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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA - OAKLAND**

17 June Newirth, by and through her Guardian
18 ad Litem, Frederick J. Newirth; Barbara
19 Feinberg; and Elizabeth Barber, Andrew
20 Bardin, and Thomas Bardin as successors-in-
21 interest to the Estate of Margaret Pierce; on
22 their own behalves and on behalf of others
23 similarly situated,

24 Plaintiffs,

25 vs.

26 Aegis Senior Communities, LLC, dba Aegis
27 Living; and Does 1 Through 100,

28 Defendants.

CASE NO. **4:16-cv-03991-JSW**

CLASS ACTION

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: May 7, 2021
Time: 9:00 a.m.
Place: Courtroom 5, 2nd Floor
Judge: Hon. Jeffrey S. White

Action Filed: April 12, 2016
Trial Date: None Set

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE that on May 7, 2021, at 9:00 a.m., or as soon thereafter as this matter may be heard in Courtroom 5, 2nd Floor, before the Honorable Jeffrey S. White of the above-entitled court, located at 1301 Clay Street, Oakland, California, 94612, Plaintiffs will, and hereby do, move the Court for preliminary approval of the parties' class settlement.¹

Plaintiffs respectfully move the Court for an Order [1] preliminarily approving the Settlement Stipulation in this action pursuant to Federal Rule of Civil Procedure 23(e); [2] preliminarily certifying a Settlement Class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3); [3] appointing Plaintiffs' attorneys as Settlement Class Counsel; [4] appointing Named Plaintiffs as Settlement Class Representatives; [5] approving the parties' proposed forms of notice and notice program and directing that notice be disseminated pursuant to this program; and [6] setting a Fairness Hearing and certain other dates in connection with the final approval of the Settlement.

The motion is based upon this notice of motion and motion, the accompanying memorandum of points and authorities, the declaration of Kathryn Stebner, the Stipulation of Settlement, Amendment to the Stipulation of Settlement, the Notice of Lodgment filed concurrently herewith, the [Proposed] Order Preliminarily Approving Class Action Settlement, the pleadings on file in this action, and such other matters that may be brought to the Court's attention at or before the hearing.

¹ Pursuant to the Court's Order Vacating Status Conference and Instructions to Parties (Dkt. 200), the parties are concurrently filing a Stipulated Motion to Amend the Scheduling Order, For Leave to File Third Amended Complaint, and For Permissive Joinder. By this stipulated motion to amend, the parties respectfully move this Court pursuant to Federal Rules of Civil Procedure 15, 16, and 20, for an Order: (1) amending the operative scheduling order to (2) permit Plaintiffs leave to file an amended complaint, (3) in order to permit the joinder of Carol Morrison to this action as an additional named Plaintiff and class representative and to add the Washington settlement class members as a subclass to this California action. The purpose of this stipulated motion to amend is to effectuate the parties' global settlement of this matter together with the related but the separate lawsuit pending in the King County Superior Court in Washington, *Morrison v. Aegis Senior Communities, LLC*, Case No. 18-2-06326-4 SEA (the "Washington Action"), which the parties are presenting for preliminary approval herein. 2

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1 **POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs respectfully request that the Court enter an order preliminarily approving the
4 parties' class settlement in this action, reached after arms-length multiple settlement negotiations
5 supervised by neutral mediators. In addition to injunctive relief, the settlement provides
6 substantial monetary payments to a settlement class of approximately 10,069 current and former
7 residents of assisted living facilities owned, managed and/or operated by Aegis Senior
8 Communities, LLC, dba Aegis Living ("Defendant") in California and Washington.²

9 This case is based on allegations that Defendant misleadingly failed to disclose that
10 resident assessments performed by its personnel would not be used to set facility staffing, but
11 instead that Defendant failed to disclose that staffing is primarily determined by labor budgets and
12 profit objectives. Defendant disputes these allegations in their entirety, denies any legal liability
13 and vigorously defended the case since the initial complaint was filed on April 12, 2016. The lead
14 claim for monetary relief in the lawsuit has been the recovery of the approximately \$54 million in
15 Community Fees paid by Defendant's residents in California and Washington. Under Plaintiffs'
16 case theory, the Community Fees would not have been paid had residents known the "true" facts
17 that resident assessments are not used to set facility staffing. Unlike other charges—such as care
18 fees as to which residents arguably received some value for services rendered— the Community
19 Fees arguably are the least likely to be affected by Defendant's offset and related defenses.

20 After substantial discovery and law-and-motion and four formal mediation proceedings,
21 the parties reached a settlement to resolve the case. Specifically, Defendant has agreed to pay
22 \$16.25 million (the "Settlement Fund") in full settlement of all claims. Subject to Court approval
23 of Plaintiffs' application for attorneys' fees, litigation costs, service awards to the Named
24 _____

25 ² 5,615 of the Settlement Class Members are in California, and 4,454 are in Washington. The
26 proposed Settlement Class is readily ascertainable, and Defendant has agreed to provide the
27 Settlement Administrator with a list of all Class Members from existing records. The Settlement
28 Class defined by the Settlement Stipulation mirrors the Class proposed in the Third Amended
Complaint. (See Northern District of California Procedural Guidance for Class Action
Settlements ("N.D. Cal. Proc. Guid."), Rule 1(a).)₁

1 Plaintiffs, and factoring in estimated notice and administration expenses, it is anticipated that
 2 approximately \$8.395 million will be available to fund payments to Settlement Class members.
 3 That translates to an average per-resident payment of approximately \$950 for the California
 4 Subclass and \$1,550 for the Washington Subclass. In addition to the Settlement Fund, the
 5 settlement includes substantial injunctive relief. Among other terms, the Injunction requires
 6 Defendant to provide staffing levels sufficient to provide current residents with the care services
 7 set forth in their service plans at their California and Washington assisted living facilities, which
 8 addresses the crux of this case. As detailed below, the Settlement falls well within the “range of
 9 reasonableness.” For these and other reasons, this motion for preliminary approval of the parties’
 10 Stipulation of Settlement (“SS” or “Settlement Stipulation”) should be granted.³

11 **II. BACKGROUND**

12 **A. Case Overview**

13 On April 12, 2016, the California Named Plaintiffs June Newirth, by and through her
 14 successor-in-interest, Kathi Troy; and Elizabeth Barber, Andrew Bardin, and Thomas Bardin as
 15 successors-in-interest to the Estate of Margaret Pierce, on behalf of themselves and all others
 16 similarly situated (together, “California Named Plaintiffs”) filed this action against Defendant.
 17 Filed as a putative class action, the lawsuit sought relief on behalf the California Named Plaintiffs
 18 and all persons who resided in any of Defendant's California assisted living facilities since April
 19 12, 2012. The California Named Plaintiffs asserted claims for damages and other relief under
 20 California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* (“CLRA”),
 21 California's unfair competition statute, Bus. & Prof. Code §§ 17200 *et seq.* (“UCL”) and the
 22 Financial Elder Abuse statute, Cal. W&I Code § 15610.30 (collectively, the “California Claims”).

23 On March 8, 2018, the Washington Named Plaintiff Carol M. Morrison by Stacy A. Van
 24

25 ³ Defendant will ensure that CAFA notice requirements are met pertaining to the California Action
 26 within ten days of the filing of this Preliminary Approval Motion. Defendant will ensure that
 27 CAFA notice requirements for the Washington Action are met after the Court grants the
 28 concurrently filed Stipulated Motion for Leave to File Third Amended Complaint (which will join
 the Washington Action to this matter) and the amended complaint is filed. (*See* N.D. Cal. Proc.
 Guid., Rule 10.)

1 Vleck as Attorney-in-Fact on behalf of herself and all others similarly situated (“Washington
2 Named Plaintiff”) filed a putative class action complaint against Defendant in the Superior Court
3 of Washington, County of King. On October 15, 2018, the Washington Named Plaintiff filed a
4 First Amended Complaint captioned *Carol M. Morrison, et al. v. Aegis Senior Communities, LLC,*
5 *dba Aegis Living*, case no. 18-2-06326-4-SEA (“Washington Action”), for claims arising under
6 Washington’s Consumer Protection Act (“CPA”, RCW 19.86.020) and Financial Exploitation of
7 Vulnerable Adults Statute (RCW 74.34.020, 74.34.200) (collectively, the “Washington Claims”).
8 The Washington Action sought relief on behalf the Washington Named Plaintiff and all persons
9 who resided in any of Defendant's Washington assisted living facilities since March 8, 2014.

10 The crux of Plaintiffs’ cases in California and Washington is that Defendant allegedly
11 misled residents, family members, and the public to believe that resident assessments would be
12 used to determine staffing at Aegis’ facilities. (Third Amended Complaint, Dkt. No. *TBD*, “TAC”,
13 ¶¶ 2-8.) Plaintiffs allege that facility staffing is not determined by resident assessments but instead
14 is based primarily on labor budgets and pre-determined profit objectives. Defendant denies the
15 allegations and claims in the case in their entirety and denies any wrongdoing whatsoever.
16 Defendant denies that the case is appropriate as a class action for purposes of litigation.
17 Defendant agreed to settle to avoid continued burdensome and costly litigation.

18 **B. Case Proceedings**

19 The California and Washington Actions have been vigorously litigated from inception. In the
20 California Action, following Plaintiffs’ amendment to the initial complaint, Defendant removed to
21 Federal Court on July 14, 2016. On July 21, 2016, Defendant filed a Motion to Compel Arbitration
22 and Dismiss Class Claims and a Motion to Dismiss the First Amended Class Action Complaint. On
23 August 24, 2016, the California Named Plaintiffs filed a Second Amended Complaint. On
24 September 21, 2016, Defendant filed a Motion to Dismiss the Second Amended Class Action
25 Complaint. On May 18, 2017, the District Court denied Defendant’s Motion to Dismiss the Second
26 Amended Class Action Complaint. On July 28, 2017, Defendant renewed its Motion to Compel
27 Arbitration and Dismiss Class Claims. On September 29, 2017, the District Court denied

1 Defendant's renewed Motion to Compel Arbitration and Dismiss Class Claims. On October 27,
2 2017, Defendant filed a Notice of Appeal and Motion to Stay Pending Appeal. On November 21,
3 2017, the District Court denied Defendant's Motion to Stay Pending Appeal. On July 24, 2019, the
4 United States Court of Appeals for the Ninth Circuit affirmed the District Court's order denying
5 Defendant's Motion to Compel Arbitration. On September 10, 2019, Defendant answered the
6 Second Amended Complaint, wherein Defendant expressly denied the allegations and claims alleged
7 in the Second Amended Complaint. On October 4, 2019, Defendant filed a Motion to Strike Class
8 Definition or to Deny Class Certification in the alternative. On October 18, 2019, Defendant filed a
9 Motion for Summary Judgment. On October 21, 2019, the California Named Plaintiffs filed a
10 Motion for Class Certification. The District Court subsequently granted the stipulated requests by
11 the California Named Plaintiffs and Defendant (together, "California Parties") to continue the
12 hearings on the Motion for Class Certification and Motion for Summary Judgment. When the
13 California Parties notified the District Court about this settlement on July 23, 2020, the District
14 Court denied, without prejudice, the Motion for Class Certification, Motion for Summary Judgment,
15 Motion to Strike the Class Definition or Deny Class Certification, subject to renewal if this
16 settlement is not consummated.

17 In the Washington Action, following Plaintiff's amendment to the initial complaint, Defendant
18 filed a Motion to Deny Class Certification on October 17, 2019. By order dated May 1, 2020, the
19 Washington state court (Hon. Marshall Ferguson) denied Defendant's motion. On October 25, 2019,
20 Defendant answered the First Amended Complaint, wherein Defendant expressly denied the
21 allegations and claims alleged in the First Amended Complaint.

22 To date, a litigation class is yet to be certified in the California or Washington Actions. (*See*
23 N.D. Cal. Proc. Guid., Rule 1.)

24 C. Case Investigation and Discovery

25 Prior to reaching a settlement, Plaintiffs engaged in substantial investigation and discovery.
26 In the California Action, those efforts included extensive review of public documents prior to the
27 filing of the lawsuit, written and deposition discovery, including written discovery responses

28

1 exchanged between the parties, Defendant’s production of approximately 132,483 pages of
2 documents, including approximately 621 Excel files, and eleven depositions, including
3 Defendant’s executive and facility-level personnel, and designated Persons Most Knowledgeable,
4 the Plaintiffs’ experts, and two witnesses knowledgeable about the claims of the California Named
5 Plaintiffs; as well as data intensive discovery resulting in the production of electronic employee
6 payroll data as well as meet and confer efforts among Defendant and its resident assessment
7 software vendor to obtain Defendant’s electronic resident assessment data. (Stebner Decl., ¶22.)

8 In the Washington Action, those efforts included extensive review of public documents
9 prior to the filing of the lawsuit, extensive written and deposition discovery, including written
10 discovery responses exchanged between the parties, Defendant’s production of approximately
11 82,063 pages of documents, including 3,667 Excel and native files, and the depositions of three
12 witnesses, including the Class Representative in this action; as well as data intensive discovery
13 resulting on the production of electronic employee payroll data and resident assessment data.
14 (Stebner Decl., ¶23.) The electronic payroll and assessment data was used by Plaintiffs’ staffing
15 experts to undertake a “shortfall” analysis regarding sample facilities in California and
16 Washington. (Stebner Decl., ¶24.)

17 Additionally, Plaintiffs in both actions engaged in extensive meet and confer efforts,
18 motion practice, and discovery hearings to obtain Defendant’s documents and interrogatory
19 responses. (Stebner Decl., ¶25.)

20 **D. Parties’ Settlement Negotiations Result In Agreement**

21 The global settlement agreement for the Californian and Washington Actions was reached
22 as a result of extensive arm’s length negotiations through parties’ counsel. This included a full-day
23 mediation of the California Action on May 29, 2018 before the Honorable Ronald Sabraw (ret.) of
24 JAMS in San Jose, California; a second full-day mediation of the California Action on October 2,
25 2018 before the Honorable Ronald Sabraw (ret.) of JAMS in San Jose, California; a full-day joint
26 mediation of the California Action and Washington Action on October 22, 2019 before the
27 Honorable Bruce Hilyer (ret.) of Hilyer Dispute Resolution in Seattle, Washington; and a full-day

1 joint mediation of the California Action and Washington Action on March 24, 2020 before the
 2 Honorable Rebecca Westerfield (ret.) of JAMS in San Francisco, California. Although the case
 3 did not resolve at the mediation session with Judge Westerfield, the parties continued settlement
 4 efforts, which led to this settlement. (Stebner Decl., ¶26.)

5 **III. THE PROPOSED SETTLEMENT WILL BENEFIT THE CLASS**

6 The parties' Stipulation of Settlement and Amendment to the Stipulation of Settlement are
 7 attached as Exhibit "A" to the Notice of Lodgment ("NOL"). The key settlement terms are:

8 **A. The Settlement Fund**

9 Defendant has agreed to pay \$16.25 million to resolve all monetary obligations owed
 10 under the settlement. In addition to the Settlement Awards paid to Settlement Class Members, the
 11 Fund will be used to pay notice/administration costs (not to exceed \$105,000), service awards of
 12 \$15,000 to each Named Plaintiff (totaling \$75,000), reimbursement of litigation expenses not to
 13 exceed \$1.3 million, and Plaintiffs' attorneys' fees in the amount approved by the Court but not
 14 exceed \$6.35 million. Factoring in an agreed-upon reserve of \$25,000 to cover late claims, the
 15 estimated amount available to fund payments to class members is roughly \$8.395 million.⁴

16 (Stebner Decl., ¶27.) Significantly, there will be no reversion of any portion of the Settlement
 17 Fund to Defendant. (See N.D. Cal. Proc. Guid., Rule 1(h).) Rather, unused reserve funds as well
 18 as uncashed or returned checks will be used to fund a second round of Settlement Awards to
 19 identified class members. Alternatively, if the remaining amounts make a second distribution
 20 economically impractical, the balance will be distributed to a *cy pres* recipient, nominated by
 21 Plaintiffs' Counsel and approved by the Court. (SS, ¶7.9; Stebner Decl., ¶28.)⁵

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

23 The Agreement provides for cash payments to Settlement Class Members (or if deceased,
 24 _____

25 ⁴ The work to develop the case theory and litigate the California Action, including without
 26 limitation work performed by Plaintiffs' Counsel, the Named Plaintiffs, and Plaintiffs' experts,
 inured to the benefit of the Washington Action. (Stebner Decl., ¶51.)

27 ⁵ The proposed *cy pres* recipient is Groceries for Seniors, a non-profit based in San Francisco
 28 providing free food to poor, elderly people. The parties and their counsel have no relationship with
 the proposed *cy pres* recipient. (Stebner Decl., ¶28; see N.D. Cal. Proc. Guid., Rule 8.)

1 their legal successors) on a direct distribution basis, with no claim form requirement. (*See* N.D.
 2 Cal. Proc. Guid., Rules 1(f) and (g).) The parties estimate the Settlement Class consists of
 3 approximately 10,069 current and former residents. (Stebner Decl., ¶29.) The Settlement
 4 Administrator proposed by the parties (CPT Group, Inc.⁶) will mail settlement checks to each
 5 Settlement Class Member for whom a valid address has been provided by Defendant (or located
 6 through the address update procedures). For Settlement Class Members without a locatable current
 7 addresses, the Administrator is authorized to make payment based on a “distribution request” by
 8 the class member (or a legal successor or successor-in-interest).⁷ (SS, ¶ 7.8.)

9 Subject to Court approval, the cash payments to Settlement Class Members will be
 10 calculated by category of Community Fee payment as follows:

- 11 1. Community Fee Payments of \$500 or More: Settlement Class Members who paid a net
 12 Community Fee of \$500 or more and Settlement Class Members for whom Community
 13 Fee Information is unavailable shall each be entitled to a Settlement Award calculated
 14 as follows. The Settlement Administrator shall first calculate a Settlement Payment
 15 Percentage (“SPP”) by dividing the Net Settlement Fund (less the amounts allocated
 16 for the No Community Fee Paid group per paragraph 3 below) by the total amount of
 17 net Community Fees paid by all Settlement Class Members including Settlement Class
 18 Members for whom Community Fee Information is unavailable. Next, the SPP shall be
 applied against the Community Fee paid by or on behalf of each Settlement Class
 Member and the reduced average net Community Fee assigned to each Settlement
 Class Member for whom Community Fee Information is unavailable, to derive the
 Settlement Award amount for each such Settlement Class Member. (*See* SS, ¶7.2 and
 Amendment to SS, ¶7.6; Stebner Decl., ¶32.)

19 Defendant’s data showed a total of \$53,187,315.75 in Community Fees were paid by or on

21 ⁶ With over thirty years of experience, CPT Group, Inc., has administered thousands of complex
 22 class action cases and billions of dollars in settlement funds. CPT Group, Inc., has extensive
 23 knowledge of complex class action settlement notice programs and are known for their quality of
 24 work, timeliness, and competitive pricing. The parties reviewed proposals from two potential
 25 settlement administrators for the same notice and claims administration process and selected CPT
 26 Group for their experience and competitive pricing. In the last two years, Plaintiffs’ counsel
 engaged CPT Group for the settlement administration of one other class action, similarly against
 an assisted living facility chain in California, in *Lollock, et al. v. Oakmont Senior Living, LLC, et*
al., Superior Court of California, County of Alameda, No. RG17875110. (Stebner Decl., ¶30; *see*
 N.D. Cal. Proc. Guid., Rule 2; *see also* CPT Group, Inc.’s website at <https://www.cptgroup.com>.)

27 ⁷ The Settlement Administrator will have a standard procedure to ensure distribution requests and
 28 other communications (e.g., opt outs) are made by qualified Settlement Class Members or persons
 authorized to act on their behalf. (Stebner Decl., ¶31; *see* N.D. Cal. Proc. Guid., Rule 1(g).)

1 behalf of Settlement Class Members after November 1, 2010 (\$25,262,684.77 or 47.5% in
 2 California and \$27,924,630.93 or 52.5% in Washington). 6,230 Settlement Class Members (3,585
 3 in California and 2,645 in Washington) paid a Community Fee of \$500 or more after November 1,
 4 2010. Additionally, roughly \$2,816,921.57 in Community Fees in California and \$430,299.94 in
 5 Washington were paid by Settlement Class Members prior to November 1, 2010 as calculated per
 6 Paragraph 2 below. The Net Settlement Fund (less the amounts allocated for the No Community
 7 Fee Paid group per paragraph 3 below) is \$8,236,500 (\$3,912,571 in California and \$4,323,929 in
 8 Washington). Accordingly, the SPP is approximately 13.9% for the California Subclass and 15.3%
 9 for the Washington Subclass. To illustrate, if a Settlement Class Member in Washington paid a
 10 Community Fee of \$10,000, their estimated settlement payment is \$1,525. The projected average
 11 settlement payment for the California Subclass is approximately \$950, and \$1,550 for the
 12 Washington Subclass. (Stebner Decl., ¶32.)

- 13 2. Community Fee Payment of \$0 to \$499: Settlement Class Members who paid a net \$0
 14 to \$499 in Community Fees shall each be entitled to a Settlement Award in amount of
 15 \$50. (See SS, ¶¶7.2 and Amendment to SS, ¶7.6; Stebner Decl., ¶32.)

16 Per Defendant's data, 3,161 residents in the Settlement Class (1,493 in California and
 17 1,668 in Washington) did not pay any Community Fees. An additional 9 Settlement Class
 18 Members (4 in California and 5 in Washington) paid less than \$499. (Stebner Decl., ¶32.)

- 19 3. Community Fee Payments Made Pre-November 2010: Settlement Class Members who
 20 paid Community Fees before November 2010 (and thus specific payment amounts are
 21 unavailable) shall each be entitled to a Settlement Award calculated as follows. The
 22 Settlement Administrator shall calculate the average Community Fee paid by
 23 Settlement Class Members in 2011. The Settlement Administrator shall divide the
 24 number of Settlement Class Members who paid no Community Fee by the number of
 25 Settlement Class Members for whom Community Fee Information is available,
 26 resulting in a percentage. The Settlement Administrator shall reduce the average
 27 Community Fee paid in 2011 by that percentage. The reduced average Community
 28 Fee amount shall be treated as the net Community Fee amount paid by each Settlement
 Class Member for whom Community Fee Information is unavailable for purposes of
 the calculation in paragraph 1 above. (See SS, ¶7.2 and Amendment to SS, ¶7.6;
 Stebner Decl., ¶32.)

Defendant's data showed 678 Settlement Class Members in this group (537 in California
 and 141 in Washington). The average Community Fee paid in 2011 was \$7,430.26 in California

1 and \$4,976.29 in Washington. Per Paragraph 3 above, the reduced average Community Fee paid
2 by this group was \$5,245.66 in California (totaling approximately \$2,816,921.57) and \$3,051.77
3 in Washington (totaling approximately \$430,299.94). (Stebner Decl., ¶32.)

4 Before the distribution, the Administrator will recalculate the per-resident payment using
5 the actual number of class members located through Defendant's records, address updates and
6 Distribution Requests. From past experience, this will likely result in an increase in the per-resident
7 payment. The checks will be mailed within thirty (30) calendar days after the Effective Date as
8 defined in the Settlement Stipulation. Settlement Award checks not cashed within the 120-day
9 check cashing deadline (after reasonable reminders issued by the Administrator) shall be added to
10 the Reserve Fund. The Agreement authorizes the Administrator to hold a reserve of \$25,000 to pay
11 late-submitted distribution requests or address other valid requests from Settlement Class Members.
12 Settlement Award checks not cashed within the check cashing deadline (after reasonable reminders
13 issued by the Administrator) shall be added to the reserve fund. As stated, the Agreement provides
14 for a second potential distribution to identified Settlement Class Members after the initial
15 distribution and late claims process has been completed, assuming funds are left over in an amount
16 sufficient to make another distribution economically practical. (SS, ¶7.9; Stebner Decl., ¶¶33-34.)

17 As noted in the Settlement Stipulation and pursuant to Court Approval, the Escrow Agent
18 will safeguard, control, and maintain the Settlement Fund until the Effective Date. For privacy
19 reasons, the names of Aegis' insurers, authorized agents, and certain security measures have been
20 redacted from the corresponding Escrow Agreement and Escrow Procedure Agreement, attached
21 as Exhibit 4 to the Settlement Stipulation. (SS, ¶ 1.16 and Ex. 4 thereto; Stebner Decl., ¶35.)
22 Defendant's position is that the identification of entities funding and maintaining the Settlement
23 Fund is not material to the overall fairness of the settlement, given that the full settlement amount
24 will be funded after Preliminary Approval and prior to the opt-out/objection deadline.

25 **C. Stipulated Injunction**

26 The Stipulation of Settlement also includes substantial non-monetary relief in the form of
27 the Stipulated Injunction, which subject to Court approval, will commence on the Effective Date

1 and remain in place for three years from that date. (NOL, Ex. A(1) – Stipulated Injunction, ¶ 13;
2 SS, ¶ 7.1). Among other terms, the Injunction requires Defendant to adhere to disclosure
3 requirements; to ensure continued compliance with all applicable regulations, including those
4 related to provide staffing levels sufficient to provide current residents with the care services set
5 forth in their service plans; to set staffing at its facilities based on Aegis’s determination of the
6 staffing hours reasonably required to perform the assessed care tasks needed by the residents as
7 determined by Aegis’s assessment procedures, the amount of time it takes to accomplish the given
8 tasks, the experience and/or education of the staff, and the ability of staff to perform various tasks
9 in parallel; and to implement an auditing process for Aegis to investigate and correct deviations
10 from Aegis care standards. (Stipulated Injunction, ¶¶ 1-10; Stebner Decl., ¶36.) The terms of the
11 Injunction address the alleged failures to provide sufficient staffing at Defendant’s facilities.
12 (Stebner Decl., ¶36.) The Injunction references a Compliance Report Addendum, which
13 Defendant contends includes proprietary information concerning Aegis’ operations. As such, the
14 Compliance Report Addendum will be made available to any Settlement Class Member (or legal
15 representative or successor-in-interest) who requests it but not otherwise publicly
16 disclosed. (Injunction, ¶ 9; Stebner Decl., ¶37.) All non-confidential settlement documents will be
17 immediately available at the website. The website will include a webpage stating that the
18 confidential Injunction Compliance Report Addendum will be made available to any Settlement
19 Class Member (or legal representative or successor-in-interest) upon request.

20 **D. Release Provisions**

21 Under the Settlement Stipulation, the Named Plaintiffs and Settlement Class Members
22 (excluding opt-outs) will release any and all actions, claims, demands, rights, suits, and causes of
23 action of whatever kind or nature whatsoever that the Releasing Parties ever had, now have or
24 hereafter can, shall, or may have against the Released Parties, including without limitation any and
25 all damages, loss, costs, expenses, penalties, attorneys’ fees and expert fees, and interest, whether
26 known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent, direct
27 or indirect, whether sounding in tort or contract or any other legal theory, whether statutory,

1 administrative, common law or otherwise, however pled, wherever brought and whether brought
2 in law, equity or otherwise, arising out of or relating in any way or manner to the claims and
3 allegations asserted or that could have been asserted in either or both Actions based on the facts
4 alleged in the complaints in the California and/or Washington Actions; provided that the following
5 claims only are specifically excluded from this Release: (i) any individual claims for personal
6 injuries, wrongful death, bodily harm, or emotional distress resulting from said claims for personal
7 injuries, wrongful death or bodily harm; and (ii) claims based on a breach of the Settlement
8 Stipulation or the Injunction. Nothing in the Settlement Stipulation shall preclude any person or
9 entity from asserting any and all relevant allegations in support of a claim for personal injuries,
10 wrongful death, bodily harm, or emotional distress resulting from said personal injuries, wrongful
11 death or bodily harm, including without limitation, allegations that the facility was understaffed.
12 The releases are effective only after final approval and the Effective Date is reached.

13 **E. Class Notice and Settlement Administration Costs**

14 The Settlement Stipulation provides dissemination of class notice to Settlement Class
15 Members by first class U.S. Mail and e-mail. To effectuate notice, Defendant will provide names
16 and contact information for all Settlement Class Members (and representatives/family members to
17 the extent available) to the Administrator, which will be updated through standard change of
18 address and other procedures. Any returned mail shall be re-sent after a skip trace is performed. In
19 addition to mailing and e-mailing, a summary form of the Court-approved class notice will be
20 published in the California and Washington editions of *USA Today* and posted on the settlement
21 website. The costs of class notice and settlement administration expenses, which the Settlement
22 Administrator estimates will not to exceed \$105,000, will be paid from the Settlement Fund. (SS,
23 ¶¶ 1.36, 3.1, 3.2, 4.1, and 4.2; Stebner Decl., ¶39; NOL Ex. C; NOL Ex. B – CPT Group, Inc.’s
24 Proposal for Class Notice and Settlement Administration.)

25 **F. Payment of Service Awards, Attorneys’ Fees and Litigation Costs**

26 Subject to Court approval, the Settlement Stipulation provides for Service Awards to the
27 five Named Plaintiffs, collectively not to exceed \$75,000. As will be established in detail in the
28

1 formal application for Service Awards, Named Plaintiffs devoted substantial time to the case
2 prosecution, including with discovery, depositions, and/or settlement negotiations.

3 The Settlement Stipulation allows Plaintiffs to file an application for attorneys' fees not to
4 exceed \$6.35 million and litigation costs not to exceed \$1.3 million. (SS, ¶¶ 1.4, 9.1, and 9.3.)
5 There is no clear sailing provision on fees or costs in the Settlement Stipulation. Rather, it simply
6 caps the maximum request that Plaintiffs can submit. Plaintiffs will support the requested
7 attorneys' fees and costs in a motion filed before the objection/opt-out deadline. Under the
8 Settlement Stipulation, any monies not requested (or not approved) for fees and costs will be added
9 to the Net Settlement Fund for payment to Settlement Class Members. (See SS, ¶¶ 7.2 and 7.3;
10 Stebner Decl., ¶41.)

11 **IV. THE SETTLEMENT SATISFIES THE LEGAL STANDARDS FOR OBTAINING**
12 **PRELIMINARY APPROVAL**

13 Judicial proceedings under Federal Rule of Civil Procedure 23 have led to a defined three-
14 step procedure for approval of class action settlements:

- 15 (1) Certification of a settlement class and preliminary approval of the proposed
16 settlement after submission to the Court of a written motion for preliminary approval.
- 17 (2) Dissemination of notice of the proposed settlement to the affected class members.
- 18 (3) A formal fairness hearing, or final settlement approval hearing, at which class
19 members may be heard regarding the settlement, and at which evidence and argument concerning
20 the fairness, adequacy, and reasonableness of the settlement are presented.

21 Federal Judicial Center, Manual for Complex Litigation (4th ed. 2004), §§ 21.63, et seq.
22 (“Manual 4th”). This procedure safeguards class members’ procedural due process rights and
23 enables the Court to fulfill its role as the guardian of class interests. See 4 Newberg on Class
24 Actions, § 11.22, et seq. (4th ed. 2002) (“Newberg”).

25 The law favors the compromise and settlement of class-action suits. See, e.g., *Churchill*
26 *Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs v. City of*
27 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d
28 615, 625 (9th Cir. 1982). The Ninth Circuit recognizes the “overriding public interest in settling

1 and quieting litigation . . . particularly . . . in class action suits . . .” *Van Bronkhorst v. Safeco*
 2 *Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

3 “[T]he decision to approve or reject a settlement is committed to the sound discretion of
 4 the trial judge because he is exposed to the litigants and their strategies, positions, and proof.”
 5 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (internal citations and quotations
 6 omitted). In exercising such discretion, the Court should give “proper deference to the private
 7 consensual decision of the parties [T]he court’s intrusion upon what is otherwise a private
 8 consensual agreement negotiated between the parties to a lawsuit must be limited to the extent
 9 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
 10 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
 11 whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1027 (internal citations and
 12 quotations omitted); *see also* Fed. R. Civ. P. 23(e).

13 At the preliminary approval stage, the Court need only find that the proposed settlement is
 14 within the “range of reasonableness” such that dissemination of notice to the class, and the
 15 scheduling of a fairness hearing, are worthwhile and appropriate. 4 *Newberg* § 11.25; *see also In*
 16 *re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007); *Young v. Polo*
 17 *Retail, LLC*, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006). Preliminary approval of a
 18 proposed class action settlement is appropriate where:

19 [T]he proposed settlement appears to be the product of serious, informed, non-
 20 collusive negotiations, has no obvious deficiencies, does not improperly grant
 21 preferential treatment to class representatives or segments of the class, and falls
 within the range of possible approval[.]

22 *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079; *see also, Manual 4th* § 21.62
 23 (preliminary approval involves an “initial evaluation” of the reasonableness and adequacy of
 24 settlement; reasonableness turns on “analysis of the class allegations and claims and the
 25 responsiveness of the settlement to those claims” while adequacy involves a “comparison of the
 26 relief granted to what class members might have obtained without using the class action process.”)

27 The instant settlement clearly meets the requirements for preliminary approval.

1 of the factual and legal bases for Plaintiffs’ claims and the key defenses to those claims.
 2 (Stebner Decl., ¶44.)

3 The fact that qualified and well-informed counsel endorse the Settlement as being fair,
 4 reasonable, and adequate weighs heavily in favor of approval. *See Linney v. Cellular Alaska*
 5 *Partnership*, 1997 WL 450064, at *5 (N.D. Cal. July 18 1997); *Ellis v. Naval Air Rework*
 6 *Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D.
 7 Cal. 1979) (“The recommendations of plaintiffs’ counsel should be given a presumption of
 8 reasonableness.”).

9 **B. The Settlement Is Fair Given the Settlement Benefits And The Risks**
 10 **Associated With Continued Litigation.**

11 Even without a presumption of fairness, the benefits of the proposed settlement clearly
 12 warrant preliminary approval, particularly given the risks of continued litigation for the class.

13 **1. The Settlement Will Result in Substantial Benefits to the Class**

14 Under the Agreement, Defendant has agreed to pay \$16.25 million, of which
 15 approximately \$8.395 million will be available for distribution to Settlement Class Members.
 16 Assuming that every Settlement Class Member is located for distribution of the payments, the
 17 average Settlement Award will be roughly \$950 for the California Subclass, and \$1,550 for the
 18 Washington Subclass. If current addresses cannot be located for all potential class members (or
 19 their successors), such that additional funds are available for distribution, the Settlement
 20 Administrator will increase the per-class member payment. (SS, ¶ 7.9.)

21 The projected average Settlement Awards in California and Washington compare favorably
 22 with the likely recovery if the case was tried. The lead claim for monetary relief in the lawsuit has
 23 been the recovery of the approximately \$54 million in Community Fees paid by residents in
 24 California and Washington. Under Plaintiffs’ case theory, the Community Fees would not have
 25 been paid had residents known the “true” facts that resident assessments are not used to set facility
 26 staffing. Unlike other charges—such as care fees as to which residents arguably received some
 27 value for services rendered—the Community Fees arguably are the least likely to be affected by
 28 Defendant’s offset and related defenses. Defendant’s records indicate the total amount of

1 Community Fees paid by Settlement Class Members was approximately \$54 million. As discussed
2 above, Defendant has agreed to pay a settlement fund of \$16.25 million, of which roughly \$8.395
3 will be available for distribution to class members. Based on the proposed apportionment between
4 the California and Washington Subclasses based on the respective percentage of the amount of
5 total Community Fees paid, that translates to an estimated average Settlement Payment Percentage
6 of approximately 13.9% of the average Community Fees paid by the California Subclass, and
7 approximately 15.3% of the average Community Fees paid by the Washington Subclass.

8 While the Community Fees represent the most solid damage claim at trial, for settlement
9 purposes, there is no guarantee that the trier of fact would award the full amount of these fees. As
10 to these fees, and other payments made by residents (such as rent), Defendant contends Plaintiffs'
11 damage claims are barred (or at least mitigated by the resident's receipt of care services after
12 move-in). In addition to substantive defenses, Defendant argues the claims are not suitable for
13 class treatment, given the arguable resident-specific issues raised. Even if the Court certified a
14 litigation class, Defendant is expected to raise vigorous trial defenses as to both liability and
15 damages. For example, Defendant argues there is no omission or misrepresentation concerning
16 staffing levels or the use of assessments in setting or reviewing staffing levels at their assisted
17 living facilities. Defendant contends resident assessments are considered in setting or reviewing
18 staffing at its facilities, that their residency agreement does not promise that facility staffing levels
19 will be based on any particular factor including resident assessments, and that prospective
20 residents based their decision to enter their facilities on non-staffing factors. (Stebner Decl., ¶46.)

21 While Plaintiffs disagree with Defendant's arguments and other anticipated defense
22 arguments, for settlement evaluation purposes, these and other defense arguments, asserted by
23 skilled and experienced counsel, raise real trial risks and must be considered. In any event, the fact
24 that the projected per-resident settlement award is less than the potential trial recovery does not
25 preclude settlement approval. Quite the contrary, it is "well-settled law that a cash settlement
26 amounting to only a fraction of the potential recovery does not per se render the settlement
27 inadequate or unfair." (*In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000))

1 (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982).) A proposed
2 settlement is not to be measured against a hypothetical ideal result that might have been achieved.
3 (See, e.g., *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998).) That is
4 because the “very uncertainty of outcome in litigation” and avoidance of expensive litigation
5 “induce consensual settlements.” (*Id.*)

6 Here, the projected average settlement payment of approximately \$950 for the California
7 Subclass and \$1,550 for the Washington Subclass (which respectively represent roughly 13.9% and
8 15.3% of the hard damages most likely to recovered at trial per class member) is well within the
9 range of reasonableness for Court approval. (See, e.g., *In re Omnivision Techs.*, 559 F. Supp. 2d
10 1036, 1042 (N.D. Cal. 2007) (approving settlement where class received payments totaling 6% of
11 potential damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. 1979)
12 (collecting cases in which settlements with a value of 1% to 8% of the estimate total damages were
13 approved); *Trombley v. Nat’l City Bank*, 759 F. Supp .2d 20, 25-26 (D.D.C, 2011) (settlement in
14 range of 17-24% of potential recovery at trial was within range of possible approval); *Winans et al.*
15 *v. Emeritus et al.*, 2016 U.S. Dist. LEXIS 3212 (N.D. Cal. 2016) at **13-15 (approving class
16 settlement that provided roughly 20-40% of the estimated "hard damages" at trial); *Carnes v. Atria*
17 *Senior Living*, No. 3:14-cv-02727-VC (N.D. Cal. 2016) (approving class settlement that provided
18 approximately 32% of the estimated damages at trial.) It also falls within the range of Class
19 Counsel’s previously approved class settlements involving similar clients, claims, and/or issues.
20 (Stebner Decl., ¶47; see N.D. Cal. Proc. Guid., Rule 11.) Further, the actual settlement awards will
21 likely exceed the projected averages. To be sure, the Settlement Administrator is tasked with
22 making all reasonable efforts to locate and pay all Settlement Class Members (or their legal
23 successors). Still, the practical reality is that some Class Members will not be located or not have
24 successors. As such, some funds will go undistributed. If so, under the Agreement, the
25 Administrator will use those funds to increase the payment amounts for the Class Members who
26 have been located. (See SS ¶ 7.9.)

27 In addition to cash payments, the settlement provides important non-monetary relief. As
28

1 discussed above, the Stipulated Injunction requires Aegis to provide staffing levels sufficient to
2 provide current residents with the care services set forth in their service plans at their California
3 and Washington assisted living facilities, which addresses the crux of this case. (Stipulated
4 Injunction, ¶¶ 1-10.) The non-monetary term further supports the reasonableness of the overall
5 settlement. See *Linney v. Cellular Alaska Partnership* (N.D. Cal. July 18, 1997) 1997 WL 450064,
6 at **6-7 (court considers injunctive relief in evaluating fairness of settlement and fee request).

7 **2. The Litigation Risks Support Preliminary Approval**

8 The potential risks attending further litigation support preliminary approval. Plaintiffs face
9 significant challenges with respect to class certification. Among other arguments, Defendant
10 contends that Plaintiffs' claims necessarily require consideration of the care services provided (or
11 not) to each resident. According to Defendant, that will trigger individual issues and thus negate
12 class certification, under cases such as *Walmart* and *Comcast*. Defendant also contends that
13 written arbitration agreements between Defendant and up to approximately 90% of the class
14 member residents preclude a litigation class in this case. (Stebner Decl., ¶49.) While Plaintiffs
15 believe the claims asserted are proper for class treatment, Defendant's anticipated challenge to
16 class certification is a litigation risk that bears on the overall settlement evaluation. Even if the
17 Court certified a litigation class, Defendant is expected to raise vigorous trial defenses as to both
18 liability and damages. For example, Defendant has asserted that residents received value (in the
19 form of care services and other benefits) that negate (or at least mitigate) any recovery. Defendant
20 also argues that there is no misrepresentation or omission concerning staffing or staffing levels at
21 Aegis' communities, or the use of assessments in setting or reviewing staffing or staffing levels.
22 Defendant contends that resident assessments are considered in setting or reviewing staffing at its
23 communities, and that prospective residents based their decision to enter Aegis' facilities on non-
24 staffing factors. Again, Plaintiffs disagree with Defendant's arguments and other anticipated
25 defense arguments. But Defendant's contentions, asserted by extremely skilled and experienced
26 counsel, raise real trial risks. Further, proceeding to trial (and the inevitable appeal) could add
27 several years to the resolution of this case. Given the elderly status of most class members, the

1 potential for years of delayed recovery is a significant concern. Considered against the risks of
 2 continued litigation, and the advanced age of many of the plaintiff class members, the totality of
 3 relief provided under the proposed Settlement is more than adequate and well within the range of
 4 reasonableness. (See Stebner Decl., ¶¶49-50.)

5 Furthermore, the impact of the COVID-19 pandemic cannot be overstated. Under the
 6 extraordinary and uncertain circumstances when the parties reached a putative settlement in July
 7 2020, the West Coast had just come off the initial surge in infections with no prospect of a
 8 vaccine. Indeed, the first major COVID-19 hotspot was at a long term care center in a suburb of
 9 Seattle, Washington. The COVID-19 infection rate was soaring in long term care facilities, posing
 10 a significant threat to the health and safety of class member residents. For example, studies have
 11 found that although less than one percent of the American population lives in long term care
 12 facilities, they have accounted for approximately 36% of US COVID-19 deaths. The pandemic
 13 also posed a real and long term threat to the financial viability of businesses including Aegis. In
 14 addition to contemplating Defendant's bleak financial picture, there were a slew of bills and
 15 executive appeals seeking broad legal immunity including for the long term care industry.
 16 Moreover, as the Court is well aware, the myriad uncertainties arising from the pandemic also
 17 included months-long delays in civil cases, the cessation of jury trials, and the possibility of courts
 18 closing their doors completely in response to the pandemic. (See Stebner Decl., ¶50.)

19 **C. The Proposed Attorneys' Fees, Litigation Expenses and Service Awards Are**
 20 **Within The Range of Reasonableness**

21 At this stage, the Court is not asked to rule on the anticipated requests for attorneys' fees,
 22 reimbursement of litigation costs and service awards to the named plaintiffs. However, the record
 23 shows the amounts proposed in the Agreement on these items fall within an acceptable range.

24 Under the Agreement, the request for reimbursement of litigation expenses will not exceed
 25 \$1.3 million, and Plaintiffs' attorneys' fees subject to Court approval will not exceed \$6.35
 26 million. The anticipated fee request will represent a "negative" multiplier of approximately 0.59
 27

1 on lodestar fees to date.⁸ Given that additional attorney time will be required for settlement
 2 approval and implementation phases, the projected negative multiplier will be even lower.
 3 (Stebner Decl., ¶51.)

4 An award of the maximum attorneys' fees permitted under the Settlement Stipulation
 5 (\$6.35 million) would represent approximately 39% of the Settlement Fund. That is within the
 6 range approved in comparable consumer class actions. *See, e.g., Knight v. Red Door Salons, Inc.*,
 7 No. 08-01520 SC, 2009 WL 248367, at *5 (N.D. Cal. Feb. 2, 2009) (approving attorneys' fees
 8 award equal to 30% of the settlement fund); *Singer v. Becton Dickinson and Company*, 2010 WL
 9 2196104 at *8 (S.D. Cal. June 1, 2010) (awarding 33 1/3% fee in class action); *Ingalls v.*
 10 *Hallmark Mktg. Corp.*, Case No. 08cv4342, Doc. No. 77 (C.D. Cal. Oct. 16, 2009) (awarding
 11 33.33% fee). *Cicero v. DirectTV, Inc.*, 2010 WL 2991486, at *7 (C.D. Cal. July 27, 2010) (case
 12 survey of class action settlements "50% [of settlement fund] is the upper limit, with 30-50%
 13 commonly awarded in cases in which the common fund is relatively small.").

14 Moreover, California federal trial courts consider the reasonableness of a fee award by
 15 reviewing its percentage of the total value of the benefits (e.g., including the value of injunctive
 16 relief) conferred on the class. (*Serrano v. Priest (Serrano III)*, 20 Cal.3d 25, 34 (1977); *Boeing*
 17 *Co. v. Van Gemert*, 444 U.S. 472, 478-81 (1980); *Lealao v. Beneficial California, Inc.*, 82 Cal.
 18 App. 4th 19, 49-50 (2000); *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal.App.4th 140, 164
 19 (2006); 3 *Newberg on Class Actions*, § 14.7.) As this Court held in approving a class settlement in
 20 an analogous setting, "[t]he parties also negotiated substantial injunctive relief, and when the
 21 Court considers the value of that injunction, it reduces the overall percentage of fees that counsel
 22 will receive." (*Walsh v. Kindred Healthcare, et al.*, 2013 U.S. Dist. LEXIS 176319, *9, *12.)
 23 Stating the obvious, this Court will determine what amount of attorneys' fees and costs should be
 24 awarded based on the record presented with Plaintiffs' application. Monies not awarded in fees or
 25 costs will be added to the Net Settlement Fund used to make settlement payments. (*See SS*, ¶¶ 7.2

26 _____
 27 ⁸ As of March 1, 2021, Plaintiffs' counsel worked approximately 16,350 hours on the California
 28 and Washington cases combined, with a lodestar of roughly \$10.7 million and litigation costs
 incurred of roughly \$1.3 million. (Stebner Decl., ¶51); *see* N.D. Cal. Proc. Guid., Rule 6.)

1 and 7.3.)

2 In addition, the Settlement Stipulation provides for service awards of \$15,000 to each
 3 Named Plaintiff (totaling \$75,000), subject to Court approval. (SS, ¶ 9.3.) That amount is within
 4 the range approved by trial courts in this Circuit. (See, e.g., *Singer v. Becton Dickinson & Co.*,
 5 2009 WL 4809646, at *6 (S.D. Cal. Dec. 9, 2009) (approving \$25,000 service award); *Garner v.*
 6 *State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at *17 (N.D. Cal. Apr. 22, 2010) (approving
 7 \$20,000 service award); *Razilov v. Nationwide Mut. Ins. Co.*, 2006 WL 3312024 (D. Or. Nov. 13,
 8 2006) (approving \$10,000 service awards.) That amount is also within the range approved by this
 9 Court. (See, e.g., *Bickley v. Schneider Nat'l Carriers, Inc.* No. 4:08-cv-05806-JSW (N.D. Cal.
 10 2016), 2016 U.S. Dist. LEXIS 167144 *9-10 (approving \$15,000 service awards); *Ozga v. U.S.*
 11 *Remodelers, Inc.*, No. C09-05112-JSW (N.D. Cal. 2010), 2010 U.S. Dist. LEXIS 91196 *8
 12 (approving \$10,000 service awards); see N.D. Cal. Proc. Guid., Rule 7.)

13 **V. PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS IS**
 14 **WARRANTED**

15 It is well-settled that under FRCP 23(c)(1), courts are authorized to certify a settlement
 16 class for purposes of resolving a putative class action. Certification of a settlement class is
 17 appropriate where the plaintiff demonstrates numerosity, commonality, typicality and adequacy
 18 of representation, and one of the three requirements of FRCP 23(b) is met. See, e.g., *Valentino v.*
 19 *Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). The Court need not consider the
 20 manageability of a litigation class because the settlement, if approved, would obviate the need for
 21 a trial. See *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Hanlon*, 150 F.3d at
 22 1021-23. The proposed Settlement Class meets the requirements for provisional certification.
 23 Defendant disputes this case can meet the requirements for class certification absent its agreement
 24 for settlement purposes only.

25 **Numerosity/Ascertainability.** In compliance with Rule 23(a)(1), the members of the
 26 Settlement Class are so numerous that joinder of all members is impractical. *Fry*, 198 F.R.D. at
 27 467. The Settlement Class consists of approximately 10,069 current and former residents of
 28 Aegis' facilities in California and Washington. Under the Settlement Stipulation, Defendant will

1 provide the Settlement Administrator with a list of the last known contact information for all
2 Settlement Class Members. (SS, 1.36; Stebner Decl., ¶52.)

3 **Common Issues.** The requirements of Rule 23(a)(2) are met, as the lawsuit involves
4 several common class-wide issues that, absent the settlement, would drive the resolution of the
5 claims. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Disputed issues
6 common to the named plaintiffs and the Class include (a) whether Defendant violated the
7 Consumer Legal Remedies Act, Washington Consumer Protection Act, and other statutes and
8 regulations by misrepresenting and/or failing to disclose the manner in which resident assessments
9 would be used to determine facility staffing; (b) whether a “reasonable consumer” would have
10 been misled by Defendant’s misrepresentations, misleading statements and omissions; and
11 (c) whether the Named Plaintiffs and class members were “damaged” and entitled to monetary
12 recovery. (TAC, ¶ 117.)

13 **Typicality.** The claims of the Named Plaintiffs are typical of the claims of the Settlement
14 Class, as required under Rule 23(a)(3). As alleged in the Third Amended Complaint, Defendant
15 misrepresented to Plaintiffs and the class members and/or their family members that Defendant
16 uses its resident assessment system to determine the care services to be provided by facility staff
17 and to assess and bill residents for corresponding care points. Rather, Defendant allegedly has a
18 policy of fixed staffing, regardless of the results generated by its resident assessment system,
19 which results in residents not receiving all of the care they have paid for and/or being subjected to
20 the inherent risk that, on any given day, facility staffing will be insufficient to provide the
21 promised care for all residents. Further, as alleged in the Third Amended Complaint, Defendant
22 has failed to disclose and concealed this material fact from the Named Plaintiffs and the class.
23 Plaintiffs’ claims are typical of the claims of the proposed class in the following ways: 1)
24 Plaintiffs are members of the proposed class; 2) Plaintiffs’ claims arise from the same uniform
25 corporate policies, procedures, practices and course of conduct on the part of Defendant; 3)
26 Plaintiffs’ claims are based on the same legal and remedial theories as those of the proposed class
27 and involve similar factual circumstances; 4) the injuries suffered by the Named Plaintiffs are

1 similar to the injuries suffered by the proposed class members; and 5) Plaintiffs seek a common
2 form of relief for themselves and the members of the class. (TAC, ¶ 118.) Based on these and
3 other allegations, the typicality requirement is clearly met. *Hanlon*, 150 F.3d at 1020 (typicality
4 established if claims of representative plaintiff are “reasonably coextensive with those of absent
5 class members; they need not be substantially identical.”)

6 **Adequate Representation.** Plaintiffs must show (1) the “ability and the incentive” to
7 represent the class vigorously; (2) that they have “obtained adequate counsel”, and (3) that there is
8 “no conflict between the individual's claims and those asserted on behalf of the class.” *Fry*, 198
9 F.R.D. at 469 (internal citations omitted); *see also Lerwill v. Inflight Motion Pictures, Inc.*, 582
10 F.2d 507, 512 (9th Cir. 1978). These requirements are met. Because the claims asserted by
11 Named Plaintiffs are typical of those asserted on behalf of the Class, the Named Plaintiffs have the
12 same interests in the outcome of this case. (*See also* TAC, ¶ 119.) As evidenced by the discovery
13 and other efforts to date, Plaintiffs have shown the incentive and ability to carry out their
14 responsibilities as class representatives. Further, the case is being prosecuted by counsel well-
15 versed in class actions generally and elder abuse matters in particular. (Stebner Decl., ¶56.)

16 **Predominance/Superiority.** Under Rule 23(b)(3), class certification is appropriate if “the
17 court finds that the questions of law or fact common to the members of the class predominate over
18 any questions affecting only individual members, and that a class action is superior to other
19 available methods for the fair and efficient adjudication of the controversy.” As explained above,
20 the common issues triggered by the Named Plaintiffs’ claims predominate over any individual
21 questions, as resolution of issues such as whether a reasonable person would construe the Aegis
22 contract as a promise to staff to meet assessed resident needs, and whether Aegis in fact
23 disregarded its own resident assessments in setting facility staffing, will necessarily resolve the
24 liability determination. (*See also* TAC, ¶¶ 120-122.) Litigating these common issues on a class
25 basis is clearly superior to multiple individual and duplicative proceedings on these same
26 questions, particularly given the frail and elderly status of most Class Members.

1 **VI. THE FORM AND MANNER OF CLASS NOTICE SHOULD BE APPROVED**

2 The form and manner of the Class Notice proposed here complies with Rule 23 and the
 3 overall requirements of due process. The form of a class action settlement notice “is satisfactory if
 4 it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse
 5 viewpoints to investigate and to come forward and be heard.’” *Churchill Village LLC v. General*
 6 *Electric*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. U.S.*, 623 F.2d 1338, 1352 (9th
 7 Cir. 1980)). The proposed Notice here provides sufficient detail in plain language to allow
 8 Settlement Class Members to make an intelligent decision with respect to their legal rights under
 9 the settlement. In clear and straightforward language, the Notice describes the claims asserted, the
 10 settlement terms, the monetary and other relief provided, and the amounts proposed for settlement
 11 administration, attorneys’ fees and litigation costs, and service awards for the Named Plaintiffs. It
 12 explains the procedures for opting out of, or objecting to, the settlement, along with the
 13 consequences of pursuing these options or remaining in the settlement. (Class Notice, NOL Ex. C;
 14 Stebner Decl., ¶58.) Further, the manner of class notice proposed here satisfies the “best notice
 15 practicable” requirement under Rule 23(c)(2)(B). The Settlement Stipulation provides
 16 dissemination of class notice to Settlement Class Members by first class U.S. Mail and e-mail. To
 17 effectuate notice, Defendant will provide names and contact information for all Settlement Class
 18 Members (and representatives/family members to the extent available) to the Administrator, which
 19 will be updated through standard change of address and other procedures. Any returned mail shall
 20 be re-sent after a skip trace is performed. In addition to mailing and e-mailing, a summary form of
 21 the Court-approved class notice will be published in the California and Washington editions of
 22 *USA Today* and posted on the settlement website. The settlement administration expenses, which
 23 the Settlement Administrator estimates will not to exceed \$105,000, will be paid from the
 24 Settlement Fund. (SS, ¶¶ 1.36, 3.1, 3.2, 4.1, and 4.2; Stebner Decl., ¶¶ 39, 58.)

25 **VII. CONCLUSION**

26 For the reasons set forth herein, Plaintiffs respectfully request that the Court grant
 27 preliminary approval for the Settlement Stipulation in this case, grant provisional certification of
 28

