determined at trial.

28 243. WHEREFORE, Plaintiffs pray as hereinafter set forth.

1 **COUNT FIFTEEN**

2 **CORPORATE WASTE**

3 **(Against all Director Defendants)**

4 **DERIVATIVE CLAIM**

5 244. Plaintiffs hereby incorporate by reference the allegations set above, as though set
6 forth in full herein.

7 245. The Director Defendants' decision to upstream hundreds of millions of dollars to
8 CC-DG constitutes corporate waste.

9 246. A subsidiary's decision to transfer hundreds of millions of dollars to its corporate
10 parent in exchange for nothing and in the face of massive debt is so one-sided that no person
11 acting in good faith pursuant to CC-PA's interests could have approved the terms of the
12 transaction. The terms adhered solely to the benefit of CC-DG, and CC-PA received nothing in
13 exchange and was rendered insolvent as a result.

14 247. CC-PA was damaged as a direct and proximate result of the Director Defendants'
15 corporate waste;

16 WHEREFORE, Plaintiffs pray as hereinafter set forth.

17 **IX. PRAYER FOR RELIEF**

18 **A. Class Relief**

19 Plaintiffs pray for relief for themselves individually and on behalf of all similarly situated
20 Class members as follows:

- 21 1. That the Court determine that this action may be maintained as a class action
22 pursuant to Federal Rules of Civil Procedure, Rule 23 and appointing the named
23 Plaintiffs as Class Representatives and their counsel as Class Counsel;
- 24 2. That the Court award Plaintiffs and the Class compensatory damages;
- 25 3. That the Court award Plaintiffs and the Class punitive damages;
- 26 4. That the Court award Plaintiffs and the Class treble damages;
- 27
- 28

5. That the Court award Plaintiffs and the Class the maximum permitted under § 1780(b), including but not limited to \$5,000 per person in addition to all other remedies permitted by law;
6. That the Court award Plaintiffs and the Class treble damages under Civil Code § 3345;
7. That the Court award Plaintiffs and the Class treble damages under Health & Safety Code § 1793.5;
8. That Defendants be ordered to make restitution to Plaintiffs and the Class pursuant to California Business & Professions Code § 17203;
9. That the Court grant a preliminary and permanent injunction requiring CC-PA to create a reserve fund sufficient to meet the requirements of California Health & Safety Code §§ 1792.6(a) and 1793(a) and prohibiting them from continued violations of these sections.
10. That the Court grant a preliminary and permanent order enjoining Defendants from engaging in the unlawful and unfair acts and practices alleged herein;
11. That the Court enter a judgment declaring the existence of a constructive trust and ordering the disgorgement of all sums unjustly obtained from Plaintiffs and the Class;
12. That the Court award Plaintiffs the costs of this action, together with reasonable attorney's fees as provided under law;
13. That the Court grant Plaintiffs and the Class pre-judgment and post-judgment interest on all sums collected;
14. And such other and further relief as this Court may deem appropriate.

B. Derivative Relief

Plaintiffs, derivatively, on behalf of CC-Palo Alto, pray for relief as follows:

15. In Plaintiffs' capacity as representatives of CC-PA, judgment in favor of CC-PA for compensatory damages against the Director Defendants and CC-DG, jointly and severally, proximately caused by breaches of fiduciary duty and corporate

1 waste, including without limitation, damages for injury to CC-PA (a) as a result of
2 upstreaming of Entrance Fee payments from CC-PA to CC-DG; (b) as a result of
3 the declaration of dividends to CC-DG that depart from Delaware corporate law
4 requirements; and (c) award to Plaintiffs costs and disbursements in this action,
5 including reasonable attorneys' fees and experts' fees;

6 16. In Plaintiffs' capacity as representatives of CC-PA, a permanent injunction
7 barring (a) the Director Defendants from failing to cause CC-PA to maintain cash
8 reserves to repay Entrance Fees; (b) the upstreaming of funds to CC-DG as long
9 as CC-PA remains insolvent; (c) the declaration of dividends to CC-DG that
10 depart from Delaware corporate law requirements;

11 17. In Plaintiffs' capacity as representatives of CC-PA, an order requiring the
12 Director Defendants to provide an accounting of all payments made to or for the
13 benefit of CC-DG or its affiliates;

14 18. That the Court award CC-PA pre-judgment and post-judgment interest on all
15 sums collected from the Director Defendants; and,

16 19. Such other and further relief as this Court may deem appropriate.
17

18 Dated: December 10, 2014

COTCHETT, PITRE & McCARTHY, LLP

19
20 By: /s/ Niall P. McCarthy

NIALL P. McCARTHY

ANNE MARIE MURPHY

DEMETRIUS X. LAMBRINOS

Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

Please take notice that Plaintiffs Burton Richter, Linda Collins Cork, Georgia L. May, Thomas Merigan, Alfred Spivack, and Janice R. Anderson demand a trial by jury in this action for themselves and the Class.

Dated: December 10, 2014

COTCHETT, PITRE & McCARTHY, LLP

By: /s/ Niall P. McCarthy
NIALL P. McCARTHY
ANNE MARIE MURPHY
DEMETRIUS X. LAMBRINOS

Attorneys for Plaintiffs

1 **PROOF OF SERVICE**

2 I am employed in the County of San Mateo; I am over the age of 18 years and not a party
3 to the within cause. My business address is the Law Offices of Cotchett, Pitre & McCarthy, LLP,
4 San Francisco Airport Office Center, 840 Malcolm Road, Burlingame, California, 94010. On this
day, I served the following document(s) in the manner described below:

5 **VERIFIED FIRST DIRECT CLASS ACTION AND CREDITOR**
6 **DERIVATIVE COMPLAINT**

7 ✓ **VIA OVERNIGHT COURIER SERVICE:** I am readily familiar with this firm's
8 practice for causing documents to be served by overnight courier. Following that practice,
I caused the sealed envelope containing the aforementioned document(s) to be delivered
9 via overnight courier service to the addressee(s) specified below.

10 James McManis
11 **McMANIS FAULKNER**
Fairmount Plaza, 10th Floor
12 50 West San Fernando Street
San Jose, CA 95113
13 jmcmanis@mcmanislaw.com

COUNSEL FOR DEFENDANTS:
CC-PALO ALTO, INC.

CLASSIC RESIDENCE
MANAGEMENT LIMITED
PARTNERSHIP

CC-DEVELOPMENT GROUP, INC.

14
15
16 I declare under penalty of perjury, under the laws of the State of California, that the
17 foregoing is true and correct. Executed at Burlingame, California, on December 10, 2014

18 /s/ Connie Chan
19 Connie Chan