

OCT 3 2008

By: P. Jennings, Deputy

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

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

Plaintiffs,)

v.)

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

Defendants.)

CASE NO: GIC877707

Date: October 3, 2008

Time: 1:30 p.m.

Judge: Hon. Yuri Hofmann

Dept: C-60

Action Filed: December 29, 2006

[PROPOSED]
JUDGMENT APPROVING
SETTLEMENT OF CLASS
ACTION

Pursuant to rule 3.769(e) of the California Rules of Court, a final approval hearing was held on October 3, 2008, in Department 60 of the Superior Court of the State of California for the County of San Diego, The Honorable Yuri Hofmann presiding. Michael A. Conger appeared for the plaintiff class. Eric M. Acker and Linda L. Lane appeared on behalf of all defendants.

The court has conducted an inquiry into the fairness of the proposed settlement of the action set forth in the Settlement Agreement and Release ("Settlement Agreement"), as required by rule 3.769(g) of the California Rules of Court. The court has considered factors relevant to fairness, including "[1] the strength of the plaintiffs' case, [2] the risk, expense, complexity and

1 likely duration of further litigation, [3] the risk of maintaining class action status through trial,
2 [4] the amount offered in settlement, [5] the extent of discovery completed and the stage of the
3 proceedings, [6] the experience and views of counsel, [7] the presence of a governmental
4 participant, and [8] the reaction of the class members to the proposed settlement.” (*Dunk v. Ford*
5 *Motor Company* (1996) 48 Cal.App.4th 1794, 1801.)

6 Based upon the evidence and arguments presented and the documents in the Court’s file,
7 and after due consideration of the factors relevant to fairness, the court finds:

8 1. Due notice of the approval hearing has been given to the members of the plaintiff
9 class pursuant to rule 3.769(f) of the California Rules of Court.

10 2. The only “agreement, express or implied, that has been entered into with respect
11 to the payment of attorney fees or the submission of an application for the approval of attorney
12 fees” (Cal. Rules of Court, rule 3.769(b)) is recited in Section 8.1 of the Settlement Agreement.

13 3. All parties, including the plaintiff class, are represented by experienced and able
14 counsel.

15 4. Because the parties have substantially completed discovery, the defendants had
16 filed a motion for summary judgment and motion to decertify the class, and the parties have
17 substantially completed preparations for trial, all parties are in a position to have a clear view of
18 the strengths and weaknesses of their cases and to make an informed compromise of disputed
19 issues.

20 5. The terms of settlement were negotiated through a process of arm’s-length
21 bargaining in which all parties participated, and the parties were assisted by an experienced
22 mediator, Craig D. Higgs, Esq.

23 6. The Settlement Agreement is not the product of fraud, or overreaching by, or
24 collusion between, negotiating parties.

25 7. All counsel to the parties have recommended and approved the terms of the
26 Settlement Agreement.

27 8. The Settlement Agreement has been reviewed by the California Department of
28 Social Services and no objections have been noted. The California Department of Social

1 Services is charged with protecting the interests of residents of facilities such as that operated by
2 defendants.

3 9. There were no objections to the proposed settlement, including the request for
4 attorney fees and costs, filed or received from the class.

5 10. The court has reviewed and considered the Settlement Agreement and the
6 consideration set forth in the Settlement Agreement is fair in relation to the strength of the
7 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, and the risk
8 of maintaining class action status through trial.

9 Based upon these findings, and the evidence presented at the fairness hearing, the court
10 concludes that the settlement, taken as a whole, is fair, adequate, and reasonable to the plaintiff
11 class and all named parties and should therefore be approved.

12 IT IS ORDERED, ADJUDGED AND DECREED that the proposed settlement, as set
13 forth in the Settlement Agreement attached as Exhibit 1 to this judgment, is approved by the
14 Court. Pursuant to Code of Civil Procedure section 664.6 and rule 3.769(h) of the California
15 Rules of Court, the court shall retain jurisdiction over the parties in order to enforce the terms of
16 this judgment and the Settlement Agreement.

17
18 Date: October 3, 2008

YURI HOFMANN

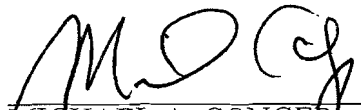
Yuri Hofmann
Judge of the Superior Court

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21 Approved as to Form and Content:

22
23 Date: October 3, 2008

LAW OFFICE OF MICHAEL A.
CONGER

24
25
26 By:


MICHAEL A. CONGER
Attorney for Plaintiff Class

27 ///

28 ///

1 Date: October 3, 2008

MORRISON & FOERSTER LLP

2
3 By:



LINDA L. LANE
Attorneys for all Defendants

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EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this “**Agreement**”) is made as of August 15, 2008 (the “**Effective Date**”) by and between the Plaintiff Class, represented by Donald R. Short, James F. Gleason, Casey Meehan, Marilyn Short, and Patty Westervelt, (the “**Class Representatives**”), and Defendants CC-La Jolla, Inc., CC-La Jolla, L.L.C., CC-Development Group, Inc., and Classic Resident Management Limited Partnership (“**Defendants**”)(Plaintiff Class and Defendants being herein collectively called “**the Parties**”).

RECITALS

WHEREAS, this action was filed with the Court on December 29, 2006.

WHEREAS, the Plaintiff Class filed a Third Amended Complaint on August 28, 2007, including the following claims against the Defendants: (1) Fraud and Deceit – Intentional Misrepresentation; (2) Fraud and Deceit – Negligent Misrepresentation; (3) Fraud and Deceit – Concealment; (4) Elder Abuse; (5) Violations of the Consumer Legal Remedies Act (“**CLRA**”); (6) Breach of Fiduciary Duty; (7) Unfair Business Practices; (8) Breach of Contract; (9) Constructive Fraud; and (10) Violation of Health and Safety Code Section 1793.5.

WHEREAS, on December 14, 2007, the Court certified two subclasses (collectively the “**Plaintiff Class**”) consisting of all current residents of La Jolla Village Towers, located at 8515 Costa Verde Boulevard, San Diego, California, including those who have already transferred to the Care Center located at 4171 Las Palmas Square, San Diego, California, who entered into a residency agreement with any of the Defendants prior to August 1, 2005; the first subclass is certified as to all causes of action except the CLRA claim and the second subclass is certified only as to the CLRA claim.

WHEREAS, the Parties now wish to effect a complete resolution and settlement of all claims, disputes and controversies relating to the allegations contained in the Third Amended Complaint, and to resolve their differences and disputes by settling the Dispute.

NOW, THEREFORE, in consideration of the mutual covenants and other terms and conditions contained herein, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to other terms defined elsewhere herein, the following terms, as used in this Agreement, shall have the meanings indicated:

1.1 “Approval Date” shall mean the date upon which the Court finally approves this Agreement and the settlement of the action contained herein, after having determined that it is fair, adequate and reasonable to the Class as a whole, and after: (i) issuing notice to the Class, and (ii) conducting a hearing on the fairness of the settlement.

1.2 “Care Center” shall mean the health care center at the Community known as Classic Residence by Hyatt at La Jolla Village, located at 4171 Las Palmas Square, San Diego, California 92122, including all of its improvements, fixtures, equipment, and amenities.

1.3 “Class” or “Settlement Class” or “Plaintiff Class” shall mean those residents of the Community set forth on Exhibit A, including those residents who opted out before the Preliminary Approval Date, but opted back in after the Preliminary Approval Date.

1.4 “Community” shall mean the retirement community known as Classic Residence by Hyatt at La Jolla Village, including the Independent Living Towers located at 8515 Costa Verde Boulevard, San Diego, California 92122 and the Care Center located at 4171 Las Palmas Square, San Diego, California 92122, including all improvements, fixtures, equipment, and amenities.

1.5 “Confidential Information” shall mean the terms of this Agreement and any other information or material disclosed by one Party to the other Party that is marked “Confidential”.

1.6 “Court” shall mean the Superior Court of the State of California for the County of San Diego, Department C-60, the Honorable Yuri Hofmann.

1.7 “Dispute” shall mean the action entitled Donald R. Short, James F. Gleason, Casey Meehan, Marilyn Short, Patty Westervelt, and Dottie Yelle, individually, and on behalf of all others similarly situated, Plaintiffs v. CC-La Jolla, Inc., a Delaware Corporation, CC-La Jolla, L.L.C., a Delaware limited liability company,

CC-Development Group, Inc., Classic Residence Management Limited Partnership, an Illinois Limited Partnership, and Does 1-110, inclusive, Defendants, Case No. GIC87707, including all claims which were made or could have been made based upon the facts and circumstances alleged in the Third Amended Complaint filed by the Plaintiff Class.

1.8 “**Independent Living Towers**” shall mean the two independent living towers at the Community known as Classic Residence by Hyatt at La Jolla Village, located at 8515 Costa Verde Boulevard, San Diego, California 92122, including all of their improvements, fixtures, equipment, and amenities.

1.9 “**Finality Date**” shall mean (i) the date of issuance of the remittitur after an appeal, or (ii) if no appeal is filed, the expiration date of the time for the filing of any appeal from the Court’s judgment approving this Agreement and dismissing the Dispute.

1.10 “**First Responder System**” shall mean the current emergency call response system in place at the Community wherein, upon initiation of the emergency call system by a resident of the Community, the concierge will call the resident’s independent living apartment and, if there is no response or if it is confirmed that emergency response is required, the concierge will contact the San Diego Fire and Rescue Department (“911”) and a First Responder will be dispatched to the residence or source of the emergency. First Responders (currently concierge or security staff) are trained quarterly in Cardiopulmonary Resuscitation (“CPR”) and Automated External Defibrillator (“AED”) by a Registered Nurse through the American Heart Association and in First Aid by the American Red Cross.

1.11 “**Party**” or “**Parties**” shall mean the Plaintiff Class, represented by Donald R. Short, James F. Gleason, Casey Meehan, Marilyn Short, and Patty Westervelt, and Defendants CC-La Jolla, Inc., CC-La Jolla, L.L.C. (d/b/a CCW-La Jolla, L.L.C.), CC-Development Group, Inc., and Classic Resident Management Limited Partnership.

1.12 “**Preliminary Approval Date**” shall mean the date upon which the Court enters an order preliminarily approving this Agreement, pending notice to the Class and a fairness hearing thereon.

2. CONDITIONS PRECEDENT

2.1 This Agreement shall be conditioned upon and shall be effective only upon the occurrence of all the following events. Prior to the occurrence of the following events, the Parties’ only obligations pursuant to this Agreement shall be those which are applicable and set forth in Paragraphs 3, 4, 5, 6, 7.1, 7.5, 7.6, 9 and 10.

(a) The Class Representatives and the Defendants have jointly requested a preliminary approval hearing.

(b) The Class Representatives and the Defendants have jointly moved for an order granting preliminary approval of this Agreement and approving issuance of notice in accordance with the procedures for providing notice submitted by the Parties.

(c) Upon preliminary approval of this Agreement and approval of the notice and the procedures for providing notice, notice has been provided to the Class in accordance with the procedures for providing notice approved by the Court.

(d) A fairness hearing has been held by the Court.

(e) The Court has granted final approval of this Agreement, dismissed the claims of the Dispute in accordance with the terms set forth herein after a fairness hearing has been conducted and the Finality Date has occurred with respect to all such orders and approvals.

3. PRELIMINARY APPROVAL, OBJECTIONS, AND FAIRNESS HEARING.

3.1 Promptly after execution of this Agreement, the Parties shall jointly request that the Court schedule a preliminary approval hearing as soon as the Court may set the hearing, and that the Court preliminarily approve the Agreement, preliminarily certify the damages claims for settlement purposes only, and approve the proposed form of notice and plan for providing notice to the Class.

3.2 The Parties shall ask the Court to schedule a fairness and final approval hearing within sixty (60) days after the date the Court orders for notice to be provided to the Class or as soon thereafter as the Court may set the hearing.

3.3 The Parties shall ask the Court to order the following procedures for objections: any member of the Class may object to this Agreement by filing, within twenty-one (21) days after the date set by the Court for notice to be served, written objections with the Court with copies served on the Parties via their counsel. Only such objecting members of the Class shall have the right, and only if they expressly seek it in their written objection, to present objections orally at the fairness hearing. The Parties may file any responses to timely-filed objections no less than five (5) business days before the fairness hearing.

4. NOTICE

Notice of this Agreement shall be in a form agreed to by the Parties and approved by the Court.

5. FINAL APPROVAL AND DISMISSAL

At the time of the fairness hearing, the Parties jointly shall request that the Court grant final approval of this Agreement and enter a judgment approving this Agreement and dismissing the Dispute as required by Rule 3.769(h) of the California Rules of Court.

6. CONFIDENTIALITY

The terms of this Agreement shall remain confidential, other than to members of the Class, until this Agreement is submitted to the Court for preliminary approval.

7. RELEASES AND SETTLEMENT

7.1 **Class.** Neither of the Parties shall oppose any member of the Class that opts in to the Settlement Class during any opt-in period mutually agreed upon by the Parties and approved by the Court. The settlement described in this Agreement applies to all Settlement Class members that have been certified and approved by the Court.

7.2 **Release by Class.** Class Representatives and the other members of the Settlement Class, both individually and as a class, on behalf of themselves, spouses, executors, heirs, successors, and assigns, hereby fully and irrevocably releases and forever discharges Defendants and their parents, subsidiaries, affiliates, agents, representatives, directors, employees, attorneys, advisors, insurers, successors and assigns of and from any and all claims, counterclaims, demands, actions, causes of action, damages, liabilities, losses, payments, obligations, costs and expenses (including, without limitation, attorneys' fees and costs) of any kind or nature, past, present or future, fixed or contingent, direct or indirect, in law or equity, several or otherwise, known or unknown, suspected or unsuspected, or otherwise, that arise from or relate in any way to the Dispute ("Released Claims"). The foregoing Released Claims are expressly intended to cover and include, without limitation, all claims, past, present or future, known or unknown, suspected or unsuspected, which can or may ever be asserted by successors or otherwise, as the result of the matters herein released, or the effects or consequences thereof. The foregoing Released Claims shall not apply to Defendants' obligations required to be performed under this Agreement.

7.3 **Waiver.** Class Representatives and the other members of the Settlement Class, both individually and as a class, on behalf of themselves, spouses, executors, heirs, successors, and assigns, hereby irrevocably and forever waives all rights they may have arising under California Civil Code Section 1542 (or any analogous requirement of law) with respect to the foregoing Released Claims.

THE CLASS REPRESENTATIVES AND THE OTHER MEMBERS OF THE SETTLEMENT CLASS, UNDERSTAND THAT SECTION 1542 PROVIDES THAT:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

CLASS REPRESENTATIVES AND THE OTHER MEMBERS OF THE SETTLEMENT CLASS, ACKNOWLEDGE THAT THEY HAVE BEEN FULLY INFORMED BY THEIR COUNSEL CONCERNING THE EFFECT AND IMPORT OF THIS AGREEMENT UNDER CALIFORNIA CIVIL CODE SECTION 1542 AND OTHER REQUIREMENTS OF LAW.

7.4 **Full Settlement.** The Parties agree that this Agreement is in full and complete settlement of the rights and obligations of the Parties in connection with the Dispute. This Agreement may be pleaded as full and complete defense to any action, suit or claim and may be used as an injunction against any such action, suit, claim, or other proceeding of any type which may be prosecuted, initiated or attempted in violation of the terms hereof. A

Party hereto shall be entitled to receive from the other Party reasonable attorneys' fees and other related legal expenses incurred in defending against any suit, action or claim brought or attempted in violation of the terms of this Agreement.

7.5 No Admission. This Agreement is entered into in order to compromise and settle disputed claims, without any concession or admission by any Party, and without any acquiescence on the part of either Defendants or the Class as to the merit of any claim, defense, affirmative defense, counterclaim, liabilities or damages related to the Dispute. Neither this Agreement nor any part thereof shall be, or be used as, an admission of liability by anyone, at any time, for any purpose.

7.6 Attorneys Fees and Costs. Each Party shall be responsible for its own attorneys' fees and costs, if any, in connection with the negotiation and execution of this Agreement and otherwise in connection with the Dispute (except as otherwise set forth in this Agreement).

8. CONSIDERATION

8.1 Payment. In consideration of the releases set forth in this Agreement, within ten (10) days after the Finality Date, Defendants agree to pay to the Settlement Class as a whole a one time payment of two million two hundred and seventy thousand dollars (\$2,270,000) (the "**Settlement Payment**"). The Class Representatives agree that the Settlement Payment shall be distributed equally to each member of the Settlement Class, after first deducting one million four hundred thousand dollars (\$1,400,000) for the Settlement Class' attorneys' fees and expenses, and five hundred dollars (\$500) for each member of the Settlement Class who was deposited in connection with the Dispute. Notwithstanding the foregoing, any Settlement Class member that, as of the Finality Date, is deceased or no longer residing at the Community shall not be entitled to any such distribution. The Settlement Payment will be distributed to the Class within thirty (30) days of the Defendants making payment to the Class via the Class Representatives and their counsel. The Class Representatives, and their counsel, will have sole responsibility for the correct distribution of the Settlement Payment to the Class and the Defendants will have no liability for any additional payments or apportionment of the Settlement Payment among the members of the Class after the Defendants transfer the Settlement Payment to the Class Representatives via their counsel.

8.2 Wellness Center. Within thirty (30) days after the Finality Date, Defendants shall institute the following policies and procedures at the Wellness Center:

(a) The Community Wellness Center shall be open for normal operations twenty-four (24) hours a day.

(b) The Community Wellness Center shall have a licensed vocational nurse (or, at Defendants' sole and unfettered discretion, a more highly trained medical professional such as a registered nurse) on site from the hours of 11:30 pm to 7:30 am (PT). All other staffing at the Wellness Center shall not be affected by this Agreement.

(c) Nothing herein shall change the First Responder System currently utilized at the Community except as set forth in section 8.2(d) below.

(d) If a resident of the Community initiates the emergency call system (the First Responder System), a First Responder will be dispatched to the member's residence or the source of the emergency, and, if required, the First Responder will notify 911. Following such dispatch and notification, the licensed vocational nurse in the Wellness Center will also be notified and dispatched to the applicable residence, or source of the emergency, if the licensed vocational nurse is reasonably available at that time.

8.3 Care Center. Defendants shall have an independent company conduct two (2) annual "mock" surveys of the Care Center at the Community, and shall give the results of such surveys to the Resident Health Services Committee within thirty (30) days following Defendants' receipt of the results. Defendants shall discuss with the Resident Health Services Committee an action plan to address any quality issues raised in the survey. With respect to any state or federal surveys, Defendants shall continue to make available the results of such surveys to all members of the Community within thirty (30) days following Defendants' receipt of the results.

8.4 Monthly Fees. The following contributions shall apply solely with respect to members of the Settlement Class that reside in the Independent Living Towers or members of the Settlement Class that reside in the Care Center under the Extensive Continuing Care Plan (collectively, the "**Monthly Fee Class Members**"). If at any time during the term of this Agreement the Defendants increase the monthly fee for the Monthly Fee Class Members such that, calculated on a yearly basis the monthly fee has increased by more than the maximum yearly percent

increases (the "Maximum % Increase") set forth in the chart below, then Defendants shall contribute or cause to be contributed to the operating budget of the Community (Independent Living and Care Center), on a monthly basis, the difference between such monthly fee and the monthly fee that would be due if the monthly fee increases each year did not exceed the maximum percent increase set forth in the chart below:

Year	Maximum % Increase
2008	0%
2009	3% over prior year
2010	3% over prior year
2011	3% over prior year
2012	3% over prior year
2013	3% over prior year
2014 and each subsequent year	4% over prior year

Such contribution will be made into the Community's operating cash account. A credit will then be reflected on the monthly billing statement for each Monthly Fee Class Member for each month such Monthly Fee Class Member resides in the Community such that the increase over the prior year in the net monthly fee paid by the Monthly Fee Class Member does not exceed the Maximum % Increase. As an example, assume that the net monthly fee of a Monthly Fee Class Member in a given year is equal to \$4000, that the monthly fee in the next year is increased by 5% and that the Maximum % Increase for that year is 3%. In this case, at the time of the increase, the Defendants would contribute or cause to be contributed into the Community's operating cash account an amount equal to \$80 per month (\$4000 multiplied by the excess of 5% over 3%) and the Monthly Fee Class Member's monthly billing statement would show the increased monthly fee of \$4,200 (\$4000 multiplied by 5%) less a credit of \$80 (\$4,000 multiplied by the excess of 5% over 3%) resulting in a net monthly fee of \$4,120 (\$4,200 less \$80). In the following year, the Maximum % Increase would be based on the net monthly fee of the previous year (\$4,120 in the foregoing example).

Defendants shall institute any increases to such monthly fees on a yearly basis. Nothing in this Agreement shall require Defendants to increase the monthly fees for residents at the Community in a uniform manner, and the increases among residents who are non-Monthly Fee Class Members may be different than those for Monthly Fee Class Members and may be greater or lesser by percentage as the Defendants may elect. Notwithstanding the foregoing, the terms in this Section 8.4 are subject to review and objection by the California Department of Social Services before entry of the Court's Final Approval and Dismissal as set forth in Section 5. If necessary, the parties will reasonably extend the hearing date to facilitate that review.

9. TERM

This Agreement shall be effective as of the Effective Date and shall continue in full force and effect in perpetuity.

10. GENERAL

10.1 Notices. Any notice, request, demand or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (a) when delivered personally; (b) when sent by facsimile, with written confirmation of receipt; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt. All notices shall be sent to the last address provided by a Party and to the attention of the person executing this Agreement on such Party's behalf (or to such other address or person as may be designated by a Party by giving written notice to the other Party pursuant to this Section).

10.2 Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of California (without giving effect to the laws, rules or principles thereof regarding conflict of laws).

10.3 Dispute Resolution. Any disputes relating to this Agreement shall be resolved according to the following procedure:

(a) **Meet and Confer.** If either Party believes that a dispute exists relating to this Agreement, it shall notify the other Party in accordance with Paragraphs 10.1 and 10.12. The Parties will then meet and confer in an effort to reach a resolution of any dispute.

(b) **Mediation.** If the Parties are unable to resolve the dispute through the meet and confer process within thirty (30) days, the Parties shall engage in mediation in an effort to reach a resolution of any dispute.

(c) The Court. If the parties are unable to resolve any disputes via mediation within sixty (60) days, the Parties agree that they will present any dispute to the Court for resolution. The parties further agree that his Agreement shall be enforceable pursuant to the Code of Civil Procedure section 664.6 and shall be admissible into evidence as needed for enforcement.

10.4 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall confer upon any person not a Party to this Agreement any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

10.5 Further Assurances. Each Party agrees to take or cause to be taken such further actions, and to execute, deliver and file or cause to be executed, delivered and filed such further documents and instruments, and to obtain such consents, as may be reasonably required or requested in order to effectuate fully the purposes, terms and conditions of this Agreement.

10.6 Force Majeure. In the event either Party hereto is prevented from or delayed in the performance of any of its obligations hereunder by reason of acts of God, war, strikes, riots, storms, fires or any other cause whatsoever beyond the reasonable control of the Party, the Party so prevented or delayed shall be excused from the performance of any such obligation to the extent and during the period of such prevention or delay.

10.7 Captions and Headings. The captions and headings used in this Agreement are inserted for convenience only, do not form a part of this Agreement, and shall not be used in any way to construe or interpret this Agreement.

10.8 Construction. This Agreement has been negotiated by the Parties and shall be interpreted fairly in accordance with its terms and without any construction in favor of or against either Party.

10.9 Counterparts. This Agreement may be executed (including, without limitation, by facsimile signature or signature within a PDF or other electronic file) in one or more counterparts, with the same effect as if the Parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and shall constitute one Agreement.

10.10 Entire Agreement; Amendment. This Agreement, including the Exhibit(s) attached hereto which are incorporated herein by reference, constitutes the entire understanding and only agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous negotiations, representations, agreements and understandings, written or oral, that the Parties may have reached with respect to the subject matter hereof. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of each of the Parties hereto. The Parties further agree that no provision of the California Health and Safety Code, including Health and Safety Code section 1771(c)(10), in any way modifies this Agreement or creates any obligation on either Party with respect to the settlement of the Dispute that is not expressly contained in this Agreement.

10.11 Duty to Support and Defend Agreement. The parties all agree to abide by all of the terms of this Agreement in good faith and to support it fully, and shall use their best efforts to defend this Agreement from any legal challenge, whether by appeal or collateral attack.

10.12 Communications to Counsel. Unless otherwise indicated in the Agreement, all notices or communications required by this Agreement shall be in writing by facsimile and U.S. Mail or overnight delivery addressed as follows:

(a) To Counsel for the Class: Michael A. Conger, Law Office of Michael A. Conger, P.O. Box 9374, Rancho Santa Fe, CA 92067

(b) To Defendants' Counsel: Eric M. Acker and Linda L. Lane, Morrison & Foerster LLP,
12531 High Bluff Drive, Suite 100, San Diego, CA 92130-2040

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

Class Representatives:

Donald R. Short

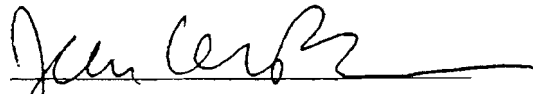
James F. Gleason

Casey Meehan

Marilyn Short

Patty Westerveit

Defendants:

By: 

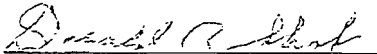
Name: John Kevin Poorman for Defendants
Title: Vice Chairman

(b) To Defendants' Counsel: Eric M. Acker and Linda L. Lane, Morrison & Foerster LLP, 12531 High Bluff Drive, Suite 100, San Diego, CA 92130-2040

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

Class Representatives:

Defendants:

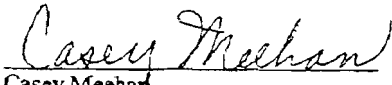

Donald R. Short

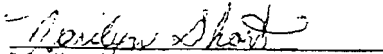
By: _____

Name: John Kevin Poorman for Defendants

Title: Vice Chairman


James F. Gleason


Casey Meehan


Marilyn Short


Patty Westervelt

EXHIBIT A
CLASS MEMBERS

1. ABRAMSON, HAZEL
2. ALLESHOUSE, MARGE
3. ALLESHOUSE, PAUL
4. ANDERSON, SUE R
5. ANDERT, PATRICIA
6. BADGLEY, MARION
7. BELDEN, ROBERT
8. BELDEN, WILANNE
9. BENJAMIN, MIRIAM
10. BENNETT, PHYLLIS
11. BERRY, GLORIA
12. BLOCK, MITCHELL
13. BODINGER, CLEO
14. BOGIE, JEAN
15. BRADNER, HUGH
16. BRADNER, MARJORIE
17. BRALEY, BARBARA
18. BRENNER, BERNARD
19. BRENNER, GRACE
20. BROCKBANK, LEE
21. BRODY, SHIRLEY
22. BROKER, IRENE
23. BROOKS, HELEN
24. BRUVOLD, MARY
25. BUCKLEY, FRANCES
26. BURGGRAF, MARGE
27. BURNETT, JEANETTE R.
28. CAMP, EVELYN
29. CAMPBELL, JAMES L.
30. CAMPBELL, MURIEL
31. CARIOLA, ROY
32. CARROLL, BERNETTA
33. CARTER, FLORENCE
34. CASSIDY, CHARLOTTE
35. CASSIDY, JACK
36. CAUGHLIN, THOMAS
37. CAVE, BETTY
38. CAVE, MARY
39. CEDERBAUM, SYLVIA
40. CHEN, MAY
41. COOPER, GEORGE
42. COOPER, JOAN
43. COWAN, GABRIELLE
44. COWAN, HALSEY
45. CREVER, HELEN
46. DAGRADI, ROSALIND
47. DAHLGREN, ROBERT
48. DAHLGREN, STELLA
49. DANAN, LYNNE
50. DARLING, FREDERICK
51. DARLING, RUTH
52. DARMSTANDLER, DONNA
53. DARMSTANDLER, HANK
54. DAVIS, DOROTHY
55. DAVIS, GENE
56. DAVIS, NELL R.
57. DAVIS, SARAH
58. DESOW, PAULA
59. DICKMAN, HAROLD
60. DIENER, ANNA
61. DIENER, NATAN
62. DUBIN, ELENOR
63. DULFON, COLETTE LEE
64. DUNN, VIRGINIA
65. EARLE, MILDRED
66. EICHBERG, JOAN
67. EICHBERG, NORMAN
68. EISENBERG, DORIS
69. ELLIOTT, ANN J.
70. EMMERSON, VIOLA
71. ERLEY, JEANE F.
72. ERLEY, RICHARD A.
73. ETTINGER, JOEL
74. FARKAS, CHARLOTTE
75. FARKAS, FRED
76. FELDMAN, DANIEL
77. FELDMAN, SYLVIA
78. FISHLEDER, PHYLLIS
79. FITZNER, ARTHUR
80. FITZNER, WILMA
81. FLENTYE, LOUISE
82. FORMAN, CECIL
83. FORSYTH, REBECCA R.
84. FOX, HARRY
85. FOX, IRENE
86. FRASER, BERNICE
87. FRIEDBERG, IMBI
88. FRIEDENBERG, ROSE
89. FRITSCH, PETER
90. GEORGE, ROBERT
91. GINSBERG, MONA
92. GLEASON, PAT
93. GLEASON, JAMES
94. GOLD, IRVING
95. GOLDBERG, ARLENE D.
96. GOLDBERG, RICHARD
97. GOLDMAN, MARVIN
98. GOLDMAN, MAXINE
99. GOLDSMID, EILEEN
100. GOLDSMID, JULIAN
101. GOLDSTEIN, DON
102. GOLDSTEIN, MARY
103. GOODSPEED, FRANKLIN
104. GOODSPEED, JOHANNE
105. GRADY, RITA C.
106. GREEN, ALBERT
107. GREENE, LOUISE
108. GREENE, ROSE

109.GRIM, WENDY
 110.GROSVENOR, RACHEL
 111.GRUNEWALD, ILSE
 112.GUNTHER, SIDNEY
 113.GUSMAN, CAROLYN
 114.GUSMAN, SAMUEL
 115.HALE, CHARLENE
 116.HALLIDAY, CLIFFORD
 117.HANSSON, HELEN
 118.HANSSON, KARL-ERIK
 119.HART, ANNA
 120.HAYES, LESTER
 121.HERMAN, JOHN
 122.HERMAN, MARIE
 123.HERTWIG, WALDEMAR
 124.HIATT, RICHARD
 125.HOCKMEYER, CLARA
 126.HOFFMAN, WILLIAM
 127.HUIZINGA, VIRGINIA
 128.HUNTER, CLARE
 129.INGALLS, ALOHA
 130.IRVINE, JAMES
 131.JACKSON, ELIZABETH
 132.JACOBS, LOUISE
 133.JAIMERENA, LUIS A
 134.JAMES, DAVID
 135.JAMES, NANCY
 136.KAHN, EUGENE
 137.KAHN, PAUL
 138.KAHN, VIRGINIA
 139.KALISH, CLAIRE
 140.KATZ, SHEILA
 141.KEENAN, JOSEPH
 142.KEENAN, PAT
 143.KELLEY, ALFRED W.
 144.KENT, PETER
 145.KIMBALL, DENISE
 146.KLEIN, ALAN
 147.KLEIN, SYLVIA
 148.KNUTSON, WALLACE
 149.KORNBLUTH, RUTH
 150.KRAMER, JEANETTE
 151.KRAMER, JOAN
 152.KRAMER, VICTOR
 153.KRINTZMAN, CAROL
 154.KRINTZMAN, JEAN C.
 155.LAMPEL, ETTA
 156.LANE, ALVA
 157.LARSON, LUISA
 158.LAW, BETTY
 159.LAW, ED
 160.LENSEN, HELEN
 161.LENSEN, JAY
 162.LESSER, JOSEPH
 163.LESSER, SONIA
 164.LESTER, PAULINE
 165.LESTER, SAM
 166.LEVITT, SANDRA
 167.LICHTER, CHARLOTTE
 168.LIVINGSTON, MAGDELINE
 169.LIVINGSTON, SIDNEY
 170.MARCUS, MAX
 171.MARSHIK, FRANK X.
 172.MARSHIK, NORIKO
 173.MCCHARLES, EVE
 174.MCKEARLY, GEORGIA M.
 175.McKELLAR, BEVERLY
 176.MEEHAN, MARY C.
 177.MILLER, GRACE
 178.MILLER, JUANITA DAHLSTROM
 179.MITCHELL, HOPE
 180.MITCHELL, JAMES
 181.MUSICK, KAY
 182.MUSICK, WARD
 183.NAIMAN, SYLVIA
 184.NEWMAN, BERNICE
 185.NEWMAN, ROBERT
 186.NIERENBERG, EDITH
 187.OLSON, LOUISE
 188.PARNES, BEA
 189.PARNES, SID
 190.PEARLMAN, NELLE
 191.PIERCE, HILDA
 192.PITTLUCK, BETTY
 193.POWELL, JANICE L.
 194.RAST, MADELEINE
 195.REDLITZ, LOUISE
 196.REED, DOROTHY
 197.REITER, PEARL
 198.ROSE, BEATRICE
 199.RUBIN, DORIS PATINKIN
 200.SAMSON, SAMMY
 201.SAMSON, TRUDY
 202.SARWINSKI, RAY
 203.SAWYER, GEORGE
 204.SAWYER, RUTH
 205.SCHREMPF, FRED W.
 206.SCHWARZ, PAUL
 207.SEIN, JOSEPH
 208.SETZER, BETTY
 209.SHAFER, MARGIE
 210.SHEHORN, CLAYTON
 211.SHORT, DON
 212.SHORT, MARILYN
 213.SILVA, DOROTHY
 214.SILVA, EDWARD
 215.SIMON, KATE
 216.SLUTZKY, HERMAN
 217.SMITH, MARGARET
 218.SOKOL, BEATRICE
 219.SOOTER, WAID
 220.SPAULDING, WALLACE P.

221. STONE, AVERY
222. STONE, HILDA
223. STONE, MARY
224. STONE, MELVIN
225. STONE, WINIFRED
226. SUDRANN, CARLYNE
227. SWEET, ETHEL
228. TENNENT, JEANNE
229. TOLCHINSKY, MARY
230. VENN, FRANCES
231. VENN, KENNETH
232. WAKEFIELD, CELIA
233. WAKEFIELD, CHARLES
234. WALL, CLARA
235. WALL, FREDERICK
236. WASSERMAN, CHARLES
237. WATKINS, RUBY
238. WATSON, ELAINE
239. WATSON, KENNETH
240. WATT, ROBERT
241. WEBER, DORIS
242. WEIL, ANNETTE KAPLAN

243. WEINBERGER, MARCELLA
244. WEISS, RUTH
245. WEISSENBERG, IDELLE
246. WEISZ, MILDRED
247. WELLS, BETTY
248. WERNER, CAROL H.
249. WERNER, JOHN M.
250. WESTERVELT, PATTY
251. WINEBERG, ABRAHAM
252. WINEBERG, SHIRLEY
253. WISPER, ARNOLD
254. WISPER, MARION
255. WOOD, BARLOW
256. WOOD, VEDA
257. WOOSTER, RAYMOND
258. WORLEIN, DEANE
259. WORLEIN, FRANCES
260. WRIGHT, D. RICHARD
261. WRIGHT, GEORGEANN H.
262. WUBBELER, FRANKIE
263. WUBBELER, RAYMOND
264. YELLE, DOROTHY