1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

AUDREY HEREDIA, et al. Plaintiffs, v. SUNRISE SENIOR LIVING, LLC, et al. Defendants.	CASE NO. 8:18-cv-01974-JLS-JDE **ORDER CONDITIONALLY GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT (Doc. 614)**

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Before the Court is a Motion for Preliminary Approval of a Class Action Settlement filed by Named Plaintiffs Amy Fearn and Elise Ganz. (Mot., Doc. 614; Mem., Doc. 614-1.) Named Plaintiffs ask the Court to: (1) certify the proposed Settlement Class; (2) preliminarily approve the terms of the class action settlement; (3) approve Class Counsel to serve as attorneys for the Settlement Class; (4) appoint Plaintiffs as Class Representatives; (5) approve the form and content of the proposed Class Notice; and (6) schedule a Final Fairness Hearing. (Mot. at 2.) Plaintiffs also replied in support of their Motion, updating the Court with additional feedback from class members (Reply, Doc. 622), and, following the Court's request for an additional information, submitted a Supplemental Brief in Support of Preliminary Approval of Class Settlement (Supp. Br., Doc. 624). Having considered the parties' briefs and held oral argument, the Court now CONDITIONALLY GRANTS the Motion for the reasons stated below.

As explained more fully below, Plaintiffs must submit a revised notice packet **within ten (10) days** of the issuance of this Order. The Court SETS a Final Fairness Hearing for **November 8, 2024, at 10:30 a.m.**

I. BACKGROUND

Plaintiffs initiated this class action in Alameda County Superior Court on June 27, 2017. (*See* Compl., Doc. 1-1.) The Second Amended Complaint ("SAC") is brought on behalf of Named Plaintiffs Fearn and Ganz[1] against Defendants Sunrise Senior Living, LLC and Sunrise Senior Living Management, Inc. (collectively "Sunrise"). (SAC ¶¶ 10–13, Doc. 77.) The lawsuit arises from Sunrise's admissions contracts for its assisted living facilities in California; Plaintiffs allege that those contracts falsely represent the care services that residents will receive and conceal the fact that facility staffing is insufficient to address aggregate resident needs. (*Id.* ¶ 2.) Plaintiffs bring claims for elder financial abuse in violation of California's Welfare and Institutions Code, as well as violations of

[1] The SAC's Named Plaintiff was originally Helen Ganz; she was substituted for Elise Ganz as successor-in-interest following Helen's death. (*See* Order Granting Substitution, Doc. 620.)

California's Consumers Legal Remedies Act ("CLRA") and Unfair Competition Law ("UCL"). (*See id.*) Sunrise removed the action to federal court on January 29, 2018, following late service of the Complaint. (*See* Notice of Removal ("NOR"), Doc. 1.) The action was then transferred to the Central District of California and this Court on October 31, 2018. (*See* Transfer Order, Doc. 42.)

A. Procedural History

Both before and after the transfer to this Court, this action was extensively litigated. On October 31, 2018, Judge Haywood S. Gilliam in the Northern District of California compelled arbitration as to plaintiff Audrey Heredia and transferred venue to the Central District. (*See* Transfer Order.) On March 4, 2019, this Court denied Sunrise's motion to dismiss and to strike the class allegations. (*See* Order Denying Motion to Dismiss, Doc. 65.) Named Plaintiffs then filed the SAC, and on September 1, 2020, Sunrise moved for judgement on the pleadings as to all equitable relief and the UCL claim; the Court granted the motion as to only the claim for restitution under the UCL. (*See* Order on Motion for Judgment on the Pleadings, Doc. 325.)

The parties then engaged in extensive discovery, including thousands of pages of document discovery, nineteen depositions, and expert discovery. (*See* First Healy Decl. ¶¶ 6–9, Doc. 614-2.) Plaintiffs moved for class certification and on November 16, 2021, the Court granted the amended motion for class certification. (*See* Certification Order, Doc. 504.) In that Order, the Court certified a class under Federal Rule of Civil Procedure 23(a) and 23(b)(3) defined as:

> All persons who resided at a Sunrise California Facility from June 27, 2013, through the present ("Class Period"), contracted with and paid money to Defendants pursuant to a Residency Agreement, and whose claims are not subject to arbitration because: (1) neither the Resident nor Resident's Responsible Party (as defined in the Residency Agreement) agreed to or accepted the arbitration provision in writing; or (2) if arbitration was initially accepted, the Resident or Resident's Responsible Party provided written notice of withdrawal within the 30-day period prescribed in the Residency Agreement.

(*Id.* at 33.) Forty-three assisted living facilities were included in the Class, though some facilities had slightly adjusted Class Period dates. (*Id.* at 33–34.) The Court also appointed Fearn and Ganz as Class Representatives and appointed the law firms of Stebner & Associates, Schneider Wallace Cottrell Konecky LLP, Dentons US LLP, Law Offices of Michael D. Thamer, the Arns Law Firm, Janssen Malloy LLP, and Marks Balette Giessel & Young, P.L.L.C as Class Counsel. (*Id.* at 34.)

Sunrise then appealed the Court's decision to grant class certification, and the Ninth Circuit affirmed that decision on August 2, 2023. (Ninth Circuit Memorandum & Mandate, Docs. 592 & 593.) Shortly after that, the parties represented that they had reached a binding settlement agreement.

B. Settlement Agreement

The Settlement Agreement provides a fund of $18.2 million to be distributed pro rata between the Class Members. (Ex. 1 to First Healey Decl., Settlement Agreement ¶ 7.1, Doc. 614-3.) The all-in fund will be used to pay the notice and administration expenses, as well as the attorneys' fees, litigation costs, and service awards. (*Id.* ¶ 7.3.) After those payments are made, the remaining net fund will be distributed by first making a base payment of $500 to all Class Members; then, the adjusted net fund will be allocated based on each Class Member's number of residency days. (*See* Ex. 1 to Second Healey Decl., Settlement Addendum ¶¶ 7.6.1, 7.6.2, Doc. 624-1.) The Settlement Administrator will "[f]irst, determine the 'Total Residency Days' by tallying the total Residency Days for all Settlement Class Members"; "[s]econd, calculate a 'Residency Days Percentage' for each Settlement Class Member by dividing the Settlement Class Member's Residency Days by Total Residency Days"; "[t]hird, multiply the Residency Days Percentage for each Settlement Class Member by the Adjusted Net Settlement Fund." (*Id.* ¶ 7.6.2.) None of the fund will revert to Sunrise; any money left in the fund after initial distribution will be further divided between Class Members who cashed their checks or will be made as a

1 cy pres payment to Groceries for Seniors.[2] (Ex. 1 to First Healey Decl., Settlement
2 Agreement ¶ 7.9.) Sunrise estimates that there are about 3,500 Class Members who will
3 receive payment under the Settlement Agreement. (First Healey Decl. ¶ 20.)

4 The Settlement Agreement also provides for entry of a permanent injunction. (Ex.
5 1 to First Healey Decl., Settlement Agreement ¶ 7.1.) The proposed injunction creates four
6 sets of requirements for Sunrise: disclosure requirements; staffing requirements; training
7 requirements; and monitoring requirements. (*See* Ex. 1 to First Healey Decl, Proposed
8 Stipulated Injunction, Doc. 614-3.) The disclosure requirements prevent Sunrise staff from
9 representing that assessments of residential service needs are the only factor used to
10 determine staffing levels. (*Id.* ¶ 1.) The staffing requirements ensure that Sunrise will
11 comply with state regulations and allot staffing in proportion to the care tasks needed by
12 residents. (*Id.* ¶¶ 5–6.) The training requirement mandates annual training on responding
13 to resident requests for assistance, monitoring the provision of resident care, and staffing
14 requirements. (*Id.* ¶ 8.) Finally, the monitoring requirement dictates that Sunrise will keep
15 and maintain records of every resident care request and response times and will provide
16 regular reports to Class Counsel. (*Id.* ¶¶ 9–12.)

17 The Settlement Agreement names CPT Group, Inc. as the Settlement Administrator
18 and tasks CPT with managing class notice, handling returned mail, obtaining updated
19 contact information as needed, answering written inquiries, establishing a settlement
20 website and a toll-free telephone number, receiving and processing payment requests,
21 distributing payment, and receiving opt outs and objections. (Ex. 1 to First Healey Decl.,
22 Settlement Agreement ¶ 3.1.) CPT estimates costs for administration will be $69,000.
23 (Supp. Br. at 5.)

24

25

26

27

28

[2] Groceries for Seniors is a proper cy pres recipient in this context. *See Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011) (cy pres payments are appropriate if they "account for the nature of the plaintiffs' lawsuit, the objectives of the underlying statutes, and the interests of the silent class members, including their geographic diversity").

1 Notice to Class Members will be provided through a mix of mailed notice, email
2 notice, publication in USA Today, and posting online. (Ex. 1 to First Healey Decl.,
3 Settlement Agreement ¶ 4.2.) Class Members who wish to object to the Settlement
4 Agreement must do so in writing; the Settlement Administrator anticipates that notice will
5 be complete within 30 days of the entry of the Preliminary Approval Order and Class
6 Member will have 60 days from the completion of notice to file objections. (*Id.* ¶¶ 1.17,
7 1.19, 5.1.) The written objection must be filed with the Clerk of Court and served on
8 Class Counsel and Sunrise's Counsel. (*Id.* ¶ 5.1.) Class Members will similarly have 60
9 days from the completion of notice to opt out of the Settlement Agreement. (*Id.* ¶ 1.20.)
10 Requests for exclusion must be in writing, personally signed, and sent by U.S. mail to the
11 Settlement Administrator. (*Id.* ¶ 5.6.)

12 Class Members who do not opt out of the Settlement Agreement will be deemed to
13 have released claims against Sunrise. (*Id.* ¶ 8.1.) The released claims extend to any
14 actions, demands, rights, and suits that "could have been asserted in the [present action]
15 based on the facts alleged in the complaints filed," except for claims for personal injury,
16 wrongful death, bodily harm, or emotional distress and claims based on breach of the
17 Settlement Agreement. (*Id.* ¶ 1.24.)

18 Finally, the Settlement Agreement provides that Class Counsel shall apply for an
19 award of attorneys' fees not to exceed $10.9 million, an award of litigation costs not to
20 exceed $2 million, and service awards for the Named Plaintiffs not to exceed $15,000
21 each. (*Id.* ¶¶ 9.1, 9.4.) All awards will be paid from the settlement fund. (*Id.* ¶ 9.2.)

22 **II. CERTIFICATION OF THE CLASS**

23 Plaintiffs asserts that certification of the Class is proper for the same reasons the
24 Court previously granted class certification, noting that the Class differs from the
25 previously certified Class only in temporal scope; the Settlement Class terminates three
26 days before the date of Class Notice to ensure that Sunrise has time to update the final
27 Settlement Class List, whereas the Court originally certified a Class that terminated on the
28 date of notice. (Mem. at 30.) "If the court has already certified a class, the only

information ordinarily necessary is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted." Fed. R. Civ. P. 23 at Committee Notes on Rules – 2018 Amendment. The parties do not identify any substantive difference between the previously certified Class and the proposed Settlement Class. Because no intervening circumstances have arisen since the Court's prior grant of certification, and for the same reasons identified in the Court's Certification Order, the Court finds that the Class satisfies adequacy, typicality, numerosity, commonality under Rule 23(a) and Rule 23(b)(3). (Certification Order at 21–35.) The Court need not recite its analysis here.

Some portions of Plaintiffs' Motion asks the Court to "preliminarily certify[]" this Class, only for settlement purposes. (*See* Mot. at 2.) But because the Court has already certified a Class, there is no need to recertify a Settlement Class for settlement purposes only. Instead, the Court AMENDS its Certification Order to GRANT certification to the following Class[3]:

All persons who resided at one of the Sunrise California Communities at any time during the Class Period who contracted with and paid money to Sunrise pursuant to a residency agreement, and whose claims are not subject to arbitration because: (1) neither the Resident nor Resident's Responsible Party (as defined in the residency agreement) agreed to or accepted an arbitration provision in writing; or (2) if arbitration was initially accepted, the Resident or Resident's Responsible Party provided written notice of withdrawal within the 30-day period prescribed in the residency agreement. Excluded from the Class are (i) Sunrise and any Sunrise officers, director, or employee; (ii) any Class Member (or their legal successors) who submits a valid and timely Request for

[3] This Class derives from the Court's prior Certification Order and the definition of the Settlement Class provided in the Settlement Agreement. (*See* Certification Order at 33; Ex. 1 to First Healey Decl., Settlement Agreement ¶¶ 1.31, 1.32.)

Exclusion; and (iii) the judge to whom this Action is assigned and any members of such judge's immediate family.

The term "Sunrise California Communities" includes the following Sunrise assisted living facilities: Sunrise at Alta Loma, Sunrise at Belmont, Sunrise at Beverly Hills, Sunrise at Bonita, Sunrise at Burlingame, Sunrise at Canyon Crest, Sunrise at Carmichael, Sunrise at Claremont, Sunrise of Cupertino, Sunrise at Danville, Sunrise at Fair Oaks, Sunrise at Fresno, Sunrise at Fullerton, Sunrise at Hermosa Beach, Sunrise at Huntington Beach, Sunrise at La Costa, Sunrise at La Jolla, Sunrise at La Palma, Sunrise at Mission Viejo, Sunrise at Monterey, Sunrise at Oakland Hills, Sunrise of Orange, Sunrise at Palo Alto, Sunrise at Palos Verdes, Sunrise at Petaluma, Sunrise at Playa Vista, Sunrise at Pleasanton, Sunrise at Rocklin, Sunrise at Sacramento, Sunrise at Sabre Springs, Sunrise at San Marino, Sunrise at San Mateo, Sunrise at Santa Monica, Sunrise at San Rafael, Sunrise at Seal Beach, Sunrise at Sterling Canyon, Sunrise at Studio City, Sunrise at Sunnyvale, Sunrise at Tustin, Sunrise at Walnut Creek, Sunrise at West Hills, Sunrise at Westlake Village, Sunrise at Wood Ranch, Sunrise at Woodland Hills, and Sunrise at Yorba Linda.

The "Class Period" is from June 27, 2013 through and including three (3) business days prior to the Class Notice Date; provided that, the Class Period commences on the following dates for residents of these Communities: Sunrise of San Rafael (September 29, 2016), Sunrise of Cupertino (October 1, 2023), and Sunrise of Orange (April 27, 2023).

Plaintiffs also ask the Court to appoint Named Plaintiffs Fearn and Ganz as Settlement Class Representatives and approve Class Counsel to serve as attorneys for the Settlement Class. (Mot. at 2.) Again, the Court already found that Named Plaintiffs were adequate Class Representatives and that Plaintiffs' Counsel were adequate Class Counsel and appointed them to serve in those positions at the class certification stage; they shall serve in those roles throughout the Settlement's administration. (*See* Certification Order at 32, 34.)

1
III. PRELIMINARY APPROVAL OF CLASS SETTLEMENT

2 To preliminarily approve a proposed class action settlement, Rule 23(e)(2) requires
3 the Court to determine whether the proposed settlement is fair, reasonable, and adequate.
4 See Fed. R. Civ. P. 23(e)(2). Review of a proposed settlement typically proceeds in two
5 stages, with preliminary approval followed by a final fairness hearing. Federal Judicial
6 Center, Manual for Complex Litigation, § 21.632 (4th ed. 2004). "The decision to [grant
7 preliminary approval and] give notice of a proposed settlement to the class is an important
8 event. It should be based on a solid record supporting the conclusion that the proposed
9 settlement will likely earn final approval after notice and an opportunity to object." Fed.
10 R. Civ. P. 23 advisory committee's note to 2018 Amendment.

11 "To determine whether a settlement agreement meets these standards, a district
12 court must consider a number of factors, including: [1] the strength of plaintiffs' case; [2]
13 the risk, expense, complexity, and likely duration of further litigation; [3] the risk of
14 maintaining class action status throughout the trial; [4] the amount offered in settlement;
15 [5] the extent of discovery completed, and the stage of the proceedings; [6] the experience
16 and views of counsel; [7] the presence of a governmental participant[4]; and [8] the reaction
17 of the class members to the proposed settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 959
18 (9th Cir. 2003) (cleaned up). "The relative degree of importance to be attached to any
19 particular factor will depend upon and be dictated by the nature of the claim(s) advanced,
20 the type(s) of relief sought, and the unique facts and circumstances presented by each
21 individual case." *Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of S.F.*, 688 F.2d
22 615, 625 (9th Cir. 1982). "It is the settlement taken as a whole, rather than the individual
23 component parts, that must be examined for overall fairness, and the settlement must stand
24 or fall in its entirety." *Staton*, 327 F.3d at 960. These factors also overlap significantly
25
26
27
28

[4] This factor does not apply in this case.

with the factors codified in Rule 23(e), and so approval under the *Staton* factors is coextensive with approval under the Federal Rules.[5]

In addition to these factors, the Court must also satisfy itself that "the settlement is not the product of collusion among the negotiating parties." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946–47 (9th Cir. 2011) (cleaned up). Accordingly, the Court must look for explicit collusion and "more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations." *Id.* at 947. Such signs include (1) "when counsel receive a disproportionate distribution of the settlement," (2) "when the parties negotiate a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds," and (3) "when the parties arrange for fees not awarded to revert to defendants." *Id.*

At this preliminary stage, and because class members will receive an opportunity to be heard on the settlement, "a full fairness analysis is unnecessary." *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008). Instead, preliminary approval and notice of the settlement terms to the proposed class are appropriate where "the proposed settlement [1] appears to be the product of serious, informed, non-collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (cleaned up); *see also Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) ("[T]he settlement need only be *potentially* fair, as the Court will make a final

---

[5] Rule 23 provides that a "court may approve" a class action settlement proposal "after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other."

determination of its adequacy at the hearing on the Final Approval, after such time as any party has had a chance to object and/or opt out.").

Based on its analysis below of all applicable factors, the Court finds that the Settlement Agreement should be preliminarily approved.

A. Strength of Plaintiffs' Case; Risk, Complexity, and Likely Duration of Further Litigation; and Risk of Obtaining and Maintaining Class Certification

This action settled after the Court certified the class and the Ninth Circuit affirmed class certification on appeal. Plaintiffs maintain that they have a strong case, particularly for reimbursement of move-in fees, partial recovery of service fees, and statutory damages under the CLRA. (First Healey Decl. ¶¶ 34–36.) But Plaintiffs acknowledge that Sunrise has strongly contested Plaintiffs' claims and damages model. (*Id.* ¶¶ 35, 37.) And though Plaintiffs believe in the merits of their claims, they face continuing opposition from Sunrise who would seek to decertify the class and file a motion for summary judgment if the settlement is not approved. (*Id.* ¶ 40.) This anticipated litigation would be complex, would require significant time and resources from the parties and the Court, and would necessitate further fact and expert discovery by the parties. (*Id.* ¶¶ 41–42.) It also introduces risk into Plaintiffs' ability to maintain class certification. While Plaintiffs have already obtained class certification, and had that class affirmed on appeal, Sunrise continues to dispute whether common questions predominate and whether further discovery would warrant decertifying the class.

Here, settlement eliminates the risks inherent in surviving summary judgment, defeating possible motions to decertify the class, prevailing at a weeks-long trial, and withstanding any subsequent appeals. These factors weigh in favor of granting preliminary approval. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.").

B. State of the Proceedings

This factor requires the Court to evaluate whether "the parties have sufficient information to make an informed decision about settlement." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). Discovery can be both formal and informal. *See id.*; *Clesceri v. Beach City Investigations & Protective Servs., Inc.*, 2011 WL 320998, at *9 (C.D. Cal. Jan. 27, 2011) (Staton, J.). Here, there has been substantial discovery and investigation in relation to the class certification proceedings, including the vetting of expert reports and analysis of both factual and legal issues related to Plaintiffs' claims. The amount of litigation and discovery that has already taken place convinces the Court that the parties have sufficient information, and the settlement appears to be the result of a reasoned decision, weighing in favor of approval.

C. Amount Offered in Settlement

"The amount offered in settlement is generally considered to be the most important consideration[] of any class settlement." *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1011 (E.D. Cal. 2019); *see also Bayat v. Bank of the West*, 2015 WL 1744342, at *4 (N.D. Cal. Apr. 15, 2015) ("[T]he critical component of any settlement is the amount of relief obtained by the class."). In addition to the amount, courts also consider whether the method of distribution or allocation of the settlement proceeds is fair, reasonable, and adequate. *See, e.g., Theodore Broomfield v. Craft Brew All., Inc.*, 2020 WL 1972505, at *9 (N.D. Cal. Feb. 5, 2020). The Court evaluates first the total amount offered in settlement, and then the proposed distribution methodology.

1. Settlement Amount

To determine whether the amount offered in settlement is fair, district courts in the Ninth Circuit must compare the settlement amount to what the parties estimate would be the maximum recovery in a successful litigation. *See Litty v. Merrill Lynch & Co.*, 2015 WL 4698475, at *9 (C.D. Cal. Apr. 27, 2015) (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)); *accord Carlin*, 380 F. Supp. 3d at 1011. Damages calculations offered to demonstrate the fairness of a proposed settlement must be

substantiated with detailed, reasoned analysis that explains how the defendant's maximum potential exposure has been calculated. *See, e.g., Louangamath v. Spectranetics Corp.*, 2021 WL 9274552, at *2 (N.D. Cal. May 19, 2021). District courts in the Ninth Circuit have approved class action settlements that provide around 20–30% of the maximum trial award. *Hurtado v. Rainbow Disposal Co., Inc.*, 2021 WL 2327858, at *4 (C.D. Cal. May 21, 2021) (approving class settlement that offered approximately 23.4–34% of the maximum amount recoverable at trial); *Winans v. Emeritus Corp.*, 2016 WL 107574, at *5 (N.D. Cal. Jan. 11, 2016) (approving class settlement that offered about 33.2% of "maximum projected 'hard damages' at trial"). The Ninth Circuit has even affirmed a district judge's approval of a class action settlement where the settlement fund was one-sixth of the estimated potential recovery. *In re Mego*, 213 F.3d at 459.

Here, the Settlement Agreement provides for an all-in settlement fund of $18.2 million, as well as a stipulated Court-ordered injunction. (Ex. 1 to First Healey Decl., Settlement Agreement ¶¶ 7.1, 7.2.) The injunction imposes disclosure duties on Sunrise and its staff and sets staffing and training requirements. (*See generally* Ex. 1 to First Healey Decl, Proposed Stipulated Injunction.) Plaintiffs argue that the monetary value of the injunction is about $37 million when the value is calculated on behalf of all residents in the Sunrise facilities that will be bound by the injunction; when calculated on behalf of Class Members, the value of the injunction is about $4.45 million. (Mem. at 24–25.) Therefore, depending on which injunction value the Court uses, the amount offered in settlement is either $55.3 million or $22.65 million. (*Id.* at 25–26.) To evaluate the total amount offered in settlement, the Court first addresses the method for valuing the injunction, then discusses which figure—$55.3 or $22.65 million—it will use for its analysis, and finally, compares that number to the estimated maximum recovery.

Plaintiffs' expert, Patrick Kennedy, calculates the value of the injunction using a damages model that evaluates the economic harm avoided by residents. (Kennedy Decl. ¶ 8, Doc. 614-9.) Kennedy estimates that, pre-injunction, the average staffing shortfall at Sunrise facilities was 31.5% and treats that shortfall as a "direct[] measure[of] the

difference between what was paid for … versus what was received"; assuming that the injunction fixes the staffing shortfall and guarantees that all residents receive what they pay for, residents will have avoided the economic harm of overpaying for services by 31.5%. (*Id.* ¶¶ 14, 19, 21.) Applied to the total amount in fees paid by all residents, this avoided economic harm is 31.5% of $118,067,737, for a total value of $37,191,337. (*Id.* ¶ 21.) Applied to the total amount in fees paid by Class Members, accounting for a departure factor and an average residency period of 26.6 months, the value of the injunction is $4,459,076. (*Id.* ¶¶ 23–25.) The Court finds this to be a reasonable method for valuing the injunction.

Next, in selecting which amount the Court relies on for its comparative analysis, the Court concludes that it is prudent to use $22.65 million—the settlement fund plus the value of the injunction to Class Members.[6] Plaintiffs argue that the Court should consider the injunction's value to all residents because "courts routinely consider the benefits to the general public" when deciding whether to approve a class action settlement. (Mem. at 25.) Indeed, an injunction's public benefit is meaningful and can weigh in favor of settlement approval, particularly where it is difficult to assign a monetary value to the injunction. *See Taylor v. Shutterfly, Inc.*, 2021 WL 5810294, *6 (N.D. Cal. Dec. 7, 2021). But this innocuous proposition does not support Plaintiffs' suggestion that the Court set the overall settlement value using the injunction's total public value. Rather, since the Court's task is to compare how much Class Members will recover in settlement to the amount they might have recovered in trial, the Court will focus on the injunction's value to Class Members to avoid an apples-to-oranges comparison.

---

[6] As mentioned, none of the settlement fund will revert to Sunrise; instead, any money left in the fund after initial distribution will be sent to Class Members who cashed their checks or will be made as cy pres payment to Groceries for Seniors. (Ex. 1 to First Healey Decl., Settlement Agreement ¶ 7.9.) Therefore, the settlement represents a "sum certain" for which Sunrise is liable and the entire amount is appropriately considered a benefit to the Class. *See Lowery v. Rhapsody Int'l, Inc.*, 75 F.4th 985, 993 (9th Cir. 2023) (distinguishing, in the attorney-fee context, "sum certain" settlement funds from claims-made settlements with a liability cap).

Turning finally to that comparison, Plaintiffs estimate that the maximum trial recovery for the Class is about $106.6 million. (First Healey Decl. ¶ 47.) This total accounts for maximum recovery of move-in fees and service fees, and treble statutory damages under the CLRA. (*Id.*) These totals rely on the class-wide damages model that the Court approved of in its order certifying the class. (Certification Order at 26–27.) Plaintiffs estimate that a reasonably achievable trial recovery is about $44.2 million, which assumes maximum recovery of move-in fees, partial recovery of service fees limited to the first six months of fees paid, and non-trebled statutory damages under the CLRA. (First Healey Decl. ¶ 48.) These reductions are reasonably calculated, especially as to service fees, considering Sunrise's argument that a resident who remained at a Sunrise facility for longer than six months was presumably satisfied with the service received and likely unharmed by the identified staffing shortages. (*Id.*) Compared to these values, the settlement offers 21% of the maximum recovery and 51% of the reasonably achievable recovery. (Mem. at 26.) These recovery percentages are well within the range of those approved by other courts.

Furthermore, the amount that will be distributed per Class Member is significant. Plaintiffs estimate that there are about 3,500 Class Members, meaning the net settlement fund of at least $5.17 million following the distribution of costs and fees offers around $1,477 per Class Member if divided evenly.[7] (Mem. at 14.) Of course, actual per-Class Member allotment will vary, pursuant to the distribution formula. But the recovery is, nevertheless, sizeable. The amount offered per Class Member is larger than other, comparable settlements involving assisted living facilities, which procured amounts under $1,000 for each Class Member. (First Healey Decl. ¶¶ 50, 57.) The Court concludes that the amount offered in settlement weighs in favor of approval.

---

[7] This figure also assumes that Class Counsel is awarded their requested 60% fees award, which is far above the Ninth Circuit's benchmark. If the Court were to grant a smaller percentage of the fund as attorney fees, then the net settlement amount will be larger—increasing the average recovery for each Class Member.

2. Distribution Method

"The purpose of developing a plan of allocation is to devise a method that permits the equitable distribution of limited settlement proceeds to eligible class members." *McHorney v. GameStop Corp.*, 2010 WL 11549399, at *4 (C.D. Cal. June 17, 2010) (quoting *In re MetLife Demutualization Litig.,* 689 F. Supp. 2d 297, 341 (E.D.N.Y. 2010)); *see also Theodore Broomfield*, 2020 WL 1972505, at *9 (finding that the proposed distribution method was equitable); *Alvarez v. 9021PHO Fashion Square LLC,* 2016 WL 11757836, at *6 (C.D. Cal. Jan. 19, 2016) (finding that "the proposed distribution of settlement funds does not appear to grant undue preferential treatment to any class members"). "It is reasonable to allocate the settlement funds to class members based on the extent of their injuries or the strength of their claims on the merits." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2008).

Initially, the Settlement Agreement proposed equal division of the settlement fund between all Class Members. (Ex. 1 to First Healey Decl., Settlement Agreement ¶ 7.6.) Though confusingly referred to as distribution on a "pro rata basis," it was clear from the language that the Agreement contemplated evenly dividing the net settlement fund (the amount remaining after fees, service awards, litigation costs, and administration costs are distributed) by the number of Class Members. (*Id.*)

At oral argument, the Court expressed concern that this distribution methodology was not equitable. As is evident from Kennedy's damages model, Plaintiffs calculate the harm of Sunrise's alleged misconduct as accruing *each day* that a Class Member overpaid in service fees. (Kennedy Decl. ¶¶ 18–21.) It necessarily follows that a Class Member's damages would be proportional to their length of stay at a Sunrise facility; a Class Member who was a Sunrise resident for several months should receive a larger reimbursement of their service fees than a Class Member who was a Sunrise resident for several days. Accordingly, the Court asked the parties whether the distribution of the net settlement fund should be proportional rather than equal to account for this difference between Class Members.

1 In response, the parties provided a Supplemental Brief in support of the Motion for
2 Preliminary Approval of Class Settlement and an Addendum to their Settlement
3 Agreement that amended the distribution formula. Now, the net settlement fund will be
4 distributed by first making a base payment of $500 to all Class Members; then, the
5 adjusted net settlement fund will be allocated based on each Class Member's number of
6 residency days. (*See* Ex. 1 to Second Healey Decl., Settlement Addendum ¶¶ 7.6.1, 7.6.2.)
7 The Settlement Administrator will calculate the total number of residency days for all
8 Class Members and determine the residency day percentage for each Class Member by
9 dividing the Class Member's personal number of residency days by the total residency
10 days. (*Id.*) The resulting percentage will determine the percentage of the adjusted net
11 settlement fund allocated to each Class Member. (*Id.*)
12 The Court finds this amended distribution methodology to be reasonable, and to
13 compensate Class Members fairly and adequately in accordance with their proportional
14 harm. This weighs in favor of settlement approval.
15 **D. Experience and Views of Class Counsel**
16 "Parties represented by competent counsel are better positioned than courts to
17 produce a settlement that fairly reflects each party's expected outcome in litigation." *In re*
18 *Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). As a result, a representation by
19 counsel "familiar[] with the law in [the relevant] practice area" and with "the strengths and
20 weaknesses of [the parties'] respective positions" that the settlement is in class members'
21 best interests "suggests the reasonableness of the settlement." *In re Immune Response Sec.*
22 *Litig.*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal. 2007). "On the other hand, recognizing the
23 potential conflict of interest between attorneys and the class they represent, the Court
24 should not blindly follow counsel's recommendations, but give them appropriate weight in
25 light of all factors surrounding the settlement." *Boyd v. Bechtel Corp.*, 485 F. Supp. 610,
26 622 (N.D. Cal. 1979).
27 Here, Class Counsel is experienced in the prosecution and resolution of class action
28 litigation against assisted living facilities. As the Court already explained in Certification

Order, the declarations submitted by Class Counsel in support of class certification demonstrated that Class Counsel have extensive experience and have adequately protected the interests of the Class. (Certification Order at 33.) Based on their experience, Class Counsel recommend the approval of this settlement, noting that the injunctive relief achieved "includes substantive, verifiable provisions" that will improve staffing at Sunrise facilities and that the per-class member monetary benefit is sizeable and exceeds payments made in comparable settlements. (First Healey Decl. ¶ 67.) The Court agrees that the relief achieved in this action speaks to the efforts of Class Counsel. This factor favors preliminary approval.

E. Reaction of Class Members

The Court reserves its evaluation of this factor. Though Plaintiffs attached several declarations in support of the Settlement Agreement (*see* Doc. 622-2), those declarations were drafted prior to the adjusted distribution formula and without the benefit of the Court's preliminary approval. At the Final Fairness Hearing, the Court will consider any objections, the rate of exclusion, and any additional declarations submitted from Class Members to assess the reaction of the Class.

F. Signs of Collusion

Although the "proposed settlement need not be ideal," it "must be fair and free of collusion, [and] consistent with counsel's fiduciary obligations to the class." *Rollins v. Dignity Health*, 336 F.R.D. 456, 461 (N.D. Cal. 2020). The Court finds no signs of collusion between the parties—explicit or subtle. Because the settlement here was reached *after* formal certification, the Court need not be "particularly vigilant" for signs of collusion; the factors discussed above weighing in favor of approval are sufficient at this stage to demonstrate fairness. *See In re Bluetooth*, 654 F.3d at 946–47. Moreover, the parties did not negotiate a clear-sailing arrangement; the settlement establishes an all-in fund from which any attorneys' fees and expenses will be drawn. (Ex. 1 to First Healey Decl., Settlement Agreement ¶ 9.2.) Nor will any portion of the settlement fund revert back to Sunrise. (*Id.* ¶ 7.9.) The Court also notes that the Settlement Agreement is the

1 result of a mediation held before two neutral mediators (*see* First Healey Decl. ¶ 11),
2 which is a factor "that supports the argument that [the agreement] is non-collusive," *see*
3 *Lee v. JPMorgan Chase & Co.*, 2015 WL 12711659, at *6 (C.D. Cal. Apr. 28, 2015).
4 Of course, before final approval, the court will "scrutinize closely the relationship
5 between attorneys' fees and benefit to the class" and will not "award[] unreasonably high
6 fees simply because they are uncontested." *In re Bluetooth*, 654 F.3d at 948 (quotations
7 omitted). Here, the Settlement Agreement provides for relatively sizeable service awards
8 for Class Representatives and considerable attorneys' fees for Class Counsel, including a
9 maximum fee amount that would represent almost 60% of the settlement fund. (Mem. at
10 18.) The benchmark for fees in the Ninth Circuit is 25% of the common fund. *See In re*
11 *Bluetooth*, 654 F.3d at 942. In the motion for fees, costs, and service payments, Class
12 Counsel must therefore make a sufficient showing justifying any upward departure from
13 the Ninth Circuit's fees benchmark.

14 **G. Conclusion as to Preliminary Approval**

15 Considering all the factors together, the Court preliminarily concludes that the
16 Settlement Agreement is fair, reasonable, and adequate, and appears to be the product of
17 serious, informed, non-collusive negotiations. Similarly, under Rule 23(e), the Court is
18 satisfied that the Class Representatives and Class Counsel have adequately represented the
19 Class, that the proposal was negotiated at arm's length, that the relief provided is adequate,
20 and Class Members are treated equitably relative to each other. The Court will
21 preliminarily approve the proposed settlement, provided that Plaintiffs address the Court's
22 concerns regarding Class Notice described below.

23 **IV. SETTLEMENT ADMINISTRATOR**

24 The parties agree to appoint CPT as the Settlement Administrator in this action,
25 subject to the Court's approval. (Ex. 1 to First Healey Decl., Settlement Agreement
26 ¶ 1.29.) CPT has over 30 years of experience administering complex class action cases
27 and has submitted a bid for administration costs not to exceed $69,000. (*See* First Healey
28 Decl. ¶ 62; Supp. Br. at 2.) Moreover, the Court previously appointed CPT as Settlement

Administrator when it approved the Class Notice following class certification. (*See* Order Approving Notice at 2.) Accordingly, the Court approves CPT as the Settlement Administrator.

V. CLASS NOTICE FORM AND METHOD

For a class certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Under Rule 23, the notice must include, in a manner that is understandable to potential class members: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed. R. Civ. P. 23(c)(2)(B).

Here, the Court generally approves the method and form of notice. As Plaintiffs note, the Court previously approved the method and form of Class Notice following class certification and Plaintiffs propose a substantially similar method and form of notice here. (*See* Mem. at 30; Order Approving Notice.) As to the method of notice, Plaintiffs propose a multi-part plan:

- Mailing notice by first class U.S. mail to the last known addresses of all Settlement Class Members, and their family members or legal representatives; returned mail will be resent after a skip trace;
- Emailing notice to the last known email addresses of all Settlement Class Members, and their family members or legal representatives;
- Publishing notice in the USA Today, California weekday edition;
- Posting notice on the website maintained by the Settlement Administrator.

(Ex. 1 to First Healey Decl., Settlement Agreement ¶¶ 4.2.1–4.2.4.)

Given the combination of individual notice and general publication, the Court concludes that this proposed method of notice is "reasonably calculated . . . to apprise interested parties of the pendency of the action." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The Court takes issue, however, with one aspect of the opt-out procedure. Here, Class Members must request exclusion from the Class in writing, to be mailed via first class U.S. mail to the Settlement Administrator. (Ex. 1 to First Healey Decl., Settlement Agreement ¶ 5.6.) Plaintiffs do not explain why mailed, written notice is required for the opting out process, even though the Settlement Administrator will be maintaining a website regarding the settlement and notice of the settlement will be provided by email, meaning other forms of electronic communication are readily available. (*See generally* Mem.) Therefore, Plaintiffs must provide within **ten days** of the date of this Order an amended notice packet providing Class Members an electronic option for requesting exclusion from the Class.

As to the form of notice, the proposed notice contains all the information that Rule 23(c)(2)(B) requires. But the Court finds that the first page of the proposed long form notice does not quickly and clearly alert readers to the fact they may be able to receive a monetary recovery under the proposed Settlement Agreement. (Ex. 1 to First Healey Decl., Long Form Notice at 38, Doc. 614-3.) Therefore, the Court orders Plaintiffs to resubmit **within 10 days** of this Order a revised long form notice that more clearly states that Class Members could receive payment from the settlement, rather than stating only that their rights may be affected.

VI. CONCLUSION

For the foregoing reasons, the Court CONDITIONALLY GRANTS Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. Plaintiffs must submit a revised notice packet within **ten (10) days** of this Order. The Court SETS a Final Fairness Hearing for **November 8, 2024, at 10:30 a.m.**

DATED: July 26, 2024

JOSEPHINE L. STATON

HON. JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE