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*Linda Collins Cork, Georgia L. May,*  
 8 *Thomas Merigan, Alfred Spivack,*  
 9 *and Janice R. Anderson.*

10 **IN THE UNITED STATES DISTRICT COURT**  
 11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 **BURTON RICHTER**, an individual;  
 13 **LINDA COLLINS CORK**, an  
 14 individual; **GEORGIA L. MAY**, an  
 15 individual; **THOMAS MERIGAN**, an  
 16 individual; **ALFRED SPIVACK**, an  
 17 individual; and **JANICE R.**  
**ANDERSON**, an individual; on behalf of  
 themselves and all others similarly  
 situated,

18 Plaintiffs,

19 v.

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

23 Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR:**

1. **CONCEALMENT**
2. **NEGLIGENT MISREPRESENTATION**
3. **BREACH OF FIDUCIARY DUTY AND CONSTRUCTIVE TRUST**
4. **FINANCIAL ABUSE OF ELDERS (CALIFORNIA WELFARE AND INSTITUTIONS CODE §§ 15600, et seq.)**
5. **VIOLATION OF CALIFORNIA CIVIL CODE §§ 1750, et seq.**
6. **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200, et seq.**
7. **BREACH OF CONTRACT**

**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, and bring this action against Defendants CC-Palo Alto (“CC-Palo Alto” of the “Vi at Palo  
4 Alto”), CC-Development Group (“CC-Chicago”), and Classic Residence Management Limited  
5 Partnership (“CRMLP”), (collectively, “Defendants”), and allege as follows:

6 **I. INTRODUCTION**

7 1. Defendants have taken hundreds of millions of dollars from a group of vulnerable  
8 senior citizens, deprived them of their security, and placed much of their lifetime savings at risk.

9 2. 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 – one of the most desirable retirement communities in the country. The  
12 Proposed Class consists of all individuals who resided at the Vi at Palo Alto between January 1,  
13 2005 and the present (“Plaintiffs” or “the Class”).

14 3. Defendant CC-Palo Alto, the entity that owns and operates the Vi at Palo Alto,  
15 wrongfully deprived Plaintiffs and the Class of their personal property by collecting hundreds of  
16 millions of dollars in refundable “Entrance Fees” and transferring those funds upstream to CC-  
17 Chicago, its corporate parent without obtaining security or any repayment promise from CC-  
18 Chicago. Due to this upstreaming activity, CC-Palo Alto does not have enough money to refund  
19 these fees, and CC-Chicago disavows any obligation to do so. This presents a serious  
20 impairment of Plaintiffs’ financial security. Moreover, Defendants have also overcharged  
21 Plaintiffs and the Class by improperly allocating increased tax assessments, earthquake insurance  
22 charges, and marketing costs to the Vi at Palo Alto’s operating expenses, and passing on these  
23 charges as inflated monthly fees.

24 **A. Entrance Fees**

25 4. Prior to entering the Vi at Palo Alto, each resident is required to “loan” to CC-  
26 Palo Alto several hundred thousand dollars (or more) in the form of an “Entrance Fee.”  
27 Plaintiffs and the Class were willing to make these loans because they were promised that 75%-  
28 90% of the Entrance Fees would be refunded to their heirs or estates after they passed away, or

1 directly to them if they left the Vi at Palo Alto. Each Plaintiff signed a Continuing Care  
 2 Residency Contract (“Residency Contract”) that made such a promise. Plaintiffs and the Class  
 3 believed that CC-Palo Alto was a reputable company and that their investment would be secure.

4 5. Since the Vi at Palo Alto’s opening in 2005, Plaintiffs have collectively loaned  
 5 Defendants over \$450 million in Entrance Fees. *See* CC-Palo Alto’s 2012 Consolidated  
 6 Financials (Ex. 1) at 3.

7 6. California Law requires companies that operate a continuing care retirement  
 8 community (“CCRC”), such as the Vi at Palo Alto, maintain reserves to act as security for the  
 9 Entrance Fees they collect. *See* California Health & Safety Code §§1792.6, 1793. In the past,  
 10 Defendants have acknowledged this reserve requirement:

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

13 *See* Ex. 2 (Hyatt in Palo Alto Brochure, circa 2005).<sup>1</sup>

14 7. Instead of maintaining these statutorily required reserves, CC-Palo Alto has, as of  
 15 December 2012, transferred over \$190 million upstream to CC-Chicago, its corporate parent.  
 16 Ex. 1 at 3 (“Distributions of Excess Paid-in Capital” line item). As a result of this illegal  
 17 upstreaming, CC-Palo Alto is financially incapable of honoring its debts to the Plaintiffs and the  
 18 Class when the loans become due. These concerns have also been raised by the Department of  
 19 Social Services. *See* Letter from Robert Thompson, dated August 2, 2012 (Ex. 3) at 2. (“CC-  
 20 PA’s cash will not be sufficient to make the entrance fee repayment due.”)

21 8. Despite receiving the money, CC-Chicago has taken the position that CC-Palo  
 22 Alto is the “sole entity responsible” for the repayment of the refundable portion of the Entrance  
 23 Fees, and therefore CC-Chicago has no such responsibility. *See* Letter from Stephanie Fields,  
 24 dated March 15, 2012 (Ex. 4) at 1. Through this conduct, Defendants have impaired the security  
 25 interest underlying the loans made to CC-Palo Alto by Plaintiffs and the Class.

26  
 27 \_\_\_\_\_  
 28 <sup>1</sup> The community is defined as “Classic Residence by Hyatt in Palo Alto,” which now operates as Vi at Palo Alto.  
*Id.*

1           9.       Plaintiffs were never informed by Defendants that CC-Palo Alto intended to  
2 upstream their Entrance Fees to CC-Chicago. The fact that they were not so informed is  
3 incredibly significant given that CC-Palo Alto now has a deficit of over \$300 million and owes  
4 Plaintiffs over \$450 million. *See* Ex. 1 at 3 (“Total Stockholders’ Deficit” line item).

5           **B.       Monthly Fees**

6           10.       In addition to these sizable Entrance Fees, Plaintiffs and the Class paid and  
7 continue to pay to CC-Palo Alto sizable, and ever increasing, monthly fees. These monthly fees  
8 have been artificially inflated due to the following three improper charges levied by Defendants.

9           11.       First, Due to the upstreaming, CC-Palo Alto has been assessed an increased tax  
10 based on its “entrepreneurial profit.” CC-Palo Alto has stated it will pass on these taxes to  
11 Plaintiffs and the Class in the form of higher monthly fees.

12           12.       Second, Defendants have improperly allocated earthquake insurance premiums to  
13 Plaintiffs, and have informed Plaintiffs that they will, in the event of an earthquake, improperly  
14 allocate the deductibles as well. Under the terms of the Residency Contract, however, Plaintiffs  
15 and the Class should not incur insurance charges attributable to anything other than furniture,  
16 fixtures, and equipment. Any insurance premiums and deductibles attributable to anything other  
17 than furniture, fixtures, and equipment should be borne by CC-Palo Alto and not the residents.  
18 Defendants failed to disclose from the outset that Plaintiffs and the Class would be responsible  
19 for insurance charges related to the exterior of the buildings at the Vi at Palo Alto.

20           13.       Third, Defendants have improperly charged Plaintiffs and the Class for so-called  
21 “marketing costs,” which were ostensibly incurred for promoting the Vi at Palo Alto.  
22 Defendants used the term “marketing costs” in a misleading manner, and charged Plaintiffs for  
23 marketing activities that did not promote the Vi at Palo Alto, but instead funded CC-Chicago’s  
24 national marketing program. Defendants have also used the churning over of apartments as a  
25 profit engine to generate millions of dollars in Entrance Fees – a portion of which it pays itself  
26 immediately as fees, and a larger portion of which, although refundable to the new residents, it  
27 upstreams to CC-Chicago. It is manifestly unfair that the residents be allocated all marketing  
28

1 costs related to the scheme to line CC-Chicago's pockets. Defendants concealed this fact from  
2 Plaintiffs and the Class.

3 14. Plaintiffs and the Class seek relief from this unlawful conduct.

4 **II. THE PARTIES**

5 **A. Defendants**

6 **1. CC-Palo Alto**

7 15. CC-Palo Alto is a Delaware corporation that owns and operates the CCRC known  
8 as the Vi at Palo Alto. Its principal place of business is Palo Alto, California.

9 **2. CC-Chicago**

10 16. CC-Chicago is CC-Palo Alto's parent company, and is also a Delaware  
11 corporation. Its principal place of business is Chicago, Illinois. CC-Chicago was formed by  
12 Penny Pritzker in 1987. In addition to the Vi at Palo Alto, CC-Chicago currently operates nine  
13 other retirement communities throughout the United States. These facilities previously operated  
14 under the trade name "Classic Residence by Hyatt" and now operate under the "Vi" brand.

15 **3. Classic Residence Management Limited Partnership (CRMLP)**

16 17. CRMLP is a subsidiary of CC-Chicago, and is also based in Chicago, Illinois.  
17 CRMLP provides the day-to-day management and operation at the Vi at Palo Alto and sets its  
18 budgets with input from CC-Chicago.

19 **B. Conspiracy**

20 18. Defendants entered into a conspiracy in furtherance of the wrongful acts alleged  
21 in this Complaint. Each Defendant was aware that the other Defendants planned to commit these  
22 wrongful acts. Each Defendant agreed with the other Defendants, and intended that these acts be  
23 committed.

24 **C. Aiding and Abetting**

25 19. Each Defendant aided and abetted the other Defendants in their commission of the  
26 wrongful acts alleged in this Complaint. Each Defendant knew that the wrongful acts alleged in  
27 this complaint were being committed by the other Defendants against Plaintiffs and the Class.  
28 Each Defendant gave substantial assistance and encouragement to the other Defendants in



1 furtherance of these alleged acts. Each Defendant's conduct was a substantial factor in causing  
2 harm to Plaintiffs and the class.

3 **D. Alter Ego**

4 20. CC-Palo Alto acted as the alter ego of CC-Chicago. CC-Palo Alto was so  
5 controlled by CC-Chicago that it ceased to exist as a separate entity.

6 **E. The Proposed Class**

7 21. The Proposed Class consists of all residents of the Vi at Palo Alto who, at any  
8 time relevant to the complaint, were over the age of 65, from January 1, 2005 to the present.

9 22. As of 2013, approximately 500 residents were located in the Vi at Palo Alto's  
10 independent living facility, and the balance resided in the Care Center. Each of these residents  
11 loaned CC-Palo Alto substantial Entrance Fees that have not been repaid, and each continues to  
12 pay CC-Palo Alto monthly fees. The average age of the current residents at the Vi at Palo Alto is  
13 about 85.

14 23. Four hundred sixty residents demanded mediation under the terms of their  
15 Residency Contracts with CC-Palo Alto. Prior to filing this case, the Parties participated in a  
16 mediation session with The Honorable Justice Panelli (Ret.). Mediation efforts failed.

17 **F. The Representative Plaintiffs**

18 **1. Burton Richter**

19 24. Burton Richter, Ph.D. moved to the Vi at Palo Alto in July, 2005, and he currently  
20 resides there with his wife, Laurose Richter. Dr. Richter's Entrance Fee was \$1,590,100. *See*  
21 Richter Residency Contract. (Ex. 5) at 6. Under the terms of his Promissory Note, 90% of his  
22 Entrance Fee is refundable and he is currently owed \$1,431,090. *See* Richter Promissory Note  
23 (Ex. 6) at 2.

24 25. Dr. Richter was never informed that CC-Palo Alto intended to transfer his  
25 Entrance Fees upstream to CC-Chicago. Nor was he informed that CC-Palo Alto did not intend  
26 to maintain cash reserves to cover its Entrance Fee refund obligations. Dr. Richter expected that  
27 CC-Palo Alto would maintain sufficient reserves. Dr. Richter was also never informed that he  
28 would be charged for earthquake insurance costs related to anything other than furniture,

1 fixtures, and equipment at the Vi at Palo Alto, or that he would be charged for marketing fees  
2 that benefited facilities other than those at the Vi at Palo Alto. The failure to disclose these  
3 important facts was a substantial factor in causing harm to Dr. Richter.

4 26. Dr. Richter is 82 years old. Dr. Richter is Chair of the Vi at Palo Alto's Resident  
5 Advisory Council ("RAC"). Dr. Richter is a Nobel Laureate in Physics (1976), and a member of  
6 the National Academy of Sciences. He is also a member of the American Philosophical Society  
7 and the American Academy of Arts and Sciences. He was Chairman of the National Research  
8 Council's Board on Physics and Astronomy, President of the American Physical Society, and  
9 President of the International Union of Pure and Applied Physics. He is the author of over 350  
10 scientific papers, many short pieces aimed at the public and the recent book "Beyond Smoke and  
11 Mirrors: Energy and Climate in the 21st Century" which won the Phi Beta Kappa award as best  
12 science book of the year.

13 **2. Linda Collins Cork**

14 27. Linda Collins Cork, D.V.M., Ph.D. moved to the Vi at Palo Alto in August 2005,  
15 and that is where she currently resides. Dr. Cork's Entrance Fee was \$674,400. *See* Cork  
16 Residency Contract (Ex. 7) at 6. Under the terms of her Promissory Note, 90% of her Entrance  
17 Fee is refundable, and she is currently owed \$606,960. *See* Cork Promissory Note (Ex. 8) at 2.

18 28. Dr. Cork was never informed that CC-Palo Alto intended to transfer her Entrance  
19 Fees upstream to CC-Chicago. Nor was she informed that CC-Palo Alto did not intend to  
20 maintain cash reserves to cover its Entrance Fee refund obligations. Dr. Cork expected that CC-  
21 Palo Alto would maintain sufficient reserves. Dr. Cork was also never informed that she would  
22 be charged for earthquake insurance costs related to anything other than furniture, fixtures, and  
23 equipment at the Vi at Palo Alto, or that she would be charged for marketing fees that in part  
24 finance CC-Chicago's national marketing program. The failure to disclose these important facts  
25 was a substantial factor in causing harm to Dr. Cork.

26 29. Dr. Cork is 77 years old. Dr. Cork is Vice Chair of the Vi at Palo Alto's Resident  
27 Advisory Council. Dr. Cork received her D.V.M. from Texas A&M College of Veterinary  
28 Medicine (1970), a Ph.D. from Washington State University (1974), and was certified as a

1 Diplomate of the American College of Veterinary Pathologists (ACVP) in 1975. Dr. Cork was a  
2 Professor at the Johns Hopkins University School of Medicine prior to moving to Stanford  
3 University in 1994 where she became Chairman of the Department of Comparative Medicine in  
4 the School of Medicine. Dr. Cork retired as Chair in September, 2009, and became an *emerita* in  
5 2012. Dr. Cork has served on advisory and review boards for the National Institutes of Health  
6 and the National Academy of Sciences and she is a member of the Institute of Medicine. She is  
7 the author of more than 150 scientific papers.

8 **3. Georgia Lee May**

9 30. Georgia Lee May moved to the Vi at Palo Alto in November 2005, and she  
10 currently resides there. Ms. May's entrance fee was \$633,200. *See* May Residency Contract  
11 (Ex. 9) at 6. Under the terms of her Promissory Note, 90% of her Entrance Fee is refundable,  
12 and she is currently owed \$569,880. *See* May Promissory Note (Ex. 10) at 2.

13 31. Ms. May was never informed that CC-Palo Alto intended to transfer her Entrance  
14 Fees upstream to CC-Chicago. Ms. May was never informed that CC-Palo Alto did not intend to  
15 maintain cash reserves to cover its Entrance Fee refund obligations. Ms. May expected that CC-  
16 Palo Alto would maintain sufficient reserves. Ms. May was never informed that she would be  
17 charged for earthquake insurance costs related to anything other than furniture, fixtures, and  
18 equipment at the Vi at Palo Alto, or that she would be charged for marketing fees that in part  
19 finance CC-Chicago's national marketing program. The failure to disclose these important facts  
20 was a substantial factor in causing harm to Ms. May.

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

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

27 33. Dr. Thomas Merigan moved to the Vi at Palo Alto in June 2011, and he currently  
28 resides there with his wife, Sue Merigan. Dr. Merigan's entrance fee was \$1,223,900. *See*

1 Merigan Residency Contract (Ex. 11) at 6. Under the terms of his Promissory Note, 80% of his  
2 Entrance Fee is refundable, and he is currently owed \$979,120 on this fee.<sup>2</sup> See Merigan  
3 Promissory Note (Ex. 12) at 2.

4 34. Dr. Merigan was never informed that CC-Palo Alto intended to transfer his  
5 Entrance Fees upstream to CC-Chicago. Nor was he informed that CC-Palo Alto did not intend  
6 to maintain cash reserves to cover its Entrance Fee refund obligations. Dr. Merigan expected  
7 that CC-Palo Alto would maintain sufficient reserves. He was also never informed that he would  
8 be charged for earthquake insurance costs related to the buildings at the Vi at Palo Alto, or that  
9 he would be charged for marketing fees that in part finance CC-Chicago's national marketing  
10 program. The failure to disclose these important facts was a substantial factor in causing harm to  
11 Dr. Merigan.

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

15 36. Dr. Merigan continued his career at the National Institutes of Health studying  
16 protein chemistry and bacteriophage genetics. He became an Assistant Professor of Medicine at  
17 Stanford University in 1963, subsequently heading the Division of Infectious Disease and  
18 founding the Diagnostic Virology Laboratory at Stanford. After becoming the first faculty  
19 member to hold the Becker Chair in Medicine in 1980, he established an AIDS research unit. 18  
20 years ago, Dr. Merigan became principal investigator of the NIAID AIDS Clinical Trials Unit,  
21 and founded the Center for AIDS Research at Stanford in 1988. Dr. Merigan has edited over  
22 twenty books, published over 560 papers and holds twelve patents. These contributions have  
23 made Dr. Merigan one of 200 most cited scientists in clinical medicine over the last 20 years. He  
24 was elected to the Institute of Medicine of the National Academy of Sciences in 1980.

25  
26 ///

27  
28 <sup>2</sup> 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.

1                   **5.     Alfred Spivack, M.D.**

2           37.     Dr. Alfred Spivack moved to the Vi at Palo Alto on or about July 11, 2012, and he  
3 currently resides there. Dr. Spivack's entrance fee was \$2,005,600. *See* Spivack Residency  
4 Contract (Ex. 13) at 6. Under the terms of his Promissory Note, 80% of his Entrance Fee is  
5 refundable, and he is currently owed \$1,604,480. *See* Spivack's Promissory Note (Ex. 14) at 2.

6           38.     Dr. Spivack was never informed that CC-Palo Alto intended to transfer his  
7 Entrance Fees upstream to CC-Chicago. Nor was he informed that CC-Palo Alto did not intend  
8 to maintain cash reserves to cover its Entrance Fee refund obligations. Dr. Spivack expected that  
9 CC-Palo Alto would maintain sufficient reserves. Dr. Spivack was never informed that he would  
10 be charged for earthquake insurance costs other than furniture, fixtures and equipment at the Vi  
11 at Palo Alto, or that he would be charged for marketing fees that in part finance CC-Chicago's  
12 national marketing program. The failure to disclose these important facts was a substantial  
13 factor in causing harm to Dr. Spivack.

14           39.     Dr. Spivack is 85 years old. He was widowed in 2000. He had been married to  
15 his wife Anita Jaron since 1959. Dr. Spivack was a Clinical Professor of Medicine at Stanford  
16 starting in 1959 when he moved to the Bay Area. He practiced as a cardiologist. In 1993 he left  
17 the practice of medicine and joined a small pharmaceutical company. He was the director of  
18 medical services at that pharmaceutical company until 2000 when he became a consultant.

19                   **6.     Janice Robb Anderson**

20           40.     Janice Anderson moved to the Vi at Palo Alto on August 29, 2005, and she  
21 currently resides there with her husband William S. Anderson. Ms. Anderson's Entrance Fee  
22 was \$1,856,400. *See* Anderson's Residency Contract (Ex. 15) at 6. Under the terms of her  
23 Promissory Note, 90% of her Entrance Fee is refundable, and she is currently owed \$1,670,760.  
24 *See* Anderson Promissory Note (Ex. 16) at 2.

25           41.     Ms. Anderson was never informed that CC-Palo Alto intended to transfer her  
26 Entrance Fees upstream to CC-Chicago. Nor was she informed that CC-Palo Alto did not intend  
27 to maintain cash reserves to cover its Entrance Fee refund obligations. Ms. Anderson expected  
28 that CC-Palo Alto would maintain sufficient reserves. Ms. Anderson was never informed that

1 she would be charged for earthquake insurance costs other than furniture, fixtures, and  
2 equipment at the Vi at Palo Alto, or that she would be charged for marketing fees that benefited  
3 facilities other than those at the Vi at Palo Alto. The failure to disclose these important facts was  
4 a substantial factor in causing harm to Ms. Anderson.

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

8 **III. FACTUAL BACKGROUND**

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

10 43. The Vi at Palo Alto is located on approximately 22.41 acres of land, leased under  
11 a 75-year Ground Lease (the “Ground Lease”) from Stanford University and whose street  
12 addresses are 600 and 620 Sand Hill Road, Palo Alto, California (Ex. 17).

13 44. The Vi at Palo Alto consists of the following facilities:

14 (a) An Independent Living Facility consisting of 388 apartments along with  
15 dining and activity facilities and other common areas; and

16 (b) A 106-unit Care Center consisting of assisted living, memory support and  
17 skilled nursing units.

18 **B. The Residency Contract**

19 45. Prior to entering the Vi at Palo Alto, the Plaintiffs and the Class provided  
20 personal, financial and medical information to CC-Palo Alto, and entered into Residency  
21 Contracts with CC-Palo Alto.

22 46. The Contract is provided on a “take-it-or-leave-it” basis that does not permit  
23 negotiation. This adhesive quality coupled with the emphasis on the extensive waiting list for  
24 the Vi at Palo Alto, the limited-time availability of apartments, and the risk that the elderly  
25 prospective resident may unexpectedly become disqualified by illness, all create substantial  
26 pressure on prospective residents to sign the Residency Contract quickly or lose the opportunity.

27  
28 ///

**C. Plaintiffs’ Loaned Substantial Entrance Fees to CC-Palo Alto**

47. The Entrance Fees provided to CC-Palo Alto by Plaintiffs and the Class are described as “loan[s]” under their Residency Contracts. *See, e.g.*, Ex. 5 at Section 8.5. The terms of each loan is governed by California law, the Residency Contract, and a Promissory Note, which is incorporated by reference in the Residency Contract. *Id.*; *see also, e.g.*, Ex. 6. Plaintiffs were willing to make these loans because they were promised that 75%-90% of these fees were refundable upon their departure from the Vi at Palo Alto.

48. The portion of the Entrance Fee that must be refunded under the terms of Plaintiffs’ Promissory Notes is based on the date the resident pays the Entrance Fee. Over time, the percentage of the Entrance Fee that is refundable has decreased.

49. Under the terms of the Residency Contract, the Note is payable once 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. 5 at Sections 8.2, 8.3 and 9.1.2).

50. 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**

51. California Health & Safety Code §§ 1792.6 and 1793 require CCRC providers, such as CC-Palo Alto, either to maintain a certain level of cash reserves for repayment of refundable contracts or to disclose their failure to do so. These requirements created clear expectations that the Entrance Fee loans made to CC-Palo Alto by Plaintiffs and the Class would be held in reserve. Defendants admit, however, that “there is no entrance fee repayment reserve.” Ex. 4 at 1. Moreover, CC-Chicago takes the position that it does not have any

1 obligation to refund Plaintiffs or the Class the amounts due under their Promissory Notes. (See  
2 Ex. 4 at 1).<sup>3</sup>

3 52. CC-Palo Alto’s failure to maintain sufficient cash reserves to refund the Entrance  
4 Fees, and subsequent non-disclosure of this fact, is a violation of California Health & Safety  
5 Code § 1793(f) which provides as follows:

6 All continuing care communities offering refundable entrance fees that are  
7 not secured by cash reserves . . . shall clearly disclose this fact in all  
marketing materials and continuing care contracts.

8 53. Despite these clear requirements, CC-Palo Alto never disclosed to Plaintiffs or the  
9 Class that it did not maintain such reserves, nor did it disclose that it was not in compliance with  
10 California law.

11 54. None of the marketing materials that the Vi at Palo Alto used to lure Plaintiffs and  
12 other residents contained a disclosure that the refundable entrance fee was unsecured by a cash  
13 reserve. Further, the Residency Contracts conceal the fact that there is no cash reserve. This  
14 would have been a material and important disclosure for in-coming residents, including  
15 Plaintiffs, especially since these Entrance Fees represent a significant portion of Plaintiffs’  
16 estates.

17 55. The reserve requirement and the fact that CC-Palo Alto never disclosed that there  
18 were no reserves, created clear expectations on behalf of the Plaintiffs and the Class that the  
19 refundable portion of their Entrance Fees would be secured by cash reserves held by CC-Palo  
20 Alto.

21 **E. CC-Palo Alto Falsely Represented to Plaintiffs’ That Their Entrance Fees**  
22 **Would be Secure**

23 56. CC-Palo Alto’s promotional materials for the Vi at Palo Alto touted to  
24 prospective residents a sense of security and reduced financial worries, including the following  
25 statements:

26 ///

27 <sup>3</sup> CC-Palo Alto established a reserve for repayment of Entrance Fees for residents entering the Community after  
28 June 1, 2012 (the “Post-June 2012 Residents”); however, these reserves represent only approximately 6% of the  
Entrance Fee repayment due to the Post-June 2012 residents, and does not cover the rest of the residents at all.



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[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).

57. The essence of CC-Palo Alto’s offering to prospective residents – most entering in their 80s – has been that it will take care of them and enhance the last chapter of their lives, and that Vi will be their home. The use of Penny Pritzker’s name in connection with the sales and promotion of the Vi at Palo Alto also strongly suggested that it was a stable institution, and that Plaintiffs’ Entrance Fees would be secure. (Penny Pritzker, CC-Chicago’s founder, was a former Stanford Trustee until 2013 when she became the U.S. Secretary of Commerce.)

58. Behind these appearances however, CC-Palo Alto’s transactions with CC-Chicago, paint a troubling picture. Due to CC- Palo Alto’s illegal upstreaming of funds to CC-Chicago, it has a deficit of over \$300 million and outstanding obligations to Plaintiffs of over \$450 million. Nowhere in CC-Palo Alto’s advertising and promotional materials, or in its Contract, or in its continuing disclosures to its residents, does it discuss any of the above-referenced transactions or financial difficulties. CC-Palo Alto also never disclosed that it would be transferring the Entrance Fees to CC-Chicago. Plaintiffs reasonably expected that CC-Palo Alto would hold the Entrance Fees.

59. Neither prospective nor existing residents are provided with any financial information concerning CC-Chicago. This includes the concealment of CC-Chicago’s obligations to its other continuing care facilities, and how these obligations might affect its continued ability to support CC-Palo Alto.

60. The effect of these practices is to shift all financial risk of repayment to the resident, which substantially impairs the value of Plaintiffs’ security interest.

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**F. Over Time the Stanford Ground Lease Will Reduce CC-Palo Alto’s Ability to Repay Plaintiffs’ Entrance Fees**

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

<b>Restriction Begins After:</b>	<b>Elimination of Refundable Portion of Entrance Fee and of Provider’s CCRC Program Before the End of the Term</b>
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.

62. As a result, CC-Palo Alto’s ability to refund earlier residents’ Entrance Fees with new Entrance Fees charged to incoming residents will be gradually eliminated.

**G. Defendants Have Charged Plaintiffs Inflated Monthly Fees**

**1. CC-Palo Alto Improperly Allocated Property Tax Liabilities to Plaintiffs**

63. CC-Palo Alto’s upstreaming activities have caused the Santa Clara County Tax Assessor (“Assessor”) to increase its property tax assessment for the Vi at Palo Alto. Defendants have indicated that they will pass these taxes onto Plaintiffs and the Class in the form of higher monthly fees and a reduced operating surplus.

64. The Vi at Palo Alto consists of two Assessor’s Parcel Numbers: one for the Care Center (APN 142-02-021) and one for the Independent Living Facility (APN 142-02-020). Stanford University leased these parcels to CC-Palo Alto on August 1, 2000 for a term of 75 years. On April 1, 2011, the Assessor served CC-Palo Alto with a 10-day raise letter. Ex. 19. The raise letter provided formal notice of the Assessor’s intent to seek an additional increase in the total assessed value of the Vi at Palo Alto of approximately **\$51 million**. Ex. 19.<sup>4</sup> The letter

<sup>4</sup> 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 was written in advance of a previously scheduled hearing in front of the Assessment Appeals  
2 Board (“AAB”).

3 65. After the hearing, the AAB found that CC-Palo Alto’s upstream transfer of over  
4 \$174 million to CC-Chicago constituted “Entrepreneurial Profit,” which is included the its  
5 property tax appraisal. *See* the AAB’s Findings and Conclusions (Ex. 20) at 3, 5, 8, and 11.  
6 Defendants have since determined that this will amount to an increase in back taxes in “excess of  
7 \$12 million,” and in additional tax assessments of \$1.9 million annually. *See* Letter from Randal  
8 Richardson, dated August 31, 2012 (Ex. 21) at 1.

9 66. Defendants have indicated that they will pay the “back taxes” pending their  
10 appeal of the AAB decision, but that Plaintiffs will bear ultimate responsibility for those taxes.  
11 Moreover, they have indicated that Plaintiffs and the Class will pay the taxes going forward. *Id.*  
12 Furthermore, Defendants have elected to “suspend the crediting to residents of any excess  
13 amounts in the Cumulative Operating Surplus ... until appeal of the base year assessment is  
14 completed.” *Id.* According to the Residency Contract, however, such surplus amounts should be  
15 used to create an operating reserve for the Vi at Palo Alto, or should be remitted to the residents  
16 in the form of lower monthly fees. *See, e.g.* Ex. 5 at Appendix D.<sup>5</sup> CC-Palo Alto’s decision to  
17 suspend these credits was done to cover the increased taxes.

18 67. On September 5, 2012, CC-Palo Alto filed a complaint and petition for writ of  
19 mandate in Santa Clara County Superior Court against the County of Santa Clara and the AAB.  
20 The appeal is pending in a preliminary stage.

21 68. Given that CC-Palo Alto’s upstreaming activities caused an increase in the  
22 property taxes, these taxes should be borne entirely by Defendants. Plaintiffs and the Class  
23 should not be penalized by Defendants’ decision to upstream these funds. Plaintiffs never agreed

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24 <sup>5</sup> The cost of operating the Community has consistently been below CC-Palo Alto’s forecast of operating costs,  
25 resulting in the Plaintiffs and the Class having paid in more in monthly fees than proved necessary to cover the cost  
26 of operating the Community. CC-Palo Alto refers to this excess of paid-in monthly fees as a “Cumulative Operating  
27 Surplus,” or “COS.” Prior to its appeal of the AAB decision, CC-Palo Alto returned the COS to the residents,  
28 retaining, with the consent of the RAC, an amount to cover future operating contingencies. However, since initiating  
their appeal of the AAB Decision, in violation of the Residency Agreements, the Defendants have refused to return  
excess COS funds to the residents, in order to use such funds otherwise to be returned to the residents, to satisfy any  
increased tax liability resulting from the appeal.

1 to permit CC-Palo Alto to deplete its operating surplus to pay increased taxes on entrepreneurial  
2 profit and Defendants should bear the consequences of their illicit activities.

3           **2. CC-Palo Alto Improperly Allocated Earthquake Insurance Charges to**  
4           **Plaintiffs**

5           69. Under the Stanford Lease, CC-Palo Alto is obligated to maintain earthquake  
6 insurance coverage, and is afforded the right “to determine the proper deductible . . . consistent  
7 with . . . the Provider’s prudent business judgment.” (Ex. 17 at 64). CC-Palo Alto has stated that  
8 CC-Chicago currently carries \$50 million of coverage for earthquake damage to all of its  
9 facilities, with a required deductible of 5% of the replacement value of each “structure” at the  
10 time of the loss.

11           70. Under this rubric, the Independent Living Facility and the Care Center at the Vi at  
12 Palo Alto would be deemed different “structures,” and, in the event of an earthquake, Defendants  
13 would be required to pay the deductible for each structure, which it intends to pass on to the  
14 Plaintiffs. CC-Palo Alto’s 2012 Financial Statement indicates that the accumulated construction  
15 cost of these structures through 2012 is approximately \$243 million, before depreciation. Ex. 1  
16 at 3. Given the 5% deductible, CC-Palo Alto would be responsible for paying \$10 million or  
17 more to replace these structures.

18           71. The Residency Contract provides that residents’ monthly fees are “intended to  
19 pay all costs of operating the Community,” including “the costs of insurance policies.” *See. e.g.,*  
20 Ex. 5 at 3.3.2. However, that same provision limits these costs to “maintenance, repairs, and  
21 replacements of **capital items** (including furnishings, fixtures and equipment.” *Id.* at 3.3.3.  
22 (Emphasis added). Many of the buildings at the Vi at Palo Alto are not included as capital items,  
23 and residents are not obligated to provide insurance for them.

24           72. In short, the Residency Contract requires that Defendants pay to insure the  
25 buildings at the Vi at Palo Alto, and that the residents pay to insure the facility’s furniture,  
26 fixtures and equipment (*i.e.* “capital items”). Therefore, all earthquake insurance costs (*i.e.*  
27 premiums and deductibles) should be allocated in the same manner. Plaintiffs should not have  
28 been charged for the full premium of such insurance, because, under the contract they are only

1 liable for capital costs. Moreover, CC-Palo Alto should retain a general reserve sufficient to bear  
2 its share of the maximum deductible payable for repairing or rebuilding the Vi at Palo Alto's  
3 buildings.

4 73. Defendants' practices regarding earthquake insurance are deceptive. Prospective  
5 residents are led to believe that CC-Palo Alto owns the Vi at Palo Alto's buildings, and is  
6 responsible for replacing them in the event of earthquake damage. Residents are not informed  
7 that they might be required to pay deductibles to replace its buildings.

### 8 **3. CC-Palo Alto Improperly Allocates Marketing Costs to Plaintiffs**

9 74. The Residency Contract provides that monthly fees are "intended to pay all costs  
10 of operating the Community" which include, in subpart (ix), "marketing costs." *See e.g.* Ex. 5 at  
11 3.3.3. The Contract does not define the term "marketing costs," and CC-Palo Alto has unfairly  
12 expanded it to include the funding of CC-Chicago's national advertising program. In addition,  
13 the overarching scheme by which Defendants repeatedly turn over apartments to generate  
14 Entrance Fees to be upstreamed to CC-Chicago make the full allocation of marketing fees to the  
15 residents unconscionable.

16 75. These costs have been substantial. Plaintiffs have paid in excess of \$5.5 million  
17 of marketing costs from March 2006 through 2013. A portion of these costs are attributable to  
18 CC-Chicago's national marketing campaign, and a portion to the upstreaming scheme. Plaintiffs  
19 were never informed they would have to pay marketing costs associated with the promotion of  
20 facilities other than Vi at Palo Alto. The imposition of these costs is improper, and Plaintiffs and  
21 the Class are entitled to return of these funds.

### 22 **H. CC-Palo Alto Breached Its Fiduciary Duty to Plaintiffs**

23 76. The Vi at Palo Alto is home to nearly 600 Plaintiffs, nearly all of whom intend to  
24 remain there for the rest of their lives. The average age of these residents is nearly 85, and many  
25 of them are over 90. Over time, as their health deteriorates, Plaintiffs become less and less  
26 physically, emotionally, and cognitively able to move out of the Vi at Palo Alto. CC-Palo Alto  
27 was entrusted with large sums of money that Plaintiffs set aside for their retirement. The  
28 circumstances described herein give rise to a fiduciary duty on the part of Defendants. CC-Palo

1 Alto assumed the role of caregiver and business partner to Plaintiffs and the Class. CC-Palo Alto  
2 therefore owes them duties of reasonable care and undivided loyalty. CC-Palo Alto had a duty to  
3 look out for the best interests of Plaintiffs and the Class by maintaining the necessary reserves to  
4 repay them. These duties also extend to CC-Chicago and CRMLP.

5 77. Due to its fidelity to CC-Chicago, CC-Palo Alto failed to act as a reasonably  
6 careful agent would have acted in similar circumstances. It was incumbent on CC-Palo Alto to  
7 hold reserves sufficient to refund Entrance Fees it borrowed from Plaintiffs and the Class.  
8 Instead, CC-Palo Alto transferred hundreds of millions of dollars to CC-Chicago with no  
9 assurances that these fees would ever be refunded. CC-Chicago has now disavowed any  
10 obligation to refund Plaintiffs and Class members the amounts due on their Entrance Fees.

11 78. CC-Palo Alto breached its duty of undivided loyalty to Plaintiffs and the Class  
12 through this same conduct. CC-Palo Alto's financial transfers to its corporate parent drained it  
13 of the resources necessary to repay Plaintiffs' Entrance Fees. These transfers were plainly  
14 against the interests of Plaintiffs and the Class.

15 79. In sum, due to CC-Palo Alto's upstreaming activity, Plaintiffs' Entrance Fees  
16 have been placed at risk, their security interest has been impaired, and they have been subjected  
17 to increased tax assessments, which have led to inflated monthly fees. Their monthly fees have  
18 been further inflated by Defendants improper allocations of earthquake insurance and marketing  
19 costs. Each of these acts constitutes a breach of Defendants' fiduciary duties to Plaintiffs and the  
20 Class.

21 80. In sum, Defendants harmed Plaintiffs in the following ways:

- 22 a. Upstreaming Plaintiffs' Entrance Fees to CC-Chicago;
- 23 b. Maintaining reserves below the required levels;
- 24 c. Impairing Plaintiffs' security interests underlying their Promissory Notes;
- 25 d. Concealing their intention to upstream Plaintiffs' Entrance Fees;
- 26 e. Failing to provide transparency in their financial decisions about the  
27 operation of the Community;
- 28 f. Incurring a deficit of over \$300 million at CC-Palo Alto;

1 g. Improperly allocating costs to Plaintiffs for tax assessments, marketing  
2 expenses and deductibles for earthquake insurance on the buildings of the  
3 Vi at Palo Alto; and,

4 h. By transferring complete control over CC-Palo Alto to CC-Chicago, with  
5 the result that CC-Palo Alto disregards its duties to protect its assets and  
6 obligations

7 **IV. CLASS ALLEGATIONS**

8 81. Plaintiffs incorporate by reference all preceding allegations as though fully set  
9 forth herein.

10 82. Plaintiffs bring this action as a class action against Defendants pursuant to Rule  
11 23 of the Federal Rules of Civil Procedure.

12 83. CC-Palo Alto uses materially identical contracts for all residents, and makes the  
13 same representations to each.

14 84. The named Plaintiffs seek to represent the following class:

15 (1) All residents of the Vi at Palo Alto from January 1, 2005 to the present  
16 (the "Class");

17 (2) Excluded from the Class are: Defendants, their officers, directors and  
18 employees, and any entity in which Defendants have a controlling interest,  
19 their agents, affiliates, legal representatives, heirs, attorneys at law,  
20 attorneys in fact or assignees thereof.

21 85. Throughout discovery, Plaintiffs may find it appropriate or necessary to amend  
22 the definition of the Class. Plaintiffs will formally define and designate a class definition when  
23 they seek to certify the Class alleged herein.

24 86. **Numerosity.** The members of the defined class are so numerous that individual  
25 joinder of all members of the Class is impracticable. Plaintiffs are informed and believe, and on  
26 that basis allege, that there are hundreds of members in the Class. The identities of Class  
27 Members are readily discernible using information contained in records in the possession or  
28 control of Defendants.

1           87.     **Commonality.** Class-wide common questions of law and fact exist and  
2 predominate over questions affecting only individual Class members. Common questions  
3 include, but are not limited to:

- 4           a.     Whether California law has been violated by Defendants as alleged herein;
- 5           b.     Whether Defendants participated in and pursued the course of conduct  
6                complained of;
- 7           c.     Whether Defendants' conduct was directed toward senior citizens;
- 8           d.     Whether Defendants' conduct constitutes unfair and/or unlawful business  
9                practices under California Business and Professions Code §17200;
- 10          e.     Whether Defendants conduct violates California Health & Safety Code §§  
11                1792.6 and 1793;
- 12          f.     Whether Defendants engaged in misrepresentations or fraudulent  
13                concealment;
- 14          g.     Whether Defendants' conduct violated California's Consumer Legal  
15                Remedies Act;
- 16          h.     Whether the Defendants breached their fiduciary duties to Plaintiffs and  
17                the Class;
- 18          i.     Whether Defendants' conduct constitutes financial elder abuse;
- 19          j.     Whether Defendants' conduct constitutes a breach of contract;
- 20          k.     Whether Plaintiffs and the Class have sustained damages, and if so, the  
21                proper measure of damages;
- 22          l.     Whether the Plaintiffs and the Class are entitled to injunctive relief.

23           88.     **Typicality.** The Plaintiffs' claims are typical of the claims of the Proposed Class.  
24 Plaintiffs and the Class were subject to the same promotional campaign by Defendants and the  
25 same facts were concealed from each of them. The security of the Plaintiffs and the Class has  
26 been impaired, and they have been charged additional costs. The Plaintiffs and the Class all paid  
27 inflated monthly fees. The Plaintiffs are entitled to the same types of damages, penalties, and  
28



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 89. **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 90. **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 91. 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 92. 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 93. Defendants' common and uniform practices subjected the proposed Class to  
22 excessive and unauthorized costs and financial risk.

23 94. 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 95. 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 96. 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 **V. CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **CONCEALMENT**

7 **(Against All Defendants)**

8 97. Plaintiffs and the Class hereby incorporate by reference the allegations set forth  
9 above, as though set forth in full herein.

10 98. Plaintiffs and the Class were harmed because defendants CC-Palo Alto and CC-  
11 Chicago concealed information from them.

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

20 100. Defendants failed to disclose the following important facts to Plaintiffs and the  
21 Class:

- 22 a. CC-Palo Alto intended to upstream Plaintiffs' Entrance Fees to CC-  
23 Chicago, and CC-Chicago planned to disavow any obligation to re-pay the  
24 upstreamed funds to Plaintiffs and Class;
- 25 b. CC-Palo Alto did not have and did not intend to maintain cash reserves to  
26 cover its Entrance Fee repayment obligations as required by California  
27 Health & Safety Code § 1792.6;

28

- c. Defendants intended to keep CC-Palo Alto dangerously underfunded, running a very large deficit and dependent on voluntary infusions of funds from CC-Chicago;
- d. Defendants intended to charge Plaintiffs and the Class for the increased taxes they incurred related to their upstreaming activities;
- e. CC-Palo Alto intended to pass along the full cost of earthquake insurance to Plaintiffs and the Class even though a portion of that cost goes to cover the portions of the buildings of the Vi at Palo Alto, for which Plaintiffs and the Class are not responsible;
- f. CC-Palo Alto planned to charge Plaintiffs and the Class for marketing costs that benefited facilities other than the Vi at Palo Alto; and which benefitted CC-Chicago.

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

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

103. 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

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

6 WHEREFORE, Plaintiffs pray as hereinafter set forth.

7 **SECOND CAUSE OF ACTION**

8 **NEGLIGENT MISREPRESENTATION**

9 **(Against All Defendants)**

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

12 105. Plaintiffs and the Class were harmed because Defendant CC-Palo Alto negligently  
13 misrepresented important facts to Plaintiffs and the Class.

14 106. Defendant CC-Palo Alto represented to Plaintiffs and the Class that the following  
15 important facts were true:

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

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

20 107. These statements were not true.

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

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

24 110. Plaintiffs and the Class reasonably relied on Defendant's representations.

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

27 WHEREFORE, Plaintiffs pray as hereinafter set forth.

28

**THIRD CAUSE OF ACTION**

**BREACH OF FIDUCIARY DUTY AND CONSTRUCTIVE TRUST**

**(Against All Defendants)**

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

112. 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.

113. Given the existence of this relationship, CC-Palo Alto owed Plaintiffs and the Class the duties of reasonable care and undivided loyalty.

**1. Undivided Loyalty**

114. 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.

115. CC-Palo Alto knowingly acted against the interests of Plaintiffs and the Class in connection with the Entrance Fee transaction and related Promissory Notes, and in connection with the increased taxes and monthly fees.

116. CC-Palo Alto acted on behalf of CC-Chicago, which is a party that was averse to Plaintiffs and the Class in connection with the transactions described herein.

117. Plaintiffs and the Class were harmed by CC-Palo Alto’s and CRMLP’s violation of their duty of undivided loyalty.

**2. Constructive Trust**

118. Defendants’ gain resulted from fraud and was in violation of the trust Plaintiffs and the Class reposed in them. It was therefore wrongful and justifies the imposition of a constructive trust, in the amount of the refundable portion of Entrance Fees paid by Plaintiffs and the Class, against all property of Defendants.

1 119. The acts and omissions herein set forth have rendered Defendants of those fund  
2 trustees.

3 120. Plaintiffs have a security interest in their Entrance Fees.

4 121. Due to CC-Palo Alto's upstreaming activities, CC-Chicago has wrongfully  
5 acquired Plaintiffs' Entrance Fees.

6 122. CC-Chicago is not entitled to those funds, and a constructive trust should be  
7 imposed.

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

14 WHEREFORE, Plaintiffs further pray as hereinafter set forth.

15 **FOURTH CAUSE OF ACTION**

16 **FINANCIAL ABUSE OF ELDERS**

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

18 **(Against All Defendants)**

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

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

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

27 127. Defendants took, secreted, appropriated, obtained and/or retained money  
28 belonging to Plaintiffs and the Class they seek to represent for a wrongful use and/or with the

1 intent to defraud. Defendants have wrongfully deprived Plaintiffs and the Class of their personal  
2 property by improperly collecting hundreds of millions of dollars in “Entrance Fees” through  
3 CC-Palo Alto and transferring those funds upstream to CC-Palo Alto’s corporate parent, CC-  
4 Chicago, thus impairing Plaintiffs’ and the Class’ security interest in those fees. Defendants  
5 have also overcharged Plaintiffs and the Class by improperly allocating increased tax  
6 assessments, earthquake insurance charges, and marketing costs to the Vi at Palo Alto’s  
7 operating expense budgets, and passing on these charges as inflated monthly fees.

8 128. Defendants assisted one another in taking, secreting, appropriating, obtaining  
9 and/or retaining money belonging to Plaintiffs and the Class for a wrongful use and/or with the  
10 intent to defraud. More specifically, CC-Chicago created CC-Palo Alto, for the purpose of  
11 inducing Plaintiffs and the Class to loan substantial Entrance Fees to CC-Palo Alto, which it  
12 would then move upstream to CC-Chicago. This plan kept CC-Palo Alto dangerously  
13 underfunded and in a state of financial distress and dependent on voluntary infusions of funds  
14 from CC-Chicago. In addition, all of the Defendants assisted one another in taking, secreting,  
15 appropriating, obtaining and/or retaining money belonging to Plaintiffs and the Class for a  
16 wrongful use and/or with the intent to defraud when they acted together to charge Plaintiffs and  
17 the Class inflated monthly fees.

18 129. Defendants knew, or should have known, that their conduct was likely to be  
19 harmful to Plaintiffs and the Class they seek to represent.

20 130. By virtue of Defendants’ conduct, Plaintiffs and the Class were deprived of a  
21 property right, in so far as Plaintiffs’ and the Class’ Entrance Fees have been placed at risk, their  
22 security interest has been impaired, and they may be subjected to increased tax assessments,  
23 which will lead to inflated monthly fees. Defendants’ violation of this duty has also resulted in  
24 inflated monthly fees charges to Plaintiffs and the Class stemming from their improper  
25 allocations for earthquake insurance and marketing costs.

26 131. As a proximate result of all of the Defendants’ conduct herein alleged, Plaintiffs  
27 and the Class that they seek to represent were damaged including without limitation economic  
28 injury related to the loss of retirement funds, reduction in the value of their estates, lost interest,

1 impairment of security interest, and other general and special damages, all in an amount  
2 according to proof at time of trial.

3 132. Due to the Defendants’ acts of financial abuse, Plaintiffs are further entitled to  
4 reasonable attorneys’ fees and costs under Welfare & Institutions Code § 15657.5, in an amount  
5 according to proof at time of trial.

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

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

21 WHEREFORE, Plaintiffs pray as hereinafter set forth.

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**FIFTH CAUSE OF ACTION**

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

**(CONSUMER LEGAL REMEDIES ACT)**

**(Against All Defendants)**

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

136. 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.

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

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

139. 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.

140. 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.

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

4 142. Defendants are continuing to engage in the practices alleged herein, and will not  
5 cease until an injunction is issued by this Court.

6 143. Plaintiffs and the Class are entitled to an award of attorneys’ fees and costs  
7 pursuant to Civil Code § 1780(d).

8 WHEREFORE, Plaintiffs pray as hereinafter set forth.

9 **SIXTH CAUSE OF ACTION**

10 **VIOLATION OF CALIFORNIA BUSINESS AND**

11 **PROFESSIONS CODE §§ 17200, *et seq.***

12 **(Against All Defendants)**

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

15 145. Defendants’ actions as heretofore alleged are “unlawful” and/or “unfair” and  
16 “fraudulent” business acts or practices as defined in Business and Professions Code § 17200 *et*  
17 *seq.*

18 146. Defendants’ practice of refusing to maintain financial reserves sufficient to repay  
19 its Entrance Fee obligations and its continuing violation of California Health & Safety Code  
20 Section 1792.6 are unlawful and unfair. These business practices impaired the value of the  
21 Plaintiffs’ and the Class’ security interest and Plaintiffs and the Class have lost property as a  
22 result.

23 147. Defendants’ violations of the Elder Abuse And Dependent Adult Civil Protection  
24 Act, Welfare and Institutions Code §§ 15600 *et seq.* are unlawful.

25 148. Defendants’ conduct is unlawful and thus violates Business and Professions Code  
26 § 17200 *et seq.* in so far as Defendants have violated California Health & Safety Code §§ 1792.6  
27 and 1793 and have thus engaged in unlawful conduct.

28

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

4 150. Defendants have engaged in numerous deceptive acts, including in so far as they  
5 failed to disclose the following important facts to Plaintiffs and the Class:

- 6 a. CC-Palo Alto intended to upstream Plaintiffs' Entrance Fees to CC-  
7 Chicago, and CC-Chicago planned to disavow any obligation to re-pay the  
8 upstreamed funds to Plaintiffs and Class;
- 9 b. CC Palo Alto did not have and did not intend to maintain cash reserves to  
10 cover its Entrance Fee repayment obligations as required by California  
11 Health & Safety Code § 1792.6;
- 12 c. Defendants intended to keep CC-Palo Alto dangerously underfunded,  
13 running a very large deficit and dependent on voluntary infusions of funds  
14 from CC-Chicago;
- 15 d. Defendants intended to charge Plaintiffs and the Class for the increased  
16 taxes they incurred related to their upstreaming activities;
- 17 e. CC-Palo Alto intended to pass along the full cost of earthquake insurance  
18 to Plaintiffs and the Class even though a portion of that cost goes to cover  
19 the portions of the buildings of the Vi at Palo Alto, for which Plaintiffs  
20 and the Class are not responsible;
- 21 f. CC-Palo Alto planned to charge Plaintiffs and the Class for marketing  
22 costs that benefited facilities other than the Vi at Palo Alto; and which  
23 benefitted CC-Chicago.

24 151. Plaintiffs and the Class have been harmed by Defendants' unfair, unlawful and  
25 fraudulent business practices.

26 152. Plaintiffs and the Class have a right to an order requiring Defendants to restore to  
27 Plaintiffs and the Class money, property, and interest which may have been acquired by these  
28 business practices, as well as the resulting general damages. This includes but is not limited to

1 the return of Entrance Payments upstreamed to CC-Chicago, as well as amounts unfairly  
2 collected from Plaintiffs and the Class through monthly fees for costs that are properly borne by  
3 Defendants.

4 153. Pursuant to Business & Professions Code § 17203, Plaintiffs seek from  
5 Defendants, and each of them, restitution and the disgorgement of all earnings, profits,  
6 compensation and benefit obtained by Defendants as a result of Defendants' conduct in violation  
7 of Business & Professions Code §§ 17200, *et seq.*

8 WHEREFORE, Plaintiffs pray as hereinafter set forth.

9 **SEVENTH CAUSE OF ACTION**

10 **BREACH OF CONTRACT**

11 **(Against All Defendants)**

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

14 155. Plaintiffs and the Class entered Residency Contracts with CC-Palo Alto.

15 156. Plaintiffs and the Class have performed and continue to perform their obligations  
16 under the Residency Contract.

17 157. All of the conditions required by law for CC-Palo Alto's performance under the  
18 Contract have occurred.

19 158. CC-Palo Alto breached its obligations regarding repayment of Plaintiffs' and the  
20 Class' Entrance Fees by upstreaming funds to CC-Chicago and failing to maintain financial  
21 reserves as required by California Health & Safety Code Section 1792.6, which is incorporated  
22 into the contract by operation of law.

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

26 160. Plaintiffs and the Class were harmed by this breach.

27 WHEREFORE, Plaintiffs pray as hereinafter set forth.

28

1 **VI. PRAYER FOR RELIEF**

2 Plaintiffs pray for relief for themselves individually and on behalf of all similarly situated

3 Class members as follows:

- 4 1. That the Court determine that this action may be maintained as a class action
- 5 pursuant to Federal Rules of Civil Procedure, Rule 23 and appointing the named
- 6 Plaintiffs as Class Representatives and their counsel as Class Counsel;
- 7 2. That the Court award Plaintiffs and the Class compensatory damages;
- 8 3. That the Court award Plaintiffs and the Class punitive damages;
- 9 4. That Defendants be ordered to make restitution to Plaintiffs and the Class
- 10 pursuant to California Business & Professions Code § 17203;
- 11 5. That the Court grant a preliminary and permanent order enjoining Defendants
- 12 from engaging in the unlawful and unfair acts and practices alleged herein;
- 13 6. That the Court enter a judgment declaring the existence of a constructive trust and
- 14 ordering the disgorgement of all sums unjustly obtained from Plaintiffs and the
- 15 Class;
- 16 7. That the Court award Plaintiffs the costs of this action, together with reasonable
- 17 attorney’s fees as provided under law;
- 18 8. That the Court grant Plaintiffs and the Class pre-judgment and post-judgment
- 19 interest on all sums collected;
- 20 9. And such other and further relief as this Court may deem appropriate.

21 Dated: February 19, 2014

**COTCHETT, PITRE & McCARTHY, LLP**

22  
 23 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: February 19, 2014

**COTCHETT, PITRE & McCARTHY, LLP**

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

*Attorneys for Plaintiffs*