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27 UNITED STATES DISTRICT COURT
28 CENTRAL DISTRICT OF CALIFORNIA

1 Audrey Heredia as successor-in-interest
2 to the Estate of Carlos Heredia; Amy
3 Fearn as successor-in-interest to the
4 Estate of Edith Zack; and Helen Ganz,
5 by and through her Guardian ad Litem,
6 Elise Ganz; on their own behalves and
7 on behalf of others similarly situated,

8 Plaintiffs,

9 vs.

10 Sunrise Senior Living, LLC; Sunrise
11 Senior Living Management, Inc.; and
12 Does 2 - 100,

13 Defendants.

CASE NO. 8:18-cv-1974-JLS (JDEx)

**PLAINTIFFS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS
SETTLEMENT**

Date: November 8, 2024
Time: 10:30 a.m.
Place: Courtroom 8A, 8th Fl.
Judge: Hon. Josephine L. Staton

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1 **I. INTRODUCTION**

2 In this case, Plaintiffs assert consumer fraud claims on behalf of current and
3 former residents of California assisted living facilities owned, managed and/or
4 operated by Defendants Sunrise Senior Living, LLC and Sunrise Senior Living
5 Management, Inc. (collectively “Sunrise”). Plaintiffs contend that, through
6 representations made in its form admission contract (“Residency Agreements”) and
7 other conduct, Sunrise leads consumers to reasonably expect that Sunrise facilities
8 will be sufficiently staffed to timely provide promised services. Undisclosed to
9 consumers, however, Sunrise’s facility staffing formula “rounds down” the staffing
10 hours that Sunrise determines are necessary to meet resident needs. Given the round
11 down and other alleged flaws with Sunrise’s staffing policy, Plaintiffs contend all
12 class members sustain economic harm when they pay money to Sunrise (in upfront
13 Move-In Fees and overpriced monthly Service Fees).

14 Sunrise denies Plaintiffs’ allegations and has vigorously defended the
15 lawsuit, including an appellate challenge to this Court’s class certification order.
16 After nearly seven years of hard-fought litigation, the parties have reached a
17 settlement, pursuant to which Sunrise has agreed to pay \$18.2 million and
18 stipulated to a Court-ordered injunction. Declaration of Christopher J. Healey ISO
19 Final Settlement Approval Motion (“Healey Decl”), Ex. 1 (Stipulation of
20 Settlement (“SS”)), Ex 1.1 (“Injunction”).

21 As detailed below, the settlement clearly warrants final approval under the
22 “fair, reasonable and adequate” test. *Chen v. Western Digital Corp.*, Case No. 8:19-
23 cv-00909-JLS-DFM, 2021 WL 9720778 (“*Chen II*”), *4 (C.D. Cal. Jan. 5, 2021).
24 The monetary payment exceeds the amounts paid in comparable settlements in
25 cases brought against other assisted living facility chains. The minimum projected
26 per-class member payments (after Court-approved fees, service awards and
27 administration costs) are roughly double the average payments in the comparable
28 settlements. Healey Decl, ¶¶90-92, Ex. 3 (Comparable Settlements Summary).

1 Importantly, the Injunction will substantially benefit Sunrise residents
2 (including Settlement Class Members) by implementing concrete requirements
3 aimed at ensuring that facility staffing is sufficient to meet resident needs. The
4 Injunction eliminates the automatic “round down” provision (under which Sunrise’s
5 target staffing was potentially reduced by 3.5 hours or more per day at each facility,
6 Dkt. 402-9, Ex. 40 at SUN0013636), requires Sunrise to determine and ensure that
7 staffing hours are sufficient to perform the care tasks called for under resident
8 assessments, and requires Sunrise to comply with California’s staffing regulations.
9 Injunction, ¶¶5-7. Further, the Injunction requires Sunrise to provide quarterly
10 reports of facility response times to resident calls for assistance, *Id.*, ¶¶9-12, thereby
11 encouraging the timely delivery of promised services and allowing Class Counsel
12 to monitor Sunrise’s compliance with the Injunction. In combination, the Injunction
13 terms materially increase the likelihood that Sunrise residents will receive promised
14 care services. *See* Dkt. 614-8 (“Flores 4/17/24 Decl”), ¶17.

15 Applying an “avoided economic harm” analysis approved in prior cases,
16 Dr. Kennedy estimates the Staffing, Training and Monitoring (“STM”) provisions
17 in the Injunction will provide an economic value of \$9.36 million to the Settlement
18 Class. Supplemental Declaration of Patrick Kennedy, PhD ISO Settlement
19 Approval Motion (“Supp Kennedy Decl”), ¶6. As all residents rely on the same
20 group of care providers, Non-Class residents at Sunrise facilities will also benefit
21 from the STM provisions. Dkt. 614-8 (Flores 4/17/24 Decl), ¶17; Kennedy 4/17/24
22 Decl, ¶¶16-22. Additionally, the Disclosure provisions requiring changes to
23 Sunrise’s Residency Agreement language will benefit consumers generally.
24 Injunction, ¶¶1-4.

25 For these and the other reasons set forth below, the instant motion for final
26 settlement approval should be granted.

27
28

1 **II. BACKGROUND**

2 **A. Claims Asserted and Parties**

3 This action was filed on June 27, 2017 in California state court and removed
4 to Federal Court by Sunrise. Named Plaintiffs Amy Fearn (as successor-in-interest
5 to the Estate of Edith Zack) and Elise Ganz (as successor-in-interest to the Estate of
6 Helen Ganz) asserted class claims on behalf of persons who resided in a Sunrise
7 California assisted living facility (“Sunrise California Facility”) since June 27,
8 2013. Plaintiffs asserted claims for damages and injunctive relief under California’s
9 Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (“CLRA”),
10 Financial Elder Abuse statute, Cal. W&I Code § 15610.30, and California’s unfair
11 competition statute, Bus. & Prof. Code §§ 17200 *et seq.* (“UCL”). Dkt. 77 (Second
12 Amended Complaint (“SAC”), ¶¶9, 90-130).

13 Sunrise provides assisted living and memory care services for seniors and
14 disabled persons throughout the United States, including California. The litigation
15 class proposed in the SAC (which the Court approved for class treatment) included
16 residents from forty-three (43) Sunrise California Facilities. Dkt. 504, pp. 33-34.

17 In August 2023, Sunrise transferred its management contracts for twenty-six
18 of the Sunrise California Facilities to Oakmont Senior Living. At present, Sunrise
19 operates sixteen California assisted living facilities. Two of the sixteen facilities
20 (Cupertino and Orange) were opened in the Fall 2023, so “non arbitration” residents
21 from those facilities are included in the Settlement Class. SS, ¶1.31. All sixteen
22 facilities (“Sunrise Injunction Facilities”) are subject to the stipulated Injunction.
23 Injunction, p. 1.

24 **B. Case Proceedings (Pre-Class Certification)**

25 This action has been vigorously litigated from inception. Plaintiffs filed the
26 lawsuit in state court on June 27, 2017. After removal to Federal court, Sunrise
27 filed motions to compel arbitration or dismiss and to transfer venue to the Central
28 District. Dkt. 15. By order dated October 31, 2018, the Northern District court

1 compelled arbitration and stayed the proceedings as to plaintiff Audrey Heredia,
2 transferred venue to the Central District, but deferred ruling on Sunrise's other
3 motions. Dkt. 42.

4 On January 9, 2019, Sunrise filed a renewed motion to dismiss and further
5 moved to strike the class allegations. Dkt. 54. On March 4, 2019, this Court denied
6 Sunrise motions. Dkt. 65. Plaintiffs filed the Second Amended Complaint on
7 June 21, 2019. Dkt. 77. Defendants filed an Answer on July 15, 2019, wherein they
8 denied the allegations and claims alleged in the Second Amended Complaint.
9 Dkt. 83.

10 On September 1, 2020, Defendants moved for judgment on the pleadings as
11 to all claims for equitable relief and Plaintiffs' UCL claim entirely. Dkt. 197. On
12 February 10, 2021, the Court granted the motion as to Plaintiffs' claim for UCL
13 restitution only and otherwise denied Sunrise's motion. Dkt. 325.

14 **C. Discovery Proceedings**

15 Pending the resolution of Sunrise's initial pleading challenges, formal case
16 discovery was stayed. Dkt. 37. After denying Sunrise's motions to dismiss and
17 strike, the Court lifted the discovery stay on March 4, 2019. Dkt. 65. Plaintiffs
18 served initial requests for interrogatory and document discovery on March 19,
19 2019, with subsequent requests served between April 2019 and February 2021.

20 The parties engaged in extensive case discovery. In total, Sunrise produced
21 over 190,000 pages (in nearly 9,400 separate documents). Sunrise's production
22 comprised more than 115 GB of data, including 762 Excel files, 244 PowerPoint
23 files, 2,850 PDFs, and over 2,400 email communications. Sunrise also produced
24 about 670 pages (in 86 documents) of expert materials. Healey Decl, ¶34. In
25 response to Sunrise's requests, Plaintiffs produced approximately 18,600 pages of
26 documents, and another 1,100 pages of expert witness materials. *Id.*

27 In addition to written discovery, the parties engaged in substantial deposition
28 discovery. Plaintiffs took ten depositions, consisting of six lay witnesses (including

1 the deposition of Jeff Slichta, Sunrise’s Rule 30(b)(6) designee), and Sunrise’s four
2 expert witnesses. Additionally, Plaintiffs interviewed Tiffany Nobee, who was
3 produced by Sunrise in response to the Court-ordered Care Labor Management
4 (CLM) inspection. Sunrise conducted nine depositions, including the two named
5 Plaintiffs, four family members of absent class members and Plaintiffs’ three
6 experts. Healey Decl, ¶36.

7 Through their retained expert witnesses, Plaintiffs also undertook extensive
8 review and analysis of key issues in the lawsuit, including Sunrise’s staffing
9 policies, the impact of those policies on facility staffing levels, and the impact of
10 staffing levels on the provision of care services to Sunrise residents. Dkt. 438-40
11 (Flores Decl), ¶¶22-46. Plaintiffs’ experts reviewed extensive electronic resident
12 assessment data, staffing data and other records to analyze staffing at Sunrise
13 facilities. Dkt. 242-2 (Schroyer Reply Decl), ¶¶70-71; Dkt. 438-55 (Kennedy Reply
14 Decl), ¶18. That work included the staffing shortfall analysis undertaken using the
15 MedModel discrete event simulation program. Schroyer Reply Decl, ¶¶59-73.

16 **D. Case Investigation**

17 Both before and after class certification proceedings, Plaintiffs engaged in
18 substantial investigation efforts, including interviews with family members of
19 current and former Sunrise residents. All told, Class Counsel interviewed over 250
20 family member witnesses. Healey Decl, ¶33. In addition, Class Counsel reviewed
21 publicly available information concerning Sunrise and its California facilities,
22 including citations issued by and complaints lodged with California’s Department
23 of Social Services. Dkt. 288-42 (Yarnall Decl), ¶¶2-10.

24 **E. Class Certification Proceedings**

25 Plaintiffs’ initial motion for class certification was denied without prejudice,
26 as the proposed class included Sunrise residents who were subject to arbitration
27 agreements. Dkt. 323. On November 16, 2021, the Court granted Plaintiffs’
28 amended motion for class certification, with the certified class limited to residents

1 not subject to arbitration. Dkt. 504. In the same order, the Court denied Sunrise’s
2 *Daubert* motions to strike Plaintiffs’ expert testimony. Dkt. 504. On April 1, 2022,
3 a Ninth Circuit motion panel granted Sunrise’s FRCP 23(f) request for accelerated
4 review of the Court’s rulings. Dkt. 566. After extensive appellate briefing and oral
5 argument, in August 2023, the Ninth Circuit affirmed the Court’s certification and
6 *Daubert* orders. *Heredia v. Sunrise Senior Living LLC*, No. 22-55332, 2023 WL
7 4930840, *2 (9th Cir. Aug. 2, 2023).

8 On February 12, 2024, the Court confirmed that the litigation class period
9 runs from June 27, 2013 through the date of class notice. Dkt. 606, p. 3.

10 **F. Settlement Negotiations**

11 The settlement was reached after extensive negotiations, including multiple
12 mediation sessions before highly-qualified neutrals. In December 2021, the parties
13 mediated before Robert Kaplan (Judicate West), but failed to reach settlement.
14 After the Ninth Circuit affirmed the class certification order, the parties agreed to
15 mediate before the Hon. Diane M. Welsh (Ret.) of JAMS. That two-day mediation
16 occurred on January 10-11, 2024 in Philadelphia. Healey Decl, ¶43.

17 After consideration of the parties’ respective positions, Judge Welsh made a
18 mediator’s proposal of \$18.2 million and injunctive relief to be negotiated. After
19 several weeks of negotiations on the injunctive relief terms, on February 16, 2024,
20 the parties accepted Judge Welsh’s mediator’s proposal, subject to negotiating a
21 mutually acceptable settlement agreement. On March 28, 2024, the parties finalized
22 the Settlement Stipulation. Throughout the mediation and follow-on discussions,
23 the parties’ negotiations were intense and hard fought. Healey Decl, ¶44.

24 **G. Preliminary Settlement Approval**

25 On May 31, 2024, the Court continued Plaintiffs’ motion for preliminary
26 settlement approval to allow the parties to revise the proposed distribution of
27 settlement payments. Specifically, in response to the Court’s comments, the parties
28

1 negotiated a revised settlement payment formula accounting for a Class Member’s
2 duration of stay at Sunrise. See Dkt. 624-1 (attaching Settlement Addendum).

3 Thereafter, by order dated July 26, 2024, the Court conditionally granted
4 preliminary settlement approval after detailed consideration of the relevant factors
5 under the FRCP 23(e) “fair, reasonable, and adequate” test. Dkt. 626, **9-19. In the
6 July 26, 2024 order, the Court also amended its prior certification order to grant
7 certification to the Settlement Class. *Id.*, **7-8.¹

8 **H. Settlement Class Notice**

9 On August 27, 2024, the Settlement Administrator (CPT) substantially
10 completed dissemination of the Settlement Class Notice to 4,044 Class Members.
11 Additional notices were sent on September 6, 2024 to an additional 139 Settlement
12 Class Members identified by Sunrise. Declaration of Irvin Garcia (CPT), ¶¶3-5.
13 With a Class Notice Date of August 27, 2024, Garcia Decl, ¶3, the opt-
14 out/objection deadline is October 26, 2024. Dkt. 628, p. 3.

15 **III. SETTLEMENT PROVIDES SUBSTANTIAL BENEFITS**

16 **A. The Settlement Fund**

17 Sunrise has agreed to pay \$18.2 million into a Settlement Fund to resolve all
18 monetary obligations owed under the settlement. The \$18.2 million cash payment
19 exceeds the amounts paid in comparable class settlements. In the closest
20 comparable settlement (the \$16.25 million Aegis settlement), the class size was
21 over twice the Settlement Class here. Healey Decl, ¶91.

22 The Settlement Fund will be used to pay attorneys’ fees, litigation expenses,
23 service awards, and class notice/settlement administration costs, all in amounts to
24 be approved by the Court. SS, ¶¶1.16, 9.1, 9.4. As detailed in the separate fee
25 briefing, Plaintiffs are seeking \$10.5 million in attorneys’ fees, reimbursement of
26

27 ¹ The Court’s July 26, 2024 order was conditioned on the parties making changes to
28 the Settlement Class Notice. After those changes were made, on August 8, 2024,
the Court granted Plaintiffs’ motion for preliminary settlement approval. Dkt. 628.

1 \$1.7 million in litigation costs and service awards of \$15,000 to each Named
2 Plaintiff (total \$30,000). CPT's updated bid for notice and settlement administration
3 costs is \$75,000. Garcia Decl, ¶14, Ex. C. The amounts requested for all of these
4 items are at or below the amounts authorized under the Settlement Stipulation. SS,
5 ¶¶1.16, 9.1, 9.4.

6 Factoring in an agreed-upon reserve of \$25,000 to cover late claims, SS,
7 ¶1.28, the Net Settlement Payment amount available to fund Settlement Awards
8 will be approximately \$5.87 million. Healey Decl, ¶15, Ex. 3. If the Court awards
9 less than the requested amounts, all non-awarded funds revert to the Settlement
10 Fund for distribution to Settlement Class Members. SS, ¶¶9.3, 9.4. No portion of
11 the Settlement Fund reverts to Sunrise. SS, ¶7.9.

12 **B. Settlement Payments to Class Members**

13 Assuming a Net Settlement Fund of approximately \$5.87 million, the initial
14 settlement distribution is projected to result in an average per-Settlement Class
15 Member amount of approximately \$1,403. Healey Decl, ¶54. In the preliminary
16 approval motion, Plaintiffs estimated the average per-Class Member payment
17 would be roughly \$1,477. However, that estimate was based on Sunrise's estimated
18 Settlement Class size of 3,500 residents. Dkt. 614-2 (Healey 4/17/24 Decl), ¶57,
19 Ex. 2 (proposed Class Notice), p. 6. After completing its file review to provide the
20 Settlement Class Member list, Sunrise determined that there are 4,183 Settlement
21 Class Members. Healey Decl, ¶54. Class Counsel reduced the requested amounts
22 for fees and litigation costs to reach the projected average payment of \$1,403. *Id.*

23 The projected \$1,403 average initial payment compares favorably to the
24 initial payments made in comparable assisted living settlements. In those cases, the
25 average initial settlement payments ranged from \$285 to \$910, with an aggregate
26 average payment of \$605 per class member. The projected initial settlement
27
28

1 payment here (\$1,403) is over twice the average amount achieved in the other
2 settlements. Healey Decl, ¶92.²

3 Further, it is likely that there will be a supplemental distribution to
4 Settlement Class Members (or their successors) who cash their initial settlement
5 checks. In other assisted living settlements, 30% or more of the initial settlement
6 checks were not cashed, resulting in substantial supplemental distributions. Healey
7 Decl, ¶¶95-96. Here, the agreement directs the Settlement Administrator to
8 distribute uncashed checks through a supplemental distribution. SS, ¶7.9.

9 The Settlement Award payments will be paid to Settlement Class Members
10 (or if deceased, their legal successors) with no claim form requirement. The
11 Settlement Administrator will exercise all reasonable efforts to deliver payments to
12 Settlement Class Members, or if deceased, their legal successors. SS, ¶¶7.4-7.9;
13 Garcia Decl, Ex. C (CPT Bid), pp. 1-3. For Settlement Class Members without a
14 locatable current address, the Administrator is authorized to make payment
15 pursuant to a “Distribution Request.” SS, ¶¶7.4, 7.5. Further, the Settlement
16 Administrator is authorized to pay late submitted claims from the Reserve Fund.
17 SS, ¶1.28.³

18
19 ² Under the distribution formula confirmed in the Settlement Addendum, the actual
20 per-Class Member payment amount will vary depending on the number of days a
21 class member resided in a Sunrise facility. Dkt. 624-1, Ex. 1. However, the \$1,403
22 figure is still a useful comparison to prior settlements. *See* Dkt. 626, p. 15.

23 ³ The proposed Reserve Fund amount is \$25,000. If the Administrator determines
24 that monies left in the Reserve Fund (after all late claims are addressed) cannot be
25 economically distributed to Class Members, the balance is to be distributed cy pres,
26 subject to the Court approval. SS, ¶7.9. The proposed cy pres recipient is Groceries
27 for Seniors, a non-profit that provides free food to elderly people in need. The
28 parties and their counsel have no relationship with the proposed cy pres recipient.
Healey Decl, ¶65.

1 **C. Stipulated Injunction**

2 The stipulated Injunction obligates Sunrise to undertake and maintain
3 substantive actions that will improve facility staffing and benefit both Sunrise
4 residents and consumers generally. The Injunction applies to the sixteen assisted
5 living facilities that Sunrise presently operates in California (“Sunrise Injunction
6 Communities”). The Injunction duration is 2.5 years (30 months). Injunction, ¶18.

7 Under the “Staffing Requirements” in the Injunction, Sunrise is required to
8 ensure that staffing hours are sufficient to perform the care tasks called for under
9 resident assessments. The Injunction specifically eliminates the “round down”
10 provision included in Sunrise’s DLR staffing formula, pursuant to which target
11 staffing was potentially reduced by 3.5 hours or more per day at each facility.
12 Dkt. 402-9, Ex. 40 at SUN0013636.⁴ Further, the Injunction obligates Sunrise to
13 comply with California staffing regulations, including 22 CCR § 87411(a), which
14 requires that the number of facility staff be sufficient to meet resident needs at all
15 times. Injunction, ¶¶5-7.

16 Under the “Training Requirements,” Sunrise is required to provide annual
17 training to facility personnel on timely response to call light requests, proper
18 monitoring of resident care and how to appropriately staff its facilities. Injunction,
19 ¶8. Sunrise is also required to maintain records of the content and attendance of
20 such training. *Id.*

21 Under the “Monitoring Requirements,” Sunrise must provide reports to Class
22 Counsel showing facilities’ response times to resident requests for assistance (“Call
23 Light Request/Response Data”) on a quarterly basis. *Id.*, ¶¶9-12. As the call light
24

25 ⁴ Despite the Fall 2019 implementation of the Care Labor Management (CLM)
26 staffing protocol, Sunrise has continued to use the DLR staffing formula to set
27 overall daily staffing targets for Sunrise facilities. Dkt. 412-2 (Umpierre Class Cert.
28 Reply Decl.), ¶¶26-29.

1 data shows how quickly Sunrise responds to resident requests, it provides an
2 effective way to monitor whether facility staffing is sufficient to meet resident
3 needs. Flores 4/17/24 Decl, ¶¶13-14.⁵

4 In combination, the Staffing, Monitoring and Reporting (“STM”)
5 requirements of the Injunction provide substantive and verifiable means to address
6 a critical issue raised in the lawsuit, namely, the sufficiency of facility staffing at
7 Sunrise facilities. Flores 4/17/24 Decl, ¶17. Dr. Kennedy’s updated opinion is that
8 the economic value of the STM provisions to Settlement Class Members exceeds
9 \$9.36 million, and the value to all Sunrise residents (Class and Non-Class) exceeds
10 \$37 million. Supp Kennedy Decl, ¶¶3, 6; Kennedy 4/17/24 Decl, ¶¶21, 25. Dr.
11 Kennedy’s analysis is based on an “avoided economic harm” methodology, *Id.*,
12 ¶¶16-22, which has been approved by multiple courts. *Troy v. Aegis Senior*
13 *Communities, LLC*, No. 16-cv-03991-JSW, 2021 WL 6129106, *4 (N.D. Cal. Aug.
14 23, 2021); *Walsh v. Kindred Healthcare*, No. C 11-00050 JSW, 2013 WL 6623190,
15 **3-4 (N.D. Cal. Dec. 16, 2013); *see also, Heredia*, 2023 WL 4930840 at *3.⁶

16 Additionally, under the Disclosure provisions in the Injunction, Sunrise is
17 required to include affirmative disclosures in its residency agreements explaining
18 how resident assessments are used to set facility staffing. Sunrise is also required to
19 _____

20 ⁵ Due to differing technical capabilities in capturing call light data, the quantity of
21 data required for production varies by facility. Healey Decl, ¶¶60-62. But because
22 Class Counsel select the facilities and days required for Sunrise’s data production,
23 Injunction, ¶¶11-12, Sunrise has an incentive to ensure compliance at all facilities.
24 Flores 4/17/24 Decl, ¶15.

25 ⁶ Dr. Kennedy previously estimated value of \$4.459 million was based on the
26 assumption that Settlement Class Members were roughly 20% of the total current
27 residents in the Sunrise Injunction Communities. Dkt. 614-9, ¶¶23-25. In fact, over
28 42% of current residents in those facilities are Settlement Class Members. *See*
Garcia Decl, ¶15 (of the 1,194 residents in the Sunrise Injunction Communities,
503 are Settlement Class Members); Healey Decl, ¶¶98-99.

1 refrain from misleading statements as to how assessments impact facility staffing.
2 Injunction, ¶¶1-4.

3 **D. Release Provisions**

4 Under the Settlement Stipulation, all Settlement Class Members (excluding
5 opt-outs) will release all claims asserted, or which could have been asserted, against
6 Sunrise and the defined Released Parties based on the facts alleged in the lawsuit.
7 SS, ¶¶1.24, 8.1, and waive the protections of California Civil Code § 1542 as the
8 released claims. SS, ¶8.3. The scope of the release complies with applicable law.
9 *Hesse v. Sprint Corp*, 598 F.3d 581, 590 (9th Cir. 2010).

10 The Release expressly excludes individual claims for personal injuries,
11 wrongful death, bodily harm, or emotional distress, as well as claims for breach of
12 the Settlement Stipulation or Injunction. SS, ¶1.24. The releases are effective only
13 after the Court grants final settlement approval and the Effective Date is reached.
14 SS, ¶8.1.

15 **E. Attorneys' Fees, Litigation Costs and Service Awards**

16 The Settlement Stipulation allows Plaintiffs to seek Court approval for
17 attorneys' fees, reimbursement of litigation expenses/costs, and services, not to
18 exceed specified amounts. SS, ¶¶9.1 (capping fee request (\$10.9 million) and
19 litigation costs (\$2 million)), 9.4 (capping per-Plaintiff service awards at \$15,000)).
20 But there is no "clear sailing" provision; rather, the agreement simply caps the
21 maximum requests that can be made. SS, ¶¶9.1. As detailed in Plaintiffs' separate
22 motion, the requested fees and costs are below the caps. If the Court awards less
23 than the amounts requested, the non-approved amounts revert to the Settlement
24 Fund for distribution to Settlement Class Members. SS, ¶¶9.3, 9.4.

25 **IV. THE SETTLEMENT MEETS THE LEGAL STANDARDS FOR**
26 **OBTAINING PRELIMINARY APPROVAL**

27 The law favors settlement of class-action lawsuits. *Churchill Vill., L.L.C. v.*
28 *Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004). Nevertheless, under FRCP 23(e), the

1 proposed settlement must be “fair, reasonable and adequate.” *Chen II*, 2021 WL
2 9720778, at *4.

3 To determine whether a proposed settlement warrants preliminary approval,
4 factors considered include: (a) the strength of plaintiffs’ case; (b) the risk, expense,
5 complexity, and likely duration of further litigation; (c) the risk of maintaining class
6 action status throughout the trial; (d) the amount offered in settlement; (e) the extent
7 of discovery completed, and the stage of the proceedings; (f) the experience and
8 views of counsel; and (g) the reaction of the class members to the proposed
9 settlement. *Chen II, supra*, at *4, citing *Staton v. Boeing Co.*, 327 F.3d 938, 959
10 (9th Cir. 2003). Courts also consider whether the settlement is the “product of
11 collusion among the negotiating parties.” *Chen II, supra*, at **4-5, citing *In re*
12 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

13 **A. Strength of Plaintiffs’ Case**

14 Through discovery and investigation efforts, Plaintiffs marshalled
15 considerable evidence to support meritorious claims. *See* Dkts. 438 (Class Motion),
16 424 (Reply). That evidence included documents showing that Sunrise used a Daily
17 Labor Report (DLR) staffing model to calculate target care services staffing at all
18 California Facilities. On its face, the DLR formula “rounds down” the care services
19 hours that Sunrise calculates based on resident assessments. Dkt. 402-6 (Slichta
20 Decl), ¶¶33-34; Dkt. 402-9, Ex. 40 (DLR Job Aid, SUN0013636). Given the round
21 down and other flaws, Plaintiffs’ staffing expert, Dr. Flores, opined that Sunrise’s
22 staffing policies placed residents at substantial risk of not receiving promised
23 services. Dkt. 438-40 (Flores Decl), ¶¶24, 32-35. Plaintiffs contend that Sunrise’s
24 failure to disclose this material supports an economic injury claim (in the form of
25 upfront Move-In Fees and overpriced Service Fees) for all residents.

26 Sunrise denies that its staffing model was flawed and argues substantial
27 evidence demonstrates high customer satisfaction with Sunrise’s facilities. That
28 includes 248 declarations Sunrise proffered from family members (and some

1 current residents) attesting to excellent care, and multiple consumer satisfaction
2 awards from independent sources, such as JD Power and U.S. News & World
3 Report. *See* Dkts. 406-407, 402-9, Ex. 48.

4 Liability issues aside, Plaintiffs face challenges with respect to classwide
5 damages. Under applicable California law, the applicable measure of damages is
6 the difference between what consumers paid and the value received. *Nguyen v.*
7 *Nissan N. Am., Inc.*, 932 F.3d 811, 820 (9th Cir. 2019). Plaintiffs’ strongest claim is
8 for upfront Move-In Fees, which are generally paid before any services are
9 provided and thus are arguably not subject to Sunrise’s offset argument. But the
10 total Move-In Fees paid by or on behalf of class members here (roughly \$6.35
11 million) is considerably lower than the equivalent fees paid in comparable assisted
12 living settlements. Healey Decl, ¶93, Ex. 3.

13 Plaintiffs’ claim for Service Fees is larger (roughly \$60 million), Healey
14 Decl, ¶47, but is subject to Sunrise’s argument that an offset is required, given the
15 value of services actually provided. Plaintiffs contend the MedModel findings (25-
16 35% staffing shortfall for sample years analyzed) provides an appropriate basis to
17 calculate the offset. Dkt. 438-39 (Kennedy Decl), ¶¶62-65, 67-73; Dkt. 424-2
18 (Schroyer Reply Decl), ¶¶59-60. At trial, Plaintiffs would have to convince the jury
19 that MedModel analysis provides an appropriate basis to calculate damages. On that
20 issue, Sunrise would likely challenge the MedModel approach and findings as
21 speculative. More broadly, Sunrise would argue that evidence of resident
22 satisfaction and the fact that few residents complained or moved out of Sunrise
23 facilities undercuts Plaintiffs’ theory of overpayment injury. Healey Decl, ¶70.

24 Plaintiffs also assert claims for CLRA statutory damages. Specifically, the
25 CLRA authorizes statutory damages of “up to \$5000” for each class member. Cal.
26 Civ. Code § 1780(b)(1). With the Settlement Class now confirmed to include 4,183
27 non-arbitration residents, the potential CLRA damages award is \$20.9 million.
28 Healey Decl, ¶82(c) (4,183 residents times \$5000). While the statutory

1 requirements for CLRA statutory damages are straightforward, the jury must
2 expressly find “an additional award” (*i.e.*, over and above the CLRA compensatory
3 damages) is “appropriate.” Cal. Civ. Code § 1780(b)(1)(C).

4 Plaintiffs contend the CLRA statutory damage award is subject to trebling
5 under Cal. Civ. Code § 3345. If trebled, the CLRA damage recovery would be
6 approximately \$62.7 million. Sunrise disputes the availability of the trebling
7 remedy, arguing the lack of specific statutory authorization undercuts Plaintiffs’
8 position. Remedies under the CLRA are cumulative to those provided under other
9 statutes. Cal. Civ. Code § 1752 and applicable Legislature history appears to
10 support trebling; however, no court decision has been located that directly confirms
11 Plaintiffs’ position. Healey Decl, ¶72.

12 In the antitrust context (where treble damages are mandatory if actual
13 damage is proven), the Ninth Circuit has held that courts have discretion to
14 “compar[e] the settlement amount to both single and treble damages” in assessing
15 the fairness of a class settlement, *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948,
16 964 (9th Cir. 2009). Here, the treble damage remedy is discretionary, not
17 mandatory. Cal. Civ. Code § 3345(b). Plaintiffs have a risk that a jury may view
18 trebling as unwarranted, given the CLRA compensatory damage and statutory
19 damage remedy. And in Federal Court, all six jurors must agree on the verdict. Fed.
20 R. Civ. P. 48(b).

21 With the 2018 amendments to Rule 23(e), courts consider the “likely range
22 of possible classwide” recovery. *See Chen v. Western Digital Corp.*, Case No. 8:19-
23 cv-00909-JLS-DFM, 2020 WL 13587954 (“*Chen I*”), *11 (C.D. Cal. Apr. 3, 2020).
24 To be conservative, Plaintiffs have included possible trebling of CLRA statutory
25 damages in estimating the maximum possible recovery. Assuming a favorable jury
26 verdict, and given the confirmed Settlement Class size, Class Counsel estimate the
27 possible trial classwide recovery ranges from roughly \$52.75 million to \$129.45
28 million. Healey Decl, ¶¶82-83.

1 **B. Risk, Complexity and Likely Duration of Further Litigation**

2 On the merits, Plaintiffs believe they will prevail on the claims asserted at
3 trial. But as detailed above, multiple potential hurdles must be cleared to prevail on
4 liability and damages.

5 Absent a settlement, the parties (and the Court) will expend significant
6 additional time and resources to resolve this litigation. Under the Court’s prior
7 order, Sunrise is required to produce additional substantial discovery, including
8 production of the staffing and assessment data required for a MedModel staffing
9 analysis as to the full class period. At least two additional Sunrise lay witnesses will
10 be deposed. Pending the results of those depositions, Plaintiffs may seek additional
11 lay witness depositions. Per prior Court orders, Plaintiffs’ access to additional lay
12 witness depositions is subject to further discovery motion before the Discovery
13 Master and potentially this Court.

14 Additionally, expert witness discovery must be completed. At present,
15 Plaintiffs have three expert witnesses for trial (Dr. Flores, Dr. Kennedy, and
16 Mr. Schroyer). Sunrise has six trial experts (Edna Musoke, Dr. Ward,
17 Robert Crandall, Dr. Walker, Prof. Berger, and Josh Allen). Discovery motion
18 practice regarding expert testimony is possible. Trial motions to exclude or limit
19 expert testimony under *Daubert* or other grounds appear virtually certain. Further,
20 Sunrise has stated that it will assert motions for summary judgment and class
21 decertification. Healey Decl, ¶75.

22 Plaintiffs estimate the class trial would take roughly 20 court days, inclusive
23 of jury selection. Depending on how the Court rules on Sunrise’s anticipated
24 arguments for defense trial proof, the trial duration could be longer. Pretrial
25 proceedings, including motions in limine (non-*Daubert*) will likely be extensive.
26 Healey Decl, ¶78.

27 If Plaintiffs prevail at trial, appellate proceedings by Sunrise would appear
28 highly likely. As demonstrated throughout this case, Sunrise has the resources and

1 disposition to aggressively litigate a wide range of issues. Even if the trial result is
2 affirmed in full, appellate proceedings could add another 18-24 months to the final
3 resolution of the lawsuit. The potential for years of delayed recovery is a significant
4 concern in any lawsuit. That is particularly true here, given the elderly status of
5 most class members.

6 Further, the settlement provides certainty of result. In addition to eliminating
7 the risks of maintaining class certification, prevailing at trial, and withstanding any
8 subsequent appeals, settlement “may provide the last opportunity for class members
9 to obtain relief.” *Chen I, supra, at *11; see also, Nat’l Rural Telecomms. Coop. v.*
10 *DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (“In most situations, unless
11 the settlement is clearly inadequate, its acceptance and approval are preferable to
12 lengthy and expensive litigation with uncertain results.”).

13 **C. Risk of Maintaining Class Certification**

14 This Court granted Plaintiffs’ motion for class certification (as to non-
15 arbitration residents) and the Ninth Circuit affirmed that ruling. Dkt. 504; *Heredia*,
16 2023 WL 49300840 at *3. Plaintiffs do not believe that expert discovery or trial
17 evidence will provide grounds to decertify the class. Sunrise argues otherwise,
18 however, contending that the use of resident-specific evidence to support Plaintiffs’
19 claims would necessarily defeat predominant common questions. Also, as to the
20 Financial Elder Abuse claims, Sunrise contends that payments made by family
21 members or third parties triggers individualized inquiries with respect to the “funds
22 of an elder” element. Healey Decl, ¶45; *See Heredia*, 2023 WL 49300840 at *3.

23 Plaintiffs respectfully believe this Court would not decertify the class,
24 Sunrise could (and is likely to) seek further appellate review. And not all jurists
25 have accepted Plaintiffs’ class certification position. *See* Dkt. 566 (Rule 23(f)
26 grant); *Stiner v. Brookdale Senior Living, Inc.*, 665 F. Supp. 3d 1150, 1208-10
27 (N.D. Cal. 2023).

28

1 **D. Amount Offered In Settlement**

2 Under the settlement, Sunrise has agreed to \$18.2 million in cash and
3 stipulated to a Court-ordered Injunction. The combined value of the benefits
4 provided under the settlement compare favorably with the “likely range of possible”
5 classwide recovery, Fed. R. Civ. P. 23(e), Advisory Committee Note to 2018
6 amendment, as well as comparable settlements.

7 **Cash Payment.** The \$18.2 million monetary payment exceeds the amounts
8 paid in all comparable settlements. Healey Decl, ¶56. If the Court grants the
9 amounts requested in Plaintiffs’ separate motion for fees, costs and service awards,
10 the net settlement payment (roughly \$5.87 million) will result in projected initial
11 cash payments to Settlement Class Members of \$1,403. Healey Decl, ¶91. That is
12 over twice the average amount of initial payments paid in comparable settlements.
13 *Id.*, ¶92, Ex. 3. If there is a supplemental distribution of unclaimed funds after the
14 initial payment round (which is likely given the track history of uncashed checks in
15 comparable settlements), the per-class member monetary payment will be higher.
16 Healey Decl, ¶95.

17 **Injunction.** As detailed above, the Staffing, Monitoring and Training
18 provisions in the Injunction impose specific obligations on Sunrise that will
19 improve facility staffing and benefit both Sunrise residents and consumers
20 generally. *See Flores 4/17/24 Decl*, ¶18. In multiple respects, these terms exceed the
21 scope of injunctive relief that Plaintiffs would likely could have obtained at trial.
22 Compare SAC, Prayer, ¶¶9-10 *with Chen I, supra*, at *11 (“expansive, robust
23 programmatic relief” in settlement, which plaintiff was “unlikely” to obtain at trial,
24 supports settlement approval).

25 Applying an approved “avoided economic harm” valuation method,
26 Dr. Kennedy estimates the economic value of the STM Injunction provisions to
27 Settlement Class Members currently residing in the Sunrise Injunction
28 Communities exceeds \$9.36 million. *Supp Kennedy Decl*, ¶6. In combination, the

1 \$18.2 cash payment and \$9.36 million economic benefit from the STM provisions
2 result in an overall class recovery of at least \$27.56 million. Healey Decl, ¶97.

3 The Injunction will produce additional benefits. The overall economic benefit
4 to all Sunrise residents (including non-Class residents) from the STM Injunction
5 provisions exceeds \$37 million. Kennedy (4/17/24) Decl, ¶21. The \$37 million
6 valuation reflects the economic benefit for *all* persons who will reside in the
7 Sunrise Injunction Facilities during the 30-month duration of the Injunction.

8 Consideration of these “non-Class Member” benefits is appropriate in assessing the
9 overall reasonableness of the settlement. As care services at Sunrise’s facilities are
10 provided by a set number of personnel who serve all residents within the particular
11 facility neighborhood, Dkt. 402-6 (Slichta Decl), ¶¶24-26, improved facility
12 staffing benefits all residents. Also, Settlement Class Members derive benefits from
13 residing in an adequately staffed facility, Flores 4/17/24 Decl, ¶18, over and above
14 their avoided economic harm benefit. When evaluating injunctive relief for
15 purposes of class settlement approval, courts consider the benefits to the general
16 public. *See e.g., Taylor v. Shutterfly, Inc.*, No. 5:18-cv-00266-BLF, 2021 WL
17 5810294, *6 (N.D. Cal. Dec. 7, 2021) (“The settlement’s inclusion of injunctive
18 relief can be considered as a class benefit even if the injunction benefits not just
19 Class Members, but the general public.”).

20 Finally, under the “Disclosure Requirements” in the Injunction, Sunrise has
21 agreed to revise its Residency Agreements to include specific disclosures regarding
22 how resident assessments are used in setting facility staffing. Injunction, ¶¶1-4.
23 These provisions address Plaintiffs’ contention that Sunrise’s contractual
24 representations were likely to mislead consumers. SAC, ¶¶2-4. Although more
25 difficult to quantify (and thus not included in Dr. Kennedy’s valuation analysis), the
26 Disclosure Requirements provide additional value in assessing the overall
27 settlement benefits. *See In re Ferrero Litigation*, 583 F.App’x. 665, 668 (9th Cir.
28 2014) (requirement that defendant provide “extra nutritional information” and

1 follow “new [advertising] protocols” constitutes “meaningful” injunctive relief
2 supporting class settlement approval).

3 **Comparison to Likely Recovery.** Applying the facility-wide valuation for
4 the Injunction, the overall monetary value of the settlement to Settlement Class
5 Members is at least \$27.56 million (\$18.2 million in cash, plus \$9.36 million in an
6 “avoided economic harm”). That equates to approximately 21% of the “maximum”
7 damage award (\$129.45 million) and over 52% of the reasonably achievable trial
8 recovery (\$52.75 million). *See* Healey Decl, ¶¶82-83.

9 Under either approach, the overall settlement value falls within the range of
10 possible Court approval. *See, e.g., Hurtado v. Rainbow Disposal Co., Inc.*, 8:17-CV-
11 01605-JLS-DFM, 2021 WL 2327858, *4 (C.D. Cal. May 21, 2021) (approving
12 class settlement that provides 23%-30% of the maximum trial award); *Winans v.*
13 *Emeritus Corp.*, 13-CV-03962-HSG, 2016 WL 107574, *5 (N.D. Cal. Jan. 11,
14 2016) (approved class settlement represents 33.2% of maximum hard damages).⁷

15 **E. Stage of Proceedings and Extent of Discovery Completed**

16 As detailed above, the parties have engaged in substantial discovery and
17 investigation. Healey Decl, ¶¶3-10. The instant settlement was reached only after
18 extensive class certification proceedings, including motion practice before this
19 Court on class issues and related *Daubert* motions, and appellate briefing and
20 argument before the Ninth Circuit. Of necessity, the class certification motion
21 entailed a rigorous analysis of the factual and legal issues underlying Plaintiffs’
22 claims. Dkt. 504.

23 _____
24 ⁷ A “cash settlement amounting to only a fraction of the potential recovery does not
25 per se render the settlement inadequate or unfair.” *In re Mego Fin. Corp. Sec. Litig.*,
26 213 F.3d 454, 459 (9th Cir. 2000) (quoting *Officers for Justice v. Civil Serv. Com’n*
27 *of City and County of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). To the
28 contrary, the “uncertainty of outcome in litigation” and avoidance of expensive
litigation “induce consensual settlements.” *Linney v. Cellular Alaska Partnership*,
151 F.3d 1234, 1242 (9th Cir. 1998).

1 **F. Experience and Views of Counsel**

2 Class Counsel believe the settlement is fair, reasonable and adequate, given
3 the factors referenced above, including the strengths and potential weaknesses in
4 the asserted claims. Healey Decl, ¶¶103-105. Endorsement of the settlement by
5 qualified and well-informed counsel supports approval. *See Linney v. Cellular*
6 *Alaska Partnership*, Nos. C-96-3008 DLJ, *et al.*, 1997 WL 450064, *5 (N.D. Cal.
7 July 18, 1997).

8 As reflected in prior submissions, Class Counsel have substantial experience
9 in class action litigation involving allegations of understaffing in assisted living
10 facilities, and several Class Counsel tried a class action against a nursing home
11 chain to verdict. Healey Decl, ¶¶6-7, 25; Dkt. 288-52 (Wallace Decl), ¶¶4-15. Also,
12 Class Counsel were counsel of record in multiple understaffing cases that resulted
13 in Court-approved settlements. Healey Decl, ¶85.

14 **G. Reaction of Class Members**

15 The Named Plaintiffs and other Settlement Class Members support the
16 settlement. Fearn 4/17/24 Decl, ¶¶31-37; Ganz 4/17/24 Decl, ¶¶41-47; Appendix of
17 Supplemental Settlement Class Member Declarations. CPT reports that, as of
18 September 23, 2024, ten Settlement Class Members (out of 4,183) had opted-out of
19 the settlement, and none have objected. Garcia Decl, ¶¶16-17. Prior to the final
20 settlement approval, Plaintiffs will provide an update on Settlement Class Member
21 reactions, including objection/opt out responses. *See Chen I, supra, at* *13.

22 **H. Agreement Not “Product of Collusion”**

23 The approval process requires consideration of whether the settlement is the
24 “product of collusion,” with red flags including “clear sailing arrangements” for
25 payment of fees separate from class funds, reversion of unawarded fees to the
26 defendant, or an agreement to pay fees disproportionate to the settlement benefits.
27 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 946–47; *Chen I*, *13.

28

1 Here, there are no clear sailing, defense reversion or other “red flags.” The
2 settlement reflects extensive, hard fought negotiations supervised by an expert
3 mediator. The Settlement Stipulation expressly provides that Plaintiffs may obtain
4 only those amounts expressly approved by the Court, with any unawarded amounts
5 added to the Settlement Fund for distribution to class members. SS, ¶¶9.3, 9.4. The
6 Ninth Circuit has specifically approved this approach for class settlements. *Staton*,
7 372 F.3d at 972.

8 **V. CONCLUSION**

9 For the reasons set forth herein, Plaintiffs respectfully request that the Court
10 grant final settlement approval.

11
12 Dated: September 26, 2024

Respectfully submitted,

s/Christopher J. Healey

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Attorneys for Plaintiffs and the Class

[Other Counsel Listed on Service Page]

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