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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Audrey Heredia, as successor-in-interest  
to the Estate of Carlos Heredia; Amy  
Fearn as successor-in-interest to the  
Estate of Edith Zack; and Helen Ganz,  
by and through her Guardian ad Litem,  
Elise Ganz; on behalf of themselves and  
all others similarly situated,

Plaintiffs,

vs.

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

Defendants.

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

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR ATTORNEYS'  
FEES, COSTS, AND SERVICE  
AWARDS**

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

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page**

- I. INTRODUCTION..... 1
- II. BACKGROUND..... 3
  - A. Claims Asserted and Parties..... 3
  - B. Case Proceedings (Pre-Class Certification)..... 4
  - C. Discovery Proceedings..... 5
  - D. Case Investigation..... 6
  - E. Class Certification Proceedings..... 6
  - F. Settlement Efforts and Preliminary Court Approval ..... 7
  - G. Class Notice ..... 8
- III. SETTLEMENT PROVIDES SUBSTANTIAL CLASS BENEFITS..... 8
  - A. Settlement Fund ..... 8
  - B. Stipulated Injunction..... 9
- IV. CLASS COUNSEL’S FEE REQUEST SHOULD BE APPROVED..... 11
  - A. Legal Overview..... 11
    - 1. Lodestar Method Should Apply To This Request..... 11
    - 2. Percentage-of-Recovery Considerations ..... 13
  - B. Class Counsel’s Lodestar Is Reasonable, Particularly Given Significant Reductions ..... 14
  - C. The Hourly Rates Used In Lodestar Calculation Are Reasonable ..... 18
  - D. The Settlement Will Provide Substantial Benefits ..... 19
  - E. Requested Fees Are Well Below Counsel’s Net Lodestar ..... 20
  - F. Percentage-Of-Recovery Cross-Check..... 20

1 V. REIMBURSEMENT OF LITIGATION EXPENSES IS  
2 WARRANTED .....23  
3 VI. THE SERVICES AWARD REQUESTS ARE APPROPRIATE.....23  
4 VII. CONCLUSION .....24  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page(s)**

**Cases**

*In re American Apparel, Inc. S'holder Litig.*,  
2014 WL 10212865 (C.D. Cal. 2014)..... 22

*Andrade-Heymsfield v. NextFoods, Inc.*,  
No. 3:21-cv-01446-BTM-MSB, 2024 WL 3871634 (S.D. Cal. April  
8, 2024)..... 3, 21

*Arace v. Medico Investments LLC*,  
48 Cal.App.5th 977 (2020)..... 12

*Beaty v. BET Holdings, Inc.*,  
222 F.3d 607 (9th Cir. 2000)..... 17

*In re Bluetooth Headset Prods. Liab. Litig.*,  
654 F.3d 935 (9th Cir. 2011).....*passim*

*Camacho v. Bridgeport Fin., Inc.*,  
523 F.3d 973 (9th Cir. 2008)..... 18

*Chalmers v. City of Los Angeles*,  
796 F.2d 1205 (9th Cir. 1986)..... 18

*Charlebois v. Angels Baseball LP*,  
993 F. Supp. 2d 1109 (C.D. Cal. 2012)..... 16

*Chaudhry v. City of L.A.*,  
751 F.3d 1096 (9th Cir. 2014), cert. denied, –U.S. –, 135 S.Ct. 295,  
190 L.Ed.2d 141 (2014)..... 15

*Chen v. Western Digital Corp.*,  
Case No. 8:19-cv-00909-JLS-DFM, 2021 WL 9720778 (C.D. Cal.  
Jan. 5, 2021)..... 24

*Cicero v. DirectTV, Inc.*,  
No. EDCV 07-1182, 2010 WL 2991486 (C.D. Cal. July 27, 2010)..... 3, 21

*In re Cobra Sexual Energy Sales*,  
2021 WL 45355790..... 23

1 *In re Cobra Sexual Energy Sales*,  
2 No. 2:13-cv-05942-AB-Ex, 2021 WL 4535790 (C.D. Cal. April 7,  
3 2021)..... 12  
4 *Cunningham v. Cnty. of Los Angeles*,  
5 879 F.2d 481 (9th Cir. 1988)..... 12  
6 *Delaney v. Baker*,  
7 20 Cal.4th 23 (1999)..... 23  
8 *Fair Housing of Marin v. Combs*,  
9 285 F.3d 899 (9th Cir. 2002)..... 15, 16  
10 *In re Ferrero Litigation*,  
11 2012 WL 2802051 (S.D. Cal. July 9, 2012)..... 14  
12 *In re Ferrero*,  
13 583 Fed.Appx. 665 (9th Cir. 2014) .....*passim*  
14 *Garner v. State Farm Mut. Auto. Ins. Co.*,  
15 No. CV 08 1365 CW (EMC), 2010 WL 1687832 (N.D. Cal. April  
16 22, 2010)..... 24  
17 *Gonzales v. City of Maywood*,  
18 729 F.3d 1196 (9th Cir. 2013)..... 14  
19 *Hanlon v. Chrysler Corp.*,  
20 150 F.3d 1011 (9th Cir.1998)..... 12, 15, 20  
21 *Harris v. Marhoefer*,  
22 24 F.3d 16 (9th Cir. 1994)..... 23  
23 *Hensley v. Eckerhart*,  
24 461 U.S. 424 (1983) ..... 17  
25 *Heredia v. Sunrise Senior Living LLC*,  
26 No. 22-55332, 2023 WL 4930840 (9th Cir. Aug 2, 2023)..... 7, 11  
27 *Holt v. Kormann*,  
28 No. SACV 11-01047 2012 WL 5829864, \*6 (C.D. Cal. 2012)..... 15  
*Ketchum v. Moses*,  
24 Cal.4th 1122 (2001)..... 15

1 *Laffitte v. Robert Half Internat. Inc.*,  
 2 1 Cal.5th 480 (2016)..... 11, 12

3 *Lowery v. Rhapsody Int’l, Inc.*,  
 4 75 F.4th 985 (9th Cir. 2023).....*passim*

5 *MacDonald v. Ford Motor Company*,  
 6 No. 13-cv-02988-JST, 2016 WL 3055643 (N.D. Cal. May 31,  
 2016)..... 16

7 *In re Mercury Interactive Corp.*,  
 8 618 F.3d 988 (9th Cir. 2010)..... 11

9 *Moreno v. City of Sacramento*,  
 10 534 F.3d 1106 (9th Cir. 2008)..... 15

11 *Roes, 1-2 v. SFBSC Mgmt., LLC*,  
 12 944 F.3d 1035 (9th Cir. 2019)..... 13

13 *Sarabia v. Ricoh USA Inc*,  
 14 Case No. 8:20-cv-00218-JLS-KES, 2023 WL 3432160 (C.D. Cal.  
 May 1, 2023)..... 18, 21

15 *Serrano III v. Priest*,  
 16 20 Cal.3d 25 (1977)..... 11, 15

17 *Singer v. Becton Dickinson & Co.*,  
 18 No. 08-CV-821-IEG (BLM), 2009 WL 4809646 (S.D. Cal. Dec. 9,  
 19 2009)..... 24

20 *Staton v. Boeing Co.*,  
 21 327 F.3d. 938 (9th Cir. 2003)..... 3, 13, 23

22 *Stetson v. Grissom*,  
 23 821 F.3d 1157 (9th Cir. 2016)..... 19

24 *Stiner v. Brookdale Senior Living, Inc.*,  
 665 F.Supp.3d 1150 (N.D. Cal. 2023)..... 22

25 *Taylor v. Shutterfly, Inc., No. 5:18-cv-00266-BLF*,  
 26 2021 WL 5810294 (N.D. Cal. Dec. 7, 2021) ..... 13, 20

27 *In re Tobacco Cases I*,  
 28 216 Cal.App.4th 570 (2013)..... 17

1 *Troy v. Aegis Senior Communities, LLC*,  
 2 No. 16-cv-03991-JSW, 2021 WL 6129106 (N.D. Cal. Aug. 23,  
 3 2021)..... 10, 13  
 4 *In re Vitamin Cases*,  
 5 110 Cal.App.4th 1041 (2003)..... 11  
 6 *Vizcaino v. Microsoft Corp.*,  
 7 290 F.3d 1043 (9th Cir. 2002).....*passim*  
 8 *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod.*  
 9 *Liab. Litig.*,  
 10 No. 6903 & 6904, 2020 WL 2086368 (N.D. Cal. Apr. 30, 2020) ..... 18  
 11 *Walsh v. Kindred Healthcare*,  
 12 No. C 11-00050 JSW, 2013 WL 6623190 (N.D. Cal. Dec. 16,  
 13 2013)..... 10, 20  
 14 *In re Washington Public Power Supply Sys. Sec. Lit.*,  
 15 19 F.3d 1291 (9th Cir. 1994)..... 18  
 16 *Yamada v. Nobel Biocare Holding AG*,  
 17 825 F.3d 536 (9th Cir. 2016)..... 13  
 18 **Statutes**  
 19 Business and Professions Code  
 20 §§ 17200 et seq. .... 4  
 21 California Civil Code  
 22 §§ 1750 et seq. .... 4  
 23 §1780(e)..... 12  
 24 California Code of Civil Procedure  
 25 § 1021.5 ..... 12  
 26 California Welfare and Institutions Code  
 27 § 15610.30 ..... 4  
 28 § 15657.5 ..... 12  
**Rules and Regulations**  
 22 California Code of Regulations  
 § 87411(a)..... 10

1 Federal Rules of Civil Procedure  
2 Rule 16..... 17  
3 Rule 23(f)..... 7, 22  
4 Rule 23(h)..... 23  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
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1 **I. INTRODUCTION**

2 With this motion, Plaintiffs respectfully request Court approval for  
3 (a) attorneys’ fees in the amount of \$10.5 million; (b) litigation costs not to exceed  
4 \$1.7 million; and (c) service awards of \$15,000 each to the two Named Plaintiffs.  
5 All three requests are supported under the facts and applicable law.

6 As explained below, Plaintiffs’ attorneys’ fees request for the successful  
7 prosecution of California consumer protection claims is properly evaluated under a  
8 lodestar analysis, with the percentage-of-recovery (monetary and non-monetary  
9 benefits to the class) considered as a cross-check (but not a limitation) on the fee  
10 award. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944 (9th Cir.  
11 2011). The key factor in the fee analysis is the “value that the settlement provided to  
12 the class, including the value of nonmonetary relief.” *Lowery v. Rhapsody Int’l, Inc.*,  
13 75 F.4th 985, 992 (9th Cir. 2023). Here, after seven years of hard-fought litigation,  
14 Sunrise has agreed to pay \$18.2 million and stipulated to a Court-ordered Injunction  
15 that has an economic value of at least \$9.36 million to the Settlement Class. Dkt.  
16 614-3 (Stipulation of Settlement or “SS”), Ex 1.1 thereto (“Injunction”); Declaration  
17 of Christopher J. Healey ISO Final Approval (“Healey Decl”), ¶¶97-100;  
18 Supplemental Declaration of Patrick Kennedy, PhD ISO Settlement Approval  
19 (“Supp Kennedy Decl”), ¶6 .

20 The \$18.2 million monetary payment exceeds the gross amounts paid in  
21 comparable assisted living facility settlements. The projected net settlement amount  
22 (after Court-approved fees, service awards and administration costs) will result in  
23 per-class member payments that are more than double the average payments in the  
24 comparable settlements. Healey Decl, ¶¶90-92, Ex. 3 (Updated Comparable  
25 Settlements Summary).

26 The Injunction substantially benefits all Sunrise residents (including  
27 Settlement Class Members), with provisions that require (and allow monitoring to  
28 confirm) that facility staffing is sufficient to meet resident needs. *See* Dkt. 614-8

1 (Flores 4/17/24 Decl), ¶17. Among other terms, the Injunction eliminates the “round  
2 down” provision in Sunrise’s target staffing formula, which automatically reduced  
3 care labor by 3.5 hours or more per day at each facility. Injunction, ¶7; Dkt. 402-6,  
4 Ex. 40. Applying an “avoided economic harm” analysis approved by multiple  
5 courts, the estimated value of the Staffing, Training and Monitoring (“STM”)  
6 provisions under the Injunction for Settlement Class Members exceeds \$9.36  
7 million. Supp Kennedy Decl, ¶6.<sup>1</sup> Overall, the STM Injunction provisions provide a  
8 monetary benefit to all Sunrise residents (Class and Non-Class) in excess of \$37  
9 million. *See* Dkt. 614-9 (Kennedy 4/17/24 Decl), ¶¶21, 25.

10 Other Injunction terms, including Disclosure provisions requiring changes to  
11 Sunrise’s contractual and marketing representations will provide additional societal  
12 benefits, even if not easily monetized. Injunction, ¶¶1-4; Dkt. 614-9, ¶¶27-29.

13 Through September 24, 2024, Class Counsel have spent over 21,106 hours  
14 litigating the case, which under market hourly rates results in over \$15 million in  
15 lodestar fees. Applying “billing judgment” reductions, the net lodestar exceeds  
16 \$13.6 million. Plaintiffs’ requested fee award of \$10.5 million represents a 23%  
17 discount (.77 negative multiplier) from the net lodestar fees. Factoring in anticipated  
18 future work, including monitoring Sunrise’s compliance with the Injunction, the  
19 negative multiplier is even greater. Healey Decl, ¶¶106, 108. Further, Plaintiffs’  
20 requested fee is \$400,000 below the \$10.9 million permitted under the Settlement  
21 Stipulation. SS, ¶9.1.

22 The fee request is also warranted under a percentage-of-recovery cross-check,  
23

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24 <sup>1</sup> Dr. Kennedy’s initial estimate of the monetary benefit of \$4.59 million to  
25 Settlement Class residents was based on the assumption that 20% of the residents in  
26 the Sunrise Injunction Communities are Settlement Class Members. Dkt. 614-9  
27 (Kennedy 4/17/24 Decl), ¶23. Sunrise’s file review for the Class Notice process  
28 confirms that, in fact, 42% of current residents in the Injunction Communities are  
Settlement Class Members. Garcia (CPT) Decl, ¶15. In turn, that increases the  
estimated economic harm benefit for Settlement Class Members. Supp Kennedy  
Decl, ¶6.

1 if the Court elects to conduct one. The overall value of cash and non-cash benefits to  
2 the Settlement Class Members is at least \$27.56 million. Healey Decl, ¶97 (\$18.2  
3 million cash plus \$9.36 million value of STM Injunction provisions); Dkt. 614-9,  
4 ¶¶21, 25. Plaintiffs’ fee request of \$10.5 million represents roughly 38% of those  
5 settlement benefits, which falls well within the range approved by courts. *Andrade-*  
6 *Heymsfield v. NextFoods, Inc.*, No. 3:21-cv-01446-BTM-MSB, 2024 WL 3871634,  
7 \*7 (S.D. Cal. April 8, 2024) (“some [percentage of recovery] awards go up to  
8 50%”); *Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486, at \*\*6-7  
9 (C.D. Cal. July 27, 2010) (case survey shows fee awards ranging from 30-50%);  
10 *see also, Lowery*, 75 F.4th at 994 (“Except in extraordinary cases, a fee award  
11 should not exceed the value that the litigation provided to the class”). The  
12 substantial additional benefits under the Injunction support an award in the upper  
13 end of the recovery percentage. *See Staton v. Boeing Co.*, 327 F.3d. 938, 974 (9th  
14 Cir. 2003).

15 Plaintiffs’ request for reimbursement of advanced litigation expenses is  
16 likewise warranted. To date, Class Counsel have advanced over \$1.7 million to  
17 cover necessary litigation expenses, which included substantial expert costs  
18 advanced with respect to the MedModel “staffing shortfall” analysis. Healey Decl,  
19 ¶134.

20 Finally, the request for \$15,000 service awards to the two Named Plaintiffs is  
21 warranted. Both Plaintiffs devoted substantial time and effort over the seven-year  
22 prosecution of this lawsuit. Further, both turned down significant individual  
23 settlement offers to pursue relief for the Class.

## 24 **II. BACKGROUND**

### 25 **A. Claims Asserted and Parties**

26 This action was filed on June 27, 2017 in California state court and removed  
27 to Federal Court by Sunrise. Named Plaintiffs Amy Fearn (as successor-in-interest  
28 to the Estate of Edith Zack) and Elise Ganz (as successor-in-interest to the Estate of

1 Helen Ganz) asserted class claims on behalf of persons who resided in a Sunrise  
2 California assisted living facility (“Sunrise California Facility”) since June 27, 2013.  
3 Plaintiffs asserted claims for damages and injunctive relief under California’s  
4 Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq. (“CLRA”),  
5 Financial Elder Abuse statute, Cal. W&I Code § 15610.30, and California’s unfair  
6 competition statute, Bus. & Prof. Code §§ 17200 et seq. (“UCL”). Dkt. 77 (Second  
7 Amended Complaint (“SAC”), ¶¶9, 90-130).

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

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

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

20 This action has been vigorously litigated from inception. Plaintiffs initially  
21 filed this action on June 27, 2017 in California state court. Upon Sunrise’s removal,  
22 the case was assigned to the Hon. Haywood S. Gilliam in the Northern District of  
23 California. Dkts. 1, 13. Thereafter, Sunrise filed motions to compel arbitration or  
24 dismiss and to transfer venue to the Central District. Dkt. 15. By order dated  
25 October 31, 2018, Judge Gilliam compelled arbitration and stayed the proceedings  
26 as to plaintiff Audrey Heredia, transferred venue to the Central District, but deferred  
27 ruling on Sunrise’s other motions. Dkt. 42. On January 9, 2019, Sunrise filed a  
28 renewed motion to dismiss and further moved to strike the class allegations. Dkt. 54.

1 On March 4, 2019, this Court denied Sunrise motions. Dkt. 65.

2 Named Plaintiffs Amy Fearn, as successor-in-interest to the Estate of Edith  
3 Zack, and Helen Ganz, by and through her Guardian ad Litem, Elise Ganz, filed the  
4 Second Amended Complaint on June 21, 2019. Dkt. 77. Defendants filed an Answer  
5 on July 15, 2019, wherein they denied the allegations and claims alleged in the  
6 Second Amended Complaint. Dkt. 83.

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

11 **C. Discovery Proceedings**

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

17 The parties engaged in extensive case discovery. In total, Sunrise produced  
18 over 190,000 pages (in nearly 9,400 separate documents). Sunrise's production  
19 comprised more than 115 GB of data, including 762 Excel files, 244 PowerPoint  
20 files, 2,850 PDFs, and over 2,400 email communications. Sunrise also produced  
21 about 670 pages in 86 documents of expert materials. Healey 4/17/24 Decl, ¶34. In  
22 response to Sunrise's requests, Plaintiffs produced approximately 18,600 pages of  
23 documents, and another 1100 pages of expert witness materials. *Id.*

24 Obtaining discovery from Sunrise was challenging and time-consuming. Over  
25 the course of the litigation, Class Counsel prepared and sent hundreds of discovery-  
26 related correspondence (letters or emails), engaged in 48 telephonic meet and  
27 conferences, briefed and argued 11 discovery motions. Healey Decl, ¶38.

28 In addition to written discovery, the parties engaged in substantial deposition

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

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

17 **D. Case Investigation**

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

25 **E. Class Certification Proceedings**

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

1 amended motion for class certification, with the certified class limited to residents  
2 not subject to arbitration. Dkt. 504. In the same order, the Court denied Sunrise’s  
3 Daubert motions to strike Plaintiffs’ expert testimony. Dkt. 504. On April 1, 2022, a  
4 Ninth Circuit motion panel granted Sunrise’s FRCP 23(f) request for accelerated  
5 review of the Court’s rulings. Dkt. 566. After extensive appellate briefing and oral  
6 argument, in August 2023, the Ninth Circuit affirmed the Court’s certification and  
7 Daubert orders. *Heredia v. Sunrise Senior Living LLC*, No. 22-55332, 2023 WL  
8 4930840, \*2 (9th Cir. Aug 2, 2023). By order dated February 12, 2024, the Court  
9 confirmed that the litigation class period runs from June 27, 2013 through the date  
10 of Class Notice. Dkt. 606, p. 3.

11 **F. Settlement Efforts and Preliminary Court Approval**

12 The settlement was reached after extensive negotiations, including multiple  
13 mediations, including a two-day mediation before the Hon. Diane M. Welsh (Ret.)  
14 of JAMS. At Magistrate Judge Welsh’s direction, the parties first hammered out  
15 injunctive relief terms (after two weeks of extensive negotiations) before accepting  
16 Judge Welsh’s mediation proposal of \$18.2 million. After another month of intense  
17 negotiations, the parties finalized the Settlement Stipulation. Healey Decl, ¶43.

18 Plaintiffs’ motion for preliminary approval was filed on April 17, 2024,  
19 supported by declarations from Counsel, multiple experts, Named Plaintiffs and  
20 class members. Dkts. 614-1 *et seq.* After in-person oral argument, on May 31, 2024,  
21 the Court continued the motion to allow the parties to revise the proposed  
22 distribution of settlement payments. Thereafter, the parties negotiated a revised  
23 settlement payment formula accounting for a Class Member’s duration of stay at  
24 Sunrise. See Dkt. 624-1 (attaching Settlement Addendum). On July 26, 2024, the  
25 Court conditionally granted preliminary settlement approval, subject to requested  
26 changes to the Settlement Class Notice. Dkt. 626. After those changes were made,  
27 on August 8, 2024, the Court granted Plaintiffs’ motion for preliminary settlement  
28 approval. Dkt. 628.

1           **G. Class Notice**

2           On August 27, 2024, the Settlement Administrator (CPT) substantially  
3 completed dissemination of the Settlement Class Notice to 4,044 Class Members.  
4 Additional notices were sent on September 6, 2024 to an additional 139 Settlement  
5 Class Members identified by Sunrise. Declaration of Irvin Garcia (CPT), ¶¶4-5.  
6 With a Class Notice Date of August 27, 2024, the deadline for opt-outs or objections  
7 to the Settlement is October 26, 2024. Dkt. 628, p. 3.

8           **III. SETTLEMENT PROVIDES SUBSTANTIAL CLASS BENEFITS**

9           **A. Settlement Fund**

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

15           Assuming a Net Settlement Fund of approximately \$5.87 million, the initial  
16 average settlement amount paid to Settlement Class Members will easily exceed  
17 amounts paid in other settlements.<sup>2</sup> With a confirmed count of 4,813 Settlement  
18 Class Members, the average projected amount of initial payments is approximately  
19 \$1403, Healey Decl, ¶54, which is well in excess of the average initial payment  
20 amounts in comparable assisted living settlements. *Id.*, ¶92 (average initial  
21 settlement payments in other settlements ranged from \$285 to \$910, with an  
22  
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24           <sup>2</sup> The estimated Net Settlement Fund of \$5.87 million is based on \$18.2 million  
25 gross payment, less amounts for CPT’s administration costs (\$75,000), the late  
26 claims reserve (\$25,000) service awards (not to exceed \$30,000 total), attorneys’  
27 fees (\$10.5 million) and litigation expenses (\$1.7 million). Healey Decl, ¶¶50,  
28 Ex. 3. If the Court awards less than the requested amounts, all non-awarded funds  
go to the Settlement Class. SS, ¶¶9.3, 9.4. No portion of the Settlement Fund reverts  
to Sunrise. SS, ¶7.9.



1 aggregate average payment of \$605).<sup>3</sup>

2 At the preliminary approval stage, Class Counsel estimated the initial  
3 average per-Class Member payment would be \$1477. That estimate was based on  
4 Sunrise’s estimate that the Settlement Class size would be 3500 residents. Dkt. 614-  
5 2 (Healey 4/17/24 Decl), ¶20. Having conducted the actual file review to provide  
6 the Settlement Class, Sunrise identified 4,183 Settlement Class Members. Garcia  
7 Decl, ¶7. While the additional Class Members reduces the average initial payment,  
8 which the reduction in Plaintiffs’ requested attorneys’ fees and litigation costs, the  
9 revised average payment of \$1403 is within the range of the prior estimate.

10 Further, in comparable settlements, 30% or more of the initial settlement  
11 checks were not cashed, resulting in supplemental distributions to Settlement Class  
12 Members (or their successors) who cashed their initial settlement checks. Healey  
13 Decl, ¶¶95-96. Given that track history, supplemental distributions are likely here.  
14 SS, ¶7.9 (authorizing Settlement Administrator to distribute uncashed checks  
15 through a supplemental distribution).

16 **B. Stipulated Injunction**

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

22 Under the “Staffing Requirements” in the Injunction, Sunrise is required to  
23 determine and ensure that staffing hours are sufficient to perform the care tasks  
24 called for under resident assessments. The Injunction specifically eliminates the

25 \_\_\_\_\_  
26 <sup>3</sup> Under the distribution formula confirmed in the Addendum to the Settlement  
27 Stipulation, the actual per-Class Member payment amount will vary depending on  
28 the number of days a class member resided in a Sunrise facility. Dkt. 624-1.  
However, the \$1403 figure is still a useful comparison to prior settlements. *See* Dkt.  
626, p. 15.

1 “round down” provision included in Sunrise’s DLR staffing formula, which  
2 automatically reduced target facility by up to 3.5 hours or more per day at each  
3 facility. Dkt. 402-6, Ex. 40. Further, the Injunction obligates Sunrise to comply  
4 with California staffing regulations, including 22 CCR § 87411(a), which requires  
5 that the number of facility staff be sufficient to meet resident needs at all times.  
6 Injunction, ¶¶5-7.

7 Under the “Monitoring Requirements,” Sunrise must provide reports to Class  
8 Counsel showing facilities’ response times to resident requests for assistance (“Call  
9 Light Request/Response Data”) on a quarterly basis. *Id.*, ¶¶9-12. As the call light  
10 data shows how quickly Sunrise responds to resident requests, it provides an  
11 effective way to monitor whether facility staffing is sufficient to meet resident  
12 needs. Flores 4/17/24 Decl, ¶¶13-14.

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

18 In combination, the Staffing, Monitoring and Reporting (“STM”)  
19 requirements of the Injunction provide substantive and verifiable means to address  
20 a critical issue raised in the lawsuit, namely, the sufficiency of facility staffing at  
21 Sunrise facilities. Flores 4/17/24 Decl, ¶17. Dr. Kennedy’s updated opinion is that  
22 the economic value of the STM provisions to Settlement Class Members exceeds  
23 \$9.36 million, and the value to all Sunrise residents (Class and Non-Class) exceeds  
24 \$37 million. Supp Kennedy Decl, ¶3,6; Kennedy 4/17/24 Decl, ¶¶21, 25.  
25 Dr. Kennedy’s analysis is based on an “avoided economic harm” methodology, *Id.*,  
26 ¶¶16-22, which has been approved by multiple courts. *Troy v. Aegis Senior*  
27 *Communities, LLC*, No. 16-cv-03991-JSW, 2021 WL 6129106, \*4 (N.D. Cal. Aug.  
28 23, 2021); *Walsh v. Kindred Healthcare*, No. C 11-00050 JSW, 2013 WL 6623190,

1   \*\*3-4 (N.D. Cal. Dec. 16, 2013); *see also, Heredia v. Sunrise Senior Living LLC*,  
2   2023 WL 4930840 at \*3.<sup>4</sup>

3           Additionally, under the Disclosure provisions in the Injunction, Sunrise is  
4   required to include affirmative disclosures in its residency agreements explaining  
5   how resident assessments are used to set facility staffing. Sunrise is also required to  
6   refrain from misleading statements as to how assessments impact facility staffing.  
7   Injunction, ¶¶1-4.

#### 8   **IV. CLASS COUNSEL’S FEE REQUEST SHOULD BE APPROVED**

##### 9       **A. Legal Overview**

##### 10       **1. Lodestar Method Should Apply To This Request**

11           As the Ninth Circuit has held, where a settlement “produces a common fund  
12   for the benefit of the entire class, courts have discretion to employ either the  
13   lodestar method or the percentage-of-recovery method.” *In re Bluetooth*, 654 F.3d  
14   at 942; *In re Mercury Interactive Corp.*, 618 F.3d 988, 992 (9th Cir. 2010). The  
15   same is true under California law. *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th  
16   480, 503-504 (2016).

17           Historically, lodestar has been the “primary method for establishing the  
18   amount of reasonable attorney fees” under California state law claims. *In re*  
19   *Vitamin Cases*, 110 Cal.App.4th 1041, 1052 (2003) (cleaned up); *Serrano III v.*  
20   *Priest*, 20 Cal.3d 25, 49 (1977) (“Serrano III”).<sup>5</sup> The lodestar method is particularly  
21   appropriate in case asserting statutory claims that authorize “fee-shifting” to  
22

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23   <sup>4</sup> Dr. Kennedy previously estimated value of \$4.459 million was based on the  
24   assumption that Settlement Class Members were roughly 20% of the total current  
25   residents in the Sunrise Injunction Communities. Dkt. 614-9, ¶¶23-25. In fact, over  
26   42% of current residents in those facilities are Settlement Class Members. Garcia  
26   Decl, ¶15.

27   <sup>5</sup> Because Plaintiffs assert California statutory claims, state law governs the instant  
28   fee request. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).  
However, Ninth Circuit and California law are similar on the issues presented.

1 encourage “socially beneficial” lawsuits. *In re Bluetooth*, 654 F.3d at 941; *Hanlon*  
2 *v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir.1998). Also, courts have applied  
3 the lodestar method where a substantial portion of the settlement relief obtained is  
4 “not easily monetized.” *In re Ferrero*, 583 Fed.Appx. 665, 668 (9th Cir. 2014).

5 Application of the lodestar method is warranted here. Plaintiffs’ CLRA  
6 claims are subject to a mandatory fee shifting provision, Cal. Civil Code §1780(e),  
7 enacted to “incentivize counsel” to protect consumers through “publicly beneficial  
8 litigation.” *In re Cobra Sexual Energy Sales*, No. 2:13-cv-05942-AB-Ex , 2021 WL  
9 4535790, \*18 (C.D. Cal. April 7, 2021). The same is true for the Elder Financial  
10 Abuse claims. Cal. W&I Code § 15657.5; *Arace v. Medico Investments LLC*, 48  
11 Cal.App.5th 977, 981-982 (2020) (attorneys’ fees and other enhanced remedies in  
12 Elder Abuse Act intended to “encourage” statutory enforcement, citing *Negrette v.*  
13 *Fid. & Guar. Life Ins. Co.*, 444 F.Supp. 2d 998, 1001 (C.D. Cal. 2006).<sup>6</sup>

14 In addition to the \$18.2 monetary payment, the Injunction will provide  
15 meaningful benefits to Settlement Class Members currently residing at Sunrise  
16 facilities, non-Class residents and consumers who are considering a Sunrise facility.  
17 See Flores 4/17/24 Decl, ¶12-18; Kennedy 4/17/24 Decl, ¶22, 27-28. The Staffing,  
18 Training and Monitoring (“STM”) provisions alone will result in substantial  
19 economic benefits to Class Members and non-Class residents. Suppl Kennedy Decl,  
20 ¶¶3,6. The Disclosure provisions in the Injunction provide additional important  
21 (although not monetizable) benefits to the general public. Injunction, ¶¶1-4;  
22 Kennedy 4/17/24 Decl, ¶¶27-28.

23 Properly supported, the lodestar figure submitted by requesting counsel is  
24 “presumptively reasonable.” *Cunningham v. Cnty. of Los Angeles*, 879 F.2d 481,  
25 488 (9th Cir. 1988). Courts can adjust lodestar fees “upward or downward” to  
26 ensure a reasonable fee, in consideration of factors such as the “quality of  
27

28 <sup>6</sup> Plaintiffs’ UCL claims also support recovery of attorneys’ fees under the “private attorney general” doctrine. Code Civ. Proc., § 1021.5; *Laffitte*, 1 Cal.5th at 489.

1 representation, the benefit obtained for the class, the complexity and novelty of the  
2 issues presented, and the risk of nonpayment.” *In re Bluetooth*, 654 F.3d at 941-942.

### 3 2. Percentage-of-Recovery Considerations

4 Under the lodestar method, a cross-check under the “percentage-of-recovery”  
5 analysis is “encouraged,” *Lowery*, 75 F.4th at 988, but not “required.” *Yamada v.*  
6 *Nobel Biocare Holding AG*, 825 F.3d 536, 547 (9th Cir. 2016) (where all classwide  
7 benefits are “not easily monetized, a cross-check is entirely discretionary”). Where  
8 the settlement includes non-monetary benefits not easy to quantify, courts have  
9 based fee awards “entirely on the lodestar.” *Taylor v. Shutterfly, Inc., No. 5:18-cv-*  
10 *00266-BLF*, 2021 WL 5810294, \*9 (N.D. Cal. Dec. 7, 2021); *In re Ferrero*, 583  
11 Fed.Appx. at 668.

12 Importantly, “recovery” under the percentage method includes both cash and  
13 the “value of nonmonetary relief.” *Lowery*, 75 F.4th at 992. To count toward the  
14 overall recovery amount, the non-monetary provisions (such as injunctive relief)  
15 must “have actual value to the class.” *In re Bluetooth*, 654 F.3d at 944. If the value  
16 to class members from the injunction obtained can be reasonably calculated, that  
17 amount is added to overall settlement value, which in turn decreases the “fees-to-  
18 benefit” percentage. *Troy*, 2021 WL 6129106, \*4; *Lowery*, 75 F.4th at 992, n.1.

19 If the monetary value of injunctive relief is “difficult to quantify” but the  
20 injunction nevertheless provides a “meaningful benefit to society,” it is still  
21 considered in determining a reasonable fee. Under those circumstances, the  
22 injunctive relief supports a fee award that represents a higher percentage of the  
23 settlement fund. *Lowery*, 75 F.4th at 992, n.1; *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944  
24 F.3d 1035, 1055 (9th Cir. 2019); *Staton*, 327 F.3d at 974; *Vizcaino*, 290 F.3d at  
25 1049.

26 The 25% “benchmark” percentage does *not* establish a hard cap on fees  
27 otherwise properly awarded. *Vizcaino*, 290 F.3d at 1048. But if a fee award  
28 proposed under the lodestar method exceeds 25% of the settlement recovery, courts

1 take a “hard look” at the claimed lodestar to ensure the requested fee is reasonable.  
2 *Lowery*, 75 F.4th at 994. Higher percentage fee awards may be proper where the  
3 settlement “provides considerable benefit to society through nonmonetary relief.”  
4 *Lowery*, 75 F.4th at 994-995; *In re Ferrero*, 583 Fed.Appx.at 668.

5 Generally, awarded fees do not exceed 50% of the overall value of class  
6 settlement benefits. *See Lowery*, 75 F.4th at 994 (“Except in extraordinary cases, a  
7 fee award should not exceed the value that the litigation provided to the class”). If  
8 circumstances warrant, however, a lodestar fee award above 50% of the overall  
9 settlement benefits may be appropriate. *Gonzales v. City of Maywood*, 729 F.3d  
10 1196, 1209 (9th Cir. 2013) (“It is not per se unreasonable for attorneys to receive a  
11 fee award that exceeds the amount recovered by their clients.”); *see also, In re*  
12 *Bluetooth*, 654 F.3d at 945.<sup>7</sup>

13 As detailed below, Plaintiffs’ fee request passes muster under the percentage  
14 cross-check, if one is applied. The requested fee (\$10.5 million) is roughly 38% of  
15 the \$27.56 million overall value of class benefits. Healey Decl, ¶¶ 97-100 (\$18.2  
16 million cash plus \$9.36 million benefit to current resident Class Members from the  
17 STM Injunction provisions). And, the other meaningful public benefits provided  
18 under the Injunction (such as from the Disclosure provisions and the STM benefits  
19 to non-Class) warrant a fee award at a higher recovery percentage.

20 **B. Class Counsel’s Lodestar Is Reasonable, Particularly Given**  
21 **Significant Reductions**

22 Through September 24, 2024, Class Counsel have collectively worked over  
23 20,903 hours on this case and incurred total lodestar fees of \$15,069,239. After  
24 billing judgment and other reductions, as detailed below, the net lodestar fees are  
25 \$13,637,770. Healey Decl, ¶¶106-108.

26 \_\_\_\_\_  
27 <sup>7</sup> *Lowery* cites as examples civil rights actions and copyright cases that provide  
28 “meaningful” societal benefits. *Lowery*, 75 F.4th at 994-995. *In re Ferrero* affirmed  
fees awarded in a class settlement of CLRA, UCL and warranty claims. *In re*  
*Ferrero Litigation*, 2012 WL 2802051, \*1 (S.D. Cal. July 9, 2012)

1 The lodestar calculation “begins with the multiplication of the number of  
2 hours reasonably expended by a reasonable hourly rate.” *Hanlon*, 150 F.3d at 1029.  
3 With respect to the hours worked, courts consider whether “in light of the  
4 circumstances, the time could reasonably have been billed to a private client.”  
5 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). Generally,  
6 courts “defer to the winning lawyer’s professional judgment as to how much time  
7 he was required to spend on the case.” *Chaudhry v. City of L.A.*, 751 F.3d 1096,  
8 1111 (9th Cir. 2014), cert. denied, –U.S. –, 135 S.Ct. 295, 190 L.Ed.2d 141  
9 (2014)(cleaned up); *Holt v. Kormann*, No. SACV 11-01047 DOC (MLGx, 2012  
10 WL 5829864, \*6 (C.D. Cal. 2012) (attorney’s sworn testimony “is evidence of  
11 considerable weight” on the issue of the time required for particular task) (cleaned  
12 up).<sup>8</sup>

13 Here, Class Counsel have submitted detailed billing records describing the  
14 work performed on the case. Healey Decl, ¶106, Ex. 3 (Lodestar Spreadsheet). That  
15 includes time spent on case investigation, witnesses interviews, complaint  
16 preparation, litigating multiple pleading challenges, written discovery, lay and  
17 expert deposition discovery, extensive discovery motion practice, multiple class  
18 certification and Daubert motions, appellate proceedings regarding the same,  
19 multiple mediation sessions, negotiating and documenting the Settlement  
20 Stipulation, Injunction, Class Notice, and briefing and arguing for settlement  
21 approval.<sup>9</sup>

22 Importantly, the net lodestar hours reflect the exercise of “billing judgment”  
23 to address “any excessive, redundant, or unnecessary hours.” *Fair Housing of*  
24

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25 <sup>8</sup> Under California law, fee awards should generally be “fully compensatory.”  
26 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001). Thus, “absent circumstances  
27 rendering the award unjust, an attorney fee award should ordinarily include  
28 compensation for all the hours reasonably spent.” *Id.*; *Serrano III*, 20 Cal.3d at 49.

<sup>9</sup> See also, Declarations of Class Counsel and appellate specialist, Monique Olivier.

1 *Marin v. Combs*, 285 F.3d 899, 908 (9th Cir. 2002). Specifically, Class Counsel  
2 have discounted gross lodestar hours in the following areas.

3 **Potentially Unnecessary, Duplicative, Or Excessive Time**

4 Class Counsel have reviewed the detailed billings for their respective firms  
5 and reduced hours where appropriate to address “any excessive, redundant, or  
6 unnecessary hours.” *Fair Housing of Marin*, 285 F.3d at 908. The collective  
7 reduction from these billing judgment adjustments is \$1,431,470 (2442.74 hours).  
8 Healey Decl, Ex. 4 (Lodestar Spreadsheet, Summary tab).

9 **Conferences Between Class Counsel**

10 Multiple law firms served as Class Counsel in this case, for good reasons.  
11 The case was complex and required diverse areas of specialized expertise ranging  
12 from understanding how assisted living facilities operate and staff to the nuances of  
13 class certification proceedings to detailed trial preparation by seasoned jury trial  
14 attorneys. Multiple firms were needed to share the significant litigation costs  
15 burden, including the MedModel shortfall analysis. Healey Decl, ¶12.

16 And over the seven years of litigation, Sunrise was aggressively represented  
17 by at least 10 lawyers from highly regarded firms, including Gibson Dunn and Snell  
18 & Wilmer. Healey Decl, ¶11. To match or equal Sunrise’s defense efforts, specific  
19 Class Counsel were assigned lead responsibility on particular tasks, with  
20 collaboration from other team members as appropriate. *See Charlebois v. Angels*  
21 *Baseball LP*, 993 F. Supp. 2d 1109, 1125-26 (C.D. Cal. 2012) (case prosecution can  
22 “benefit[] from a second read and more strategizing by the attorneys involved).

23 Class Counsel believe the collaborative effort produced a stronger work  
24 product. Nevertheless, to address any concerns regarding duplicative efforts, a  
25 blanket discount of 30% has been applied to all hours spent on conference calls  
26 between Class Counsel. Given the nature of this case, that adjustment is fair.  
27 *MacDonald v. Ford Motor Company*, No. 13-cv-02988-JST, 2016 WL 3055643, \*4  
28 (N.D. Cal. May 31, 2016) (in a “large, putative class action,” some level of attorney



1 conferences are “not only to be expected, but will often result in a savings of  
2 attorney time” by sharing updates and key information).

3 **Motion to Add “Arbitration” Plaintiff Peter Falkenberg**

4 Plaintiffs’ initial class motion was denied, as the Court found that the Named  
5 Plaintiffs (who rejected arbitration) were not suitable representatives to prosecute  
6 claims on behalf of residents potentially subject to arbitration. Dkt. 323, p. 7. The  
7 Court allowed Plaintiffs to file an amended motion and later eventually certified a  
8 class of “not subject to arbitration” residents. Dkt. 504.

9 Generally, “lack of success” on arguments made regarding related claims  
10 does not warrant a lodestar reduction. *See Hensley v. Eckerhart*, 461 U.S. 424, 435,  
11 n.11 (1983) (absent lack of success on “unrelated claims,” the failure to “prevail on  
12 every contention” raised is generally not a “sufficient reason for reducing a fee”).  
13 Federal and California courts apply a “high threshold for triggering decreases due  
14 to limited success,” particularly in cases that “vindicate important public interests.”  
15 *Beatty v. BET Holdings, Inc.*, 222 F.3d 607, 612 (9th Cir. 2000).<sup>10</sup>

16 Aside from the narrowed class definition, the claims asserted and relief  
17 sought in initial and amended certification motions were identical. Compare Dkts.  
18 146 (initial class motion)l 352 (amended motion). In granting class certification on  
19 Plaintiffs’ amended motion, the Court relied in significant part on evidence  
20 supplied with Plaintiffs’ initial motion. Dkt. 503, pp.2-9; 13-20. While the class  
21 was narrowed, the case prosecution resulted in highly successful result for both  
22 Settlement Class Members and other Sunrise residents.

23 In denying the initial class motion, however, the Court found Plaintiffs failed  
24 to timely comply with FRCP 16 in seeking leave to add Peter Falkenberg as a  
25 “subject to arbitration” class representative. Dkt. 323, p. 1. While Plaintiffs

26 \_\_\_\_\_  
27 <sup>10</sup> Whether *Hensley*’s reduction of lodestar fees for cases involving lack of success  
28 on “unrelated claims” applies to all California state law claims is an open question.  
*See In re Tobacco Cases I*, 216 Cal.App.4th 570, 580, n.8 (2013). Here, the issue is  
academic, as all claims were related.

1 respectfully disagree with that ruling, Class Counsel have deducted all hours spent  
2 associated with research, briefing and argument on the motion for leave to add  
3 Mr. Falkenberg as a “subject to arbitration” plaintiff.

4 **Travel Time**

5 Finally, Class Counsel have reduced travel time hours by 50%. *In re*  
6 *Washington Public Power Supply Sys. Sec. Lit.*, 19 F.3d 1291, 1298–99 (9th Cir.  
7 1994) (approving 50% reduction of “entire duration of the time spent in transit”);  
8 *see also In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab.*  
9 *Litig.*, No. 6903 & 6904, 2020 WL 2086368, at \*8 (N.D. Cal. Apr. 30, 2020).

10 **C. The Hourly Rates Used In Lodestar Calculation Are Reasonable**

11 Under the lodestar analysis, the hourly rates used in a fee request must be  
12 “reasonable” given the “experience, skill and reputation of the attorney requesting  
13 fees.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986). The  
14 requested rates must be “in line with those prevailing in the community for similar  
15 services by lawyers of reasonable comparable skill, experience and reputation.”  
16 *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008) (cleaned up);  
17 *Sarabia v. Ricoh USA Inc*, Case No. 8:20-cv-00218-JLS-KES, 2023 WL 3432160,  
18 \*7 (C.D. Cal. May 1, 2023). Generally, the “forum district represents the relevant  
19 legal community.” *Sarabia*, \*7.

20 Multiple courts (including this Court) have found the “annual Real Rate  
21 Report” to be a “useful guidepost” for assessing reasonable rates in the Central  
22 District. *Sarabia*, \*8 (collecting cases). Here, the hourly rates charged by Class  
23 Counsel are within the Third Quartile rates in the current Real Rate Report (2023  
24 Report). Compare Healey Decl Ex 4 (Lodestar Spreadsheet, Summary Tab, listing  
25 hourly rates); Healey Decl, Ex 5 (2023 Real Rate Report), pp. 16, 25, 29-30.<sup>11</sup>

26 \_\_\_\_\_  
27 <sup>11</sup> Per the Real Rate Report team, the “Third Quartile” represents “attorneys whose  
28 rates fall between the 50th and 75th percentiles. Attorneys in the Third Quartile  
typically charge higher rates than those in the First Quartile but are below the top  
25% of the rate distribution.” Healey Decl, ¶129.

1 The Third Quartile rates in the Real Rate Report are the appropriate  
2 guideline here. Class Counsel have literally decades of experience successfully  
3 prosecuting class actions involving understaffing claims asserted against assisted  
4 living and skilled nursing facilities. Marks Decl, ¶¶3-7; Thamer Decl, ¶¶2-3;  
5 Stebner Decl, ¶¶3-6; Healey Decl, ¶¶6-9. Multiple courts have approved hourly  
6 rates for many of Class Counsel, at levels commensurate with the rates requested  
7 here. Healey Decl, ¶136, Ex.7.

8 Further, given the delay in payment over this 7-year litigation, Class  
9 Counsel could have applied *current* hourly rates to prior time entries. *Stetson v.*  
10 *Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (to compensate for delayed  
11 payment, lodestar should be calculated using “the prevailing rate as of the date of  
12 the fee request” or by “using historical rates and compensating for delays with a  
13 prime-rate enhancement”). Here, four firms (Marks, Trails Law Group, Thamer,  
14 Oliver) charged the same rate for all hours worked. Three firms (Dentons, Stebner,  
15 Janssen) increased rates during the litigation but did not retroactively apply the  
16 higher rates. Consistent with *Stetson*, Schneider Wallace applied higher rates to  
17 prior work, but capped rates at 2023 levels. Healey Decl, ¶132.

18 **D. The Settlement Will Provide Substantial Benefits**

19 The key consideration in any fee request is whether the “value provided to  
20 the class, including the value of nonmonetary relief” justifies the fee award.  
21 *Lowery*, 75 F.4th at 993; *In re Bluetooth*, 654 F.3d at 943-45. Here, the \$18.2  
22 million cash payment represents at least 34% of the likely trial recovery and  
23 exceeds the cash payments obtained in comparable settlements. Healey Decl, ¶¶83,  
24 91. Further, the STM provisions in the Injunction result in avoided economic harm  
25 benefit of at least \$9.36 million for Settlement Class Members who reside in  
26 Sunrise facilities during the Injunction term. Supp Kennedy Decl, ¶6. Combined,  
27 the cash and injunctive relief provides an overall value of at least \$27.56 million for  
28 the Settlement Class. Healey Decl, ¶97.

1 Additional provisions in the Injunction will result in other “benefits to  
2 society” that are properly considered in evaluating the instant fee request. *In re*  
3 *BlueTooth*, 654 F.3d at 942; *Vizcaino*, 290 F.3d at 1047-49. First, non-Class  
4 residents at Sunrise facilities rely on the same pool of care providers as current  
5 resident Class Members and, as such, will likewise obtain an “avoided economic  
6 harm” benefit from the STM Injunction provisions. Kennedy (4/17/24) Decl, ¶¶16-  
7 22; Flores 4/17/24 Decl, ¶¶13-14.

8 Second, the Disclosure provisions in the Injunction will benefit consumers,  
9 including prospective Sunrise residents. Specifically, those provisions require  
10 disclosures (and preclude misstatements) with respect to how resident assessments  
11 are used to set facility staffing, Injunction, ¶¶1-4, and thus address a key allegation  
12 in the lawsuit. Dkt 77 (SAC), ¶¶3-8. Even if not easily monetized, the Disclosure  
13 provisions provide societal benefits properly considered in determining an  
14 appropriate fee award here. *In re Ferrero*, 583 Fed.Appx. at 668 (“meaningful”  
15 injunction that is “consistent with the relief” sought in the lawsuit supports approval  
16 of fee award); *Lowery*, 75 F.4th at 992, n.1.

17 **E. Requested Fees Are Well Below Counsel’s Net Lodestar**

18 Even with the above-referenced billing judgment reductions, the \$10.5  
19 million fee request represents a 23% discount (.77 negative multiplier) from Class  
20 Counsel’s net lodestar fees. Healey Decl, ¶¶108-109. The “negative multiplier”  
21 further supports the reasonableness of the fee request. *Taylor*, 2021 WL 5810294,  
22 \*\*8-9; *Walsh*, 2013 WL 6623224, \*3. Further, substantial additional fees will likely  
23 be incurred on future case work, including the monitoring Sunrise’s compliance  
24 with the Injunction. Healey Decl, ¶125. Given this anticipated future work, the  
25 projected fee discount will be even greater. *See Hanlon*, 150 F.3d at 1029-30.

26 **F. Percentage-Of-Recovery Cross-Check**

27 Plaintiffs’ fee request of \$10.5 million represents roughly 38% of the \$27.56  
28 million in economic value provided to the Settlement Class. Healey Decl, ¶97

1 (\$18.2 million cash plus \$9.36 million benefit from STM Injunction provisions).  
2 That falls within the range approved in other cases. *In re Ferrero*, 583 Fed.Appx. at  
3 668 (approving fee award of \$985,920 where settlement benefits are \$550,000 cash  
4 plus (non-monetized) injunctive relief requiring changes to product labels and  
5 advertising); *Andrade-Heymsfield*, 2024 WL 3871634, \*7 (“some [percentage of  
6 recovery] awards go up to 50%”); *Cicero v. DirectTV, Inc.*, No. EDCV 07-1182;  
7 2010 WL 2991486, at \*\*6-7 (C.D. Cal. July 27, 2010) (survey of class action  
8 “suggests that 50% is the upper limit, with 30-50% commonly awarded in cases in  
9 which the common fund is relatively small”).

10 Under *Lowery*, if the requested fee “exceeds 25% of the benefit to the class,”  
11 a “hard and probing look” is warranted to ensure the award is reasonable. *Lowery*,  
12 75 F.4th at 994. The instant fee request passes muster under any level of scrutiny.  
13 Class Counsel’s lodestar support is solid and reflects careful application of “billing  
14 judgment” to eliminate any excessive time. The hourly rates charged fall squarely  
15 within market (as confirmed by the Real Rate Report and other sources) and do not  
16 include a “delayed payment” adjustment. The requested fee represents a significant  
17 discount from Class Counsel’s net lodestar after billing judgment reductions. It is  
18 also \$400,000 below the amount permitted under the Settlement Stipulation.

19 Further, in considering whether an adjustment from the 25% benchmark is  
20 warranted, courts generally consider the results achieved, risk of litigation, skill  
21 required and quality of work, and litigation burdens and whether settlement  
22 produced non-cash benefits, such as injunctive relief. *Vizcaino*, 290 F.3d at 1048–  
23 50; *Sarabia*, 2023 WL 3432160, at \*5. These considerations further reinforce the  
24 reasonableness of the instant lodestar fee request.

25 With respect to “results achieved,” the key question is the value provided to  
26 the class in terms of cash and nonmonetary relief. *Lowery*, 75 F.4th at 993; *In re*  
27 *Bluetooth*, 654 F.3d at 943-45. Here, the \$18.2 million cash exceeds the monetary  
28 benefits in comparable settlements. Healey Decl., ¶¶91-92. And the STM Injunction

1 provisions alone provide an additional monetized benefit of \$6.36 million to  
2 Settlement Class Members. Supp Kennedy Decl, ¶6.

3 With respect to the risk factor, the case presented multiple challenges. On the  
4 merits, Sunrise marshalled substantial evidence to support its customer satisfaction  
5 defense, including 248 declarations and multiple consumer satisfaction awards from  
6 independent sources, such as JD Power and U.S. News & World Report. *See* Dkts.  
7 406-407, 402-9, Ex. 48. As to class certification, Plaintiffs believe their economic  
8 loss claims were suitable for class treatment, but not all jurists have agreed. *See*  
9 Dkt. 566 (Rule 23(f) grant); *Stiner v. Brookdale Senior Living, Inc.*, 665 F.Supp.3d  
10 1150, 1208-1210 (N.D. Cal. 2023).

11 The successful prosecution of this case required skillful lawyering,  
12 particularly given Sunrise’s resources and choice of defense counsel. In addition to  
13 other high quality counsel, Sunrise was represented by Gibson Dunn, one of the  
14 most prestigious and aggressive law firms in the county. *In re American Apparel,*  
15 *Inc. S’holder Litig.*, 2014 WL 10212865, at \*22 (C.D. Cal. 2014) (court considers  
16 “quality of opposing counsel as a measure of the skill required to litigate the case  
17 successfully”).

18 The case presented significant litigation burdens. Over seven years of  
19 litigation, Class Counsel worked over 21,100 hours on case investigation,  
20 discovery, motion practice, class certification, appellate proceedings and other  
21 tasks. Healey Decl, ¶¶106-111. The class certification and Daubert motions, in  
22 particular, required extensive analysis and presentation of merits proof. In addition,  
23 Class Counsel advanced over \$1.7 million in expert costs and other litigation  
24 expenses, including significant costs associated with MedModel’s staffing shortfall  
25 analysis. Healey Decl, ¶134, Ex. 4 (Lodestar Spreadsheet). The protracted  
26 proceedings and substantial cost advancement support a higher percentage fee  
27 award. *Vizcaino*, 290 F.3d at 1050.

28 With respect to “non-cash” considerations, both Settlement Class Members

1 and Non-Class residents will benefit from the Injunction provisions bolstering  
2 facility staffing, as they rely on the same pool of care providers. *See Flores* 4/17/24  
3 Decl, ¶¶13-14. Further, the general consuming public will benefit from improved  
4 disclosures in Sunrise’s admission contract with respect to how resident  
5 assessments impact facility staffing levels. Injunction, ¶¶1-4. The “meaningful”  
6 injunctive relief resulting in a “considerable benefit to society” supports Plaintiffs’  
7 requested fee. *See Lowery*, 75 F.4th at 994-995; *In re Ferrero*, 583 Fed.Appx. at  
8 668.

9       Additionally, imposing a 25% or other artificial cap on attorneys’ fees here  
10 would undermine the Legislative intent under the CLRA and Elder Financial Abuse  
11 statutes to encourage meritorious lawsuits through the mandatory fee-shifting  
12 provisions. *In re Cobra Sexual Energy Sales*, 2021 WL 45355790, \*18 (CLRA fee  
13 shifting designed to “incentivize counsel” to protect consumers through “publicly  
14 beneficial litigation); *Delaney v. Baker*, 20 Cal.4th 23, 33 (1999) (fee provision in  
15 elder abuse statute enacted to encourage “attorneys to take up the cause”).

16 **V. REIMBURSEMENT OF LITIGATION EXPENSES IS WARRANTED**

17       Class Counsel are entitled to reimbursement of reasonable out-of-pocket costs  
18 and expenses advanced in investigating, prosecuting, and settling this case. Fed. R.  
19 Civ. P. 23(h); *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (approving  
20 reimbursement reasonable expenses that would “normally be charged to a fee paying  
21 client”); *Staton*, 327 F.3d at 974. Here, Class Counsel have capped the requested  
22 reimbursement for litigation costs and expenses at \$1.7 million. As supported by  
23 Class Counsel’s declarations, these costs and expenses were reasonably necessary  
24 for the prosecution of the lawsuit.

25 **VI. THE SERVICES AWARD REQUESTS ARE APPROPRIATE**

26       The two Named Plaintiffs respectfully seek service awards of \$15,000 each  
27 (\$30,000 total). The requests are within the range permitted under the Settlement  
28 Stipulation. SS, ¶9.3.

1 The requested awards are warranted, given the “strong commitment” to the  
2 class shown here by the named Plaintiffs. *Garner v. State Farm Mut. Auto. Ins. Co.*,  
3 No. CV 08 1365 CW (EMC), 2010 WL 1687832, \*\*18 & n.8 (N.D. Cal. April 22,  
4 2010) (approving \$20,000 service award; collecting cases). Specifically, both  
5 Plaintiffs devoted considerable time and effort throughout their extended service  
6 (close to five years) in this litigation. They participated in numerous conferences  
7 with Class Counsel on case status, deposition preparation, and settlement related  
8 matters. Both were subjected to intense full-day depositions, which forced the  
9 witnesses to revisit painful and difficult experiences by beloved family members.  
10 And perhaps most telling, both turned down substantial individual settlement offers.  
11 Dkt. 614-7(Ganz 4/17/24 Decl), ¶¶36-37,40; Dkt. 614-6 (Fearn 4/17/24 Decl), ¶¶31-  
12 32, 34.

13 The requested amounts are within the range approved by other courts within  
14 the Ninth Circuit. *See, e.g., Chen v. Western Digital Corp.*, Case No. 8:19-cv-  
15 00909-JLS-DFM, 2021 WL 9720778, \*18 (C.D. Cal. Jan. 5, 2021) (granting  
16 \$18,000 service award); *Singer v. Becton Dickinson & Co.*, No. 08-CV-821-IEG  
17 (BLM), 2009 WL 4809646, at \*6 (S.D. Cal. Dec. 9, 2009) (approving \$25,000  
18 service award); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW  
19 (EMV), 2010 WL 1687832, at \*17 (N.D. Cal. Apr. 22, 2010) (approving \$20,000  
20 service award).

## 21 **VII. CONCLUSION**

22 For these reasons, Plaintiffs respectfully request: (a) attorneys’ fees of  
23 \$10.5 million; (b) reimbursement of \$1.7 million in litigation costs and expenses;  
24 and (c) service awards of \$15,000 to each of the two Named Plaintiffs, totaling  
25 \$30,000.

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1 Dated: September 26, 2024

/s/Christopher J. Healey

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