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16 **IN THE UNITED STATES DISTRICT COURT**  
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 **BURTON RICHTER**, an individual; **LINDA**  
19 **COLLINS CORK**, an individual; **GEORGIA L.**  
20 **MAY**, an individual; **THOMAS MERIGAN**, an  
individual; **ALFRED SPIVACK**, an individual; and  
21 **JANICE R. ANDERSON**, an individual; on behalf of  
themselves and all others similarly situated,

22 Plaintiffs,

23 v.

24 **CC-PALO ALTO, INC.**, a Delaware corporation;  
**CLASSIC RESIDENCE MANAGEMENT**  
25 **LIMITED PARTNERSHIP**, an Illinois limited  
partnership; and **CC-DEVELOPMENT GROUP,**  
26 **INC.**, a Delaware corporation,

27 Defendants.  
28

Case No. C14-00750 HRL

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Date: August 15, 2014  
Time: 9:00 a.m.  
Crtrm: Courtroom 4, 5<sup>th</sup> Floor  
Judge: Hon. Edward J. Davila

**JOINT CASE MANAGEMENT CONFERENCE STATEMENT; Case No. C14-00750 HRL**

**JOINT CASE MANAGEMENT CONFERENCE STATEMENT**

Pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 16-9, and the June 9, 2014, San Jose Division Standing Order Regarding Case Management in Civil Cases, the parties BURTON RICHTER, LINDA COLLINS CORK, GEORGIA L. MAY, THOMAS MERIGAN, ALFRED SPIVACK, and JANICE R. ANDERSON (collectively, “Plaintiffs”), and CC-PALO ALTO, INC., a Delaware corporation; CLASSIC RESIDENCE MANAGEMENT LIMITED PARTNERSHIP, an Illinois limited partnership; and CC-DEVELOPMENT GROUP, INC., a Delaware corporation (collectively, “Defendants”), have met, conferred, and agreed on the following matters:

**A. Jurisdiction and Service**

The Parties do not dispute that this court may exercise jurisdiction over this matter and that all parties have been served.

**1. Facts**

**a. Plaintiff’s Statement**

This is financial elder abuse class action. The Vi at Palo Alto is a high-end Continuing Care Retirement Community (“CCRC”). Complaint ¶ 2. The proposed Plaintiff Class (“the Class”) consists of all individuals who have resided at the Vi at Palo Alto between January 1, 2005 and the present. *Id.* ¶ 21. Prior to entering the Vi at Palo Alto, Plaintiffs and the Class entered into Continuing Care Residency Contracts (“Residency Contracts”), and made over \$450 million in loans to CC-Palo Alto, on the order of hundreds of thousands or millions of dollars per resident, in the form of refundable Entrance Fees. *Id.* ¶¶ 4-5. Plaintiffs and the Class also pay large monthly fees to reside at the Vi at Palo Alto. *Id.* ¶¶ 10-14. CC-Palo Alto breached the Residency Contracts and impaired Plaintiffs’ security interest in their Entrance Fees by illegally upstreaming hundreds of millions of dollars to its parent company CC-Chicago. *Id.* ¶¶ 3, 7, 56-60. CC-Palo Alto concealed these, and other important facts, from Plaintiffs. *Id.* ¶¶ 100, 150.

Plaintiffs reasonably expected that CC-Palo Alto would maintain sufficient cash reserves to pay back their Entrance Fees because California law requires it. *See* California Health & Safety Code §§ 1792.6, 1793.

1 Since 2005, Plaintiffs have collectively loaned CC-Palo Alto over \$450 million in  
 2 Entrance fees. Complaint ¶ 5. As of 2012, CC-Palo Alto had upstreamed over \$190 million to  
 3 CC-Chicago, and had incurred a deficit of over \$300 million. *Id.* at ¶¶ 7, 9. The net effect of this  
 4 upstreaming practice has been to shift the financial risk of non-payment to the residents, which  
 5 substantially impairs their security interest. *Id.* ¶ 60. In fact, the State of California has raised  
 6 concerns about CC-Palo Alto's under capitalization and upstreaming to CC-Chicago. *Id.* Exhibit  
 7 3, at 2.

8 In addition to this illegal upstreaming, Defendants have harmed Plaintiffs and the Class by  
 9 charging them artificially inflated monthly fees. Complaint ¶¶ 10-14, 63-75. These monthly fees,  
 10 which are supposedly intended for the upkeep and improvement of the facilities at the Vi at Palo  
 11 Alto, have been artificially inflated in multiple ways. First, CC-Palo Alto has stated it will pass on  
 12 property taxes to the residents that were incurred solely due to CC-Palo Alto's illegal  
 13 upstreaming. *Id.* ¶¶ 11 and 63-68. That cost amount is about \$1.9 million a year to the Class. *Id.* ¶  
 14 65. Second, CC-Palo Alto improperly allocated charges for earthquake insurance premiums to  
 15 Plaintiffs, who are only contractually responsible for capital items. *Id.* ¶¶ 12 and 69-73. Third,  
 16 CC-Palo Alto overcharged Plaintiffs for so-called "marketing costs" that were used to subsidize  
 17 CC-Chicago's national marketing campaign, and used to sell promissory notes to line its own  
 18 pockets. *Id.* ¶¶ 13, 74-75. These overcharges have been uniformly imposed on Plaintiffs and the  
 19 Class under the guise that they are part of the "costs of operating the community." Defendants'  
 20 illegal upstreaming of Plaintiffs' Entrance Fees and its overcharges associated with the monthly  
 21 fees give rise to the seven causes of action alleged in Plaintiffs' Complaint.

22 **b. Defendant's Statement**

23 CC-Development Group, Inc., the parent company of CC-Palo Alto, Inc. is a market  
 24 leader in the senior living business with a number of subsidiaries, which in turn own and operate  
 25 ten (10) First Class Continuing Care Retirement Communities ("CCRCs"). CCRCs offer their  
 26 senior residents housing, meals, housekeeping, recreational and hospitality services, long-term  
 27 care, and a long-term care financial benefits program for their lifetimes, in return for payment of  
 28 an entrance fee and a monthly fee. CCRCs offer a "continuum of care," typically consisting of

three levels: a) independent living; b) assisted living, where residents can receive help with activities of daily living such as bathing, grooming, dressing, and medication management; and c) skilled nursing. CCRCs also provide a long-term care, health insurance benefit. Under a “Type A” contract, such as that offered at Vi at Palo Alto, when residents require assisted living or nursing care, residents continue to pay essentially the same monthly fee that was paid in independent living, despite the higher actual cost of providing care. A full range of services is also available to residents, including salon and spa services, fitness and on-site health services, 24-hour valet parking, and weekly housekeeping and laundry services. With its extensive services and amenities, Vi at Palo Alto offers the finest in retirement living.

Vi at Palo Alto is owned by CC-Palo Alto, Inc., and managed by Classic Residence Management Limited Partnership (“CRMLP”). Both entities are subsidiaries of CC-Development Group. The employees that provide the day-to-day management and operation of Vi at Palo Alto are employees of CRMLP. Vi at Palo Alto is situated on land leased from The Board of Trustees of the Leland Stanford Junior University (the “Ground Lease”). The 75-year Ground Lease, among other things, requires CC-Palo Alto to maintain and operate the project at a First Class level of quality and service.

In order to live at Vi at Palo Alto, each resident must sign a Continuing Care Residency Contract (“Residency Agreement”) with CC-Palo Alto, setting forth the parties’ obligations. Each resident freely entered into a contractual relationship with CC-Palo Alto, and pursuant to the terms of that agreement, paid an entrance fee upon entering the Community. Residents receive a license to occupy an apartment, but they have no ownership interest in the premises or in CC-Palo Alto.

The Residency Agreement specifically states that the entrance fee is intended to be a loan to CC-Palo Alto, with a portion of that loan to be repaid. This loan agreement is further set forth in the Entrance Fee Promissory Note that each resident signed. The Entrance Fee Promissory Note is an unsecured, general obligation of CC-Palo Alto.

Under the Residency Agreement, residents are entitled to repayment of a portion of the entrance fee upon termination. CC-Palo Alto is obligated to make these repayments 14 days after

1 resale of the apartment or 10 years from the date of termination, whichever occurs first. **Nowhere**  
2 **in the contracts or in the law is an entrance fee repayment reserve required for the purposes**  
3 **claimed by plaintiffs.** CC-Palo Alto fully meets or exceeds all state-required reserves, has never  
4 defaulted on an entrance fee repayment, has a history of full occupancy, and has a long waiting  
5 list (over 800) of potential residents.

6 Additionally, residents pay a monthly fee based on the size of their homes that ranges  
7 from \$4,110 to \$9,320. As set forth in the Residency Agreement, monthly fees, along with  
8 certain other Community revenues, are intended to pay all costs of operating the Community.  
9 The Residency Agreement expressly provides that the costs of insurance policies, real estate  
10 taxes, and marketing costs are an operating expense to be paid from monthly fees.

11 CC-Palo Alto has complied with all of its contractual and regulatory requirements, going  
12 above and beyond what is required of it in certain instances. CCRCs are one of the most highly  
13 regulated businesses in California. The statute expressly dictates the terms of continuing care  
14 contracts and every contract must be approved by the California Department of Social Services  
15 (“DSS”) before it may be used. The DSS regularly evaluates the performance and financial  
16 strength of each provider to determine whether it has the ability to fulfill contractual repayment  
17 obligations. Moreover, although CC-Palo Alto is financially sound, DSS has extensive powers to  
18 intervene where it believes a CCRC is financially unstable or may not be able to meet its  
19 obligations. In fact, the DSS specifically reviewed CC-Palo Alto's financial stability in 2012 and,  
20 in an expansion of its prior policy, determined an amount to cover the remote possibility that, if  
21 an apartment could not be resold within 10 years after contract termination, an entrance fee  
22 repayment would need to be made from a source other than reoccupancy proceeds. DSS  
23 determined that the additional reserve would apply only to contracts entered into on and after June  
24 1, 2012, and CC-Palo Alto has fully funded that reserve. CC-Palo Alto has never defaulted on an  
25 entrance fee repayment and has repeatedly confirmed its contractual obligation to repay the  
26 repayable portion of the entrance fee. Indeed, none of the CCRCs owned by CC-Palo Alto's  
27 affiliates has ever defaulted on an entrance fee repayment.

1                                **2.     Legal Issues**

2            The legal issues in the case include but are not limited to:

- 3            a.        Whether this case should be certified as a class action;
- 4            b.        Whether California law has been violated by Defendants;
- 5            c.        Whether Defendants participated in and pursued the course of conduct complained
- 6 of;
- 7            d.        Whether Defendants' conduct was directed toward senior citizens;
- 8            e.        Whether Defendants' conduct constituted unfair and/or unlawful business practices
- 9 under California Business and Professions Code §17200;
- 10           f.        Whether Defendants' conduct violated California Health & Safety Code §§ 1792.6
- 11 and 1793;
- 12           g.        Whether Defendants engaged in misrepresentations or fraudulent concealment;
- 13           h.        Whether any purported misrepresentation was material;
- 14           i.        Whether plaintiffs and the putative class justifiably relied on any purported
- 15 misrepresentation;
- 16           j.        Whether Defendants' conduct violated California's Consumer Legal Remedies
- 17 Act;
- 18           k.        Whether Defendants owed fiduciary duties to Plaintiffs and the putative Class and
- 19 breached the duties owed;
- 20           l.        Whether Defendants' conduct constituted financial elder abuse;
- 21           m.        Whether Defendants' conduct constituted a breach of contract;
- 22           n.        Whether Plaintiffs and the putative Class sustained damages, and if so, the proper
- 23 measure of damages;
- 24           o.        Whether Plaintiffs and the putative Class are entitled to injunctive relief;
- 25           p.        Affirmative defenses, including but not limited to, statute of limitations, consent,
- 26 waiver, contractual right, assumption of the risk, prematurity, laches, unclean hands, and mistake.

27           **B.     Motions**

28           Plaintiffs filed their class action complaint on February 19, 2014 [Doc. 1]. Defendant

1 filed a Motion to Dismiss on March 17, 2014 [Doc. 15] which is scheduled to be heard on August  
 2 15, 2014, in conjunction with the initial Case Management Conference. There currently are no  
 3 other pending motions.

4 As for anticipated motions, Plaintiffs anticipate filing a motion for class certification at the  
 5 appropriate time. Plaintiffs reserve the right to file pre-trial and discovery motions.

6 At this time Defendants contemplate filing a motion for summary judgment or partial  
 7 summary judgment at the appropriate time. Defendants will file a motion to challenge class  
 8 certification or vigorously oppose a motion for class certification. Defendants reserve their rights  
 9 to file discovery motions (and other motions) as deemed appropriate.

#### 10 **1. Amendment and Pleadings**

11 No amendments of the pleadings are anticipated, unless the Court grants Defendants'  
 12 Motion to Dismiss the Complaint. If that were to occur, Plaintiffs seek leave to file an  
 13 amendment to the complaint.

#### 14 **C. Evidence Preservation**

15 Plaintiffs and Defendants have reviewed the Guidelines Relating to the Discovery of  
 16 Electronically Stored Information, and have met and conferred pursuant to Fed. R. Civ. P. 26(f)  
 17 regarding the preservation of evidence.

#### 18 **D. Disclosures**

19 The Parties conducted a Rule 26(f) conference on July 25, 2014. The Parties agreed to  
 20 make their initial disclosures by August 8, 2014.

#### 21 **E. Discovery**

##### 22 **1. Discovery taken to date:**

23 No discovery has yet taken place.

##### 24 **2. Scope of anticipated discovery:**

25 a. Plaintiffs anticipate taking discovery from Defendants regarding the particular  
 26 financial transactions between Plaintiffs and the Class and Defendants; Defendants' marketing  
 27 materials and practices; Defendants' standard policies and practices as they relate to the  
 28 transactions between Plaintiffs and Defendants and the proposed class. Plaintiffs anticipate taking

discovery related to class certification. The Parties have discussed the likely need for a protective order and agree that the United States District Court for the Northern District of California's form protective order may be a basis of an order in this case. The Defendants have suggested that an attorneys' eyes only level of protection is needed because of the likelihood that residents' medical and financial information will be produced. Plaintiffs are considering that request; however, further meet and confer efforts are needed. Plaintiffs agreed to prepare a draft protective order, which will be provided soon.

b. Defendants anticipate taking discovery from Plaintiffs and the putative class members regarding their residency at Vi at Palo Alto; inquiries and requests for information made by residents; information provided by defendants to residents; guidance received by residents from family members or advisors. Defendants also reserve the right to take discovery of the Department of Social Services—the agency charged with enforcing the continuing care contract statutes—and family members or advisors of residents. Defendants anticipate taking discovery to oppose class certification. A protective order with an attorneys' eyes only provision is necessary in this case, given the sensitive and confidential nature of the documents and information, including the medical and financial information of putative class members. The Parties will meet and confer regarding an appropriate form to submit to the court for approval.

**3. Proposed limitations or modifications of the discovery rules:**

None

**4. E-discovery:**

The Parties have agreed to cooperate in discussing ESI topics. The Parties have agreed to cooperate in scheduling a further meet and confer on ESI in the next few weeks.

**5. Completion of discovery:**

- a. Plaintiffs believe that all discovery can be completed within eight (8) months.
- b. Defendants believe that all discovery can be completed within two (2) years.

///



1           **E. Class Actions**

2           This case is pleaded as a class action. Defendants dispute that it should be certified as a  
3 class action.

4           **G. Related Cases**

5           There are no related cases.

6           **H. Relief**

7           Plaintiffs seek compensatory damages, restitution, disgorgement, exemplary and punitive  
8 damages, costs of suit, pre- and post-judgment interest at the maximum legal rate, attorneys' fees,  
9 and injunctive relief, as well as all such relief deemed appropriate by the Court.

10          Defendants deny that Plaintiffs have been damaged by any act or omission of Defendants.  
11 Defendants contend that Plaintiffs are not entitled to any relief in any form from Defendants.

12          **I. Settlement and ADR**

13          1. Joint statement: The Parties note that they participated in pre-litigation mediation  
14 before Justice Panelli (Ret.) of JAMS on September 12, 2013.

15          2. Plaintiffs' statement: Plaintiffs are willing to participate in attempts to resolve this  
16 matter; however, because it is a putative class action, any discussion of resolution must be made  
17 on a class-wide basis. Plaintiffs believe that some discovery is necessary prior to the initiation of  
18 further settlement discussions. Plaintiffs believe that the case is appropriate for further private  
19 mediation.

20          2. Defendants' statement: Defendants are amenable to mediation once the motion to  
21 dismiss is resolved and some targeted discovery is conducted in order to facilitate discussion  
22 among the Parties.

23          **J. Other References**

24          The case is not suitable for reference to binding arbitration, a special master, or the  
25 Judicial Panel on Multidistrict Litigation.

26          **K. Narrowing of Issues**

27          The Parties have not agreed to any narrowing of the issues at this time.  
28

1           **L. Expedited Trial Procedure**

2           The Parties do not consent to an expedited trial procedure.

3           **M. Scheduling**

4           The Parties do not believe that the setting of a schedule is appropriate until the pleadings  
5 are settled.

6           **N. Trial:** The case will be tried to a jury. Plaintiffs estimate the expected length of  
7 the trial is 10 days. Defendants estimate the length of trial will be 20 days.

8           **O. Disclosure of Non-party Interested Entities or Persons**

9           1. Plaintiffs: Other than the Parties and the putative Class, Plaintiffs are unaware of  
10 any person or entity having a financial or other interest in the case.

11           2. Defendants: Other than the Parties and the putative Class, Defendants are unaware  
12 of any person or entity having a financial or other interest in the case.

13  
14 Dated: August 8, 2014

**COTCHETT, PITRE & McCARTHY, LLP**

15 By: /s/ Anne Marie Murphy  
16 NIALL P. McCARTHY  
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20 **McMANIS FAULKNER**

21 Dated: August 8, 2014

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23 JAMES McMANIS  
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