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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Audrey Heredia as successor-in-interest to the Estate of Carlos Heredia; Amy Fearn as successor-in-interest to the Estate of Edith Zack; and Elise Ganz, as successor-in-interest to the Estate of Helen Ganz; on their own behalves and on behalf of others similarly situated,

Plaintiffs,

vs.

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

Defendants.

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

**[PROPOSED] ORDER GRANTING
MOTION FOR ATTORNEYS'
FEES, COSTS AND SERVICE
AWARDS**

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

INTRODUCTION

1
2 Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Service Awards
3 (“Motion”) came on for hearing on November 8, 2024, at 10:30 a.m., in
4 Courtroom 8A of the United States District Court for the Central District of
5 California, with the Honorable Josephine L. Staton presiding.

6 Plaintiffs moved the Court for an award of \$10.5 million in attorneys’ fees,
7 litigation expenses and costs not to exceed \$1.7 million, and service awards in the
8 amount of \$30,000 (\$15,000 to each Named Plaintiff).

9 Having considered the Plaintiffs’ motion, the supporting Declarations and
10 exhibits attached thereto, the relevant legal authority, the record in this case, and
11 the argument of Counsel at the hearing thereon; the Court hereby FINDS,
12 ORDERS, AND ADJUDGES as follows:¹

13 **I. ATTORNEYS’ FEES**

14 As the underlying claims here are based on state law, the Court applies state
15 law with respect to the fee request. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
16 1047 (9th Cir. 2002).

17 Under both California state law and Ninth Circuit precedent, where a
18 settlement “produces a common fund for the benefit of the entire class, courts
19 have discretion to employ either the lodestar method or the percentage-of-recovery
20 method.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir.
21 2011); *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480, 503-504 (2016).

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

27 _____
28 ¹ For purposes of this Order, the Court adopts and incorporates the terms and definitions set forth in the Stipulation of Settlement (“SS”).

1 shifting” to encourage “socially beneficial” lawsuits. *In re Bluetooth*, 654 F.3d at
2 941; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir.1998). Also, courts
3 have applied the lodestar method where a substantial portion of the settlement
4 relief obtained is “not easily monetized.” *In re Ferrero*, 583 Fed. Appx. 665, 668
5 (9th Cir. 2014).

6 Application of the lodestar method is warranted here. Plaintiffs’ CLRA
7 claims are subject to a mandatory fee shifting provision, Cal. Civil Code §1780(e),
8 enacted to “incentivize counsel” to protect consumers through “publicly beneficial
9 litigation.” *In re Cobra Sexual Energy Sales*, Case No. 2:13-cv-05942-AB-Ex,
10 2021 WL 4535790, *18 (C.D. Cal. April 7, 2021). The same is true for the Elder
11 Financial Abuse claims. Cal. W&I Code § 15657.5; *Arace v. Medico Investments*
12 *LLC*, 48 Cal.App.5th 977, 981-982 (2020) (attorneys’ fees and other enhanced
13 remedies in Elder Abuse Act intended to “encourage” statutory enforcement,
14 citing *Negrete v. Fid. & Guar. Life Ins. Co.*, 444 F. Supp. 2d 998, 1001 (C.D. Cal.
15 2006).

16 Further, the settlement includes injunctive relief, including terms that are
17 readily monetizable and other terms that are not. Specifically, the stipulated
18 Injunction includes Staffing, Training and Monitoring (“STM”) provisions that
19 will result in quantifiable economic benefits to Class Members who currently
20 reside in Sunrise facilities (as well as other non-Class residents. Dkt.631-18
21 (Suppl. Kennedy Decl.), ¶¶3,6. Other Injunction provisions (such as the
22 Disclosure provisions) provide additional important (although not monetizable)
23 benefits to the general public. Injunction, ¶¶1-4; Dkt. 614-9 (Kennedy 4/17/24
24 Decl.), ¶¶27-28.

25 Courts awarding attorneys’ fees under the lodestar method are
26 “encouraged” to cross-check the requested fees under the “percentage-of-
27 recovery” analysis. *Lowery v. Rhapsody Int’l, Inc.*, 75 F.4th 985, 988 (9th Cir.
28 2023). The “recovery” under the percentage method includes both cash and the

1 “value of nonmonetary relief. In determining an appropriate fee award, courts
2 “must expressly consider the value that the settlement provided to the class,
3 including the value of nonmonetary relief.” *Lowery*, 75 F.4th at 992; *In re*
4 *Bluetooth*, 654 F.3d at 943–45.

5 Percentage considerations, including the 25% benchmark, do not cap the
6 amount of fees that can be awarded, if justified under the circumstances of the
7 case. *Vizcaino*, 290 F.3d at 1048. However, if a fee award proposed under the
8 lodestar method exceeds 25% of the settlement recovery, courts take a “hard look”
9 at the claimed lodestar to ensure the requested fee is reasonable. *Lowery*, 75 F.4th
10 at 994.

11 **A. Class Counsels’ Lodestar**

12 The lodestar calculation “begins with the multiplication of the number of
13 hours reasonably expended by a reasonable hourly rate.” *Hanlon*, 150 F.3d at 1029;
14 *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 26 (2000). With respect
15 to the hours worked, courts consider whether “in light of the circumstances, the
16 time could reasonably have been billed to a private client.” *Moreno v. City of*
17 *Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008).

18 Generally, courts “defer to the winning lawyer’s professional judgment as to
19 how much time he was required to spend on the case.” *Chaudhry v. City of L.A.*,
20 751 F.3d 1096, 1111 (9th Cir. 2014), cert. denied, –U.S. –, 135 S.Ct. 295, 190
21 L.Ed.2d 141 (2014) (cleaned up); *Holt v. Kormann*, Case No. SACV 11-01047
22 DOC (MLGx), 2012 WL 5829864, *6 (C.D. Cal. Nov. 15, 2012) (attorney’s sworn
23 testimony “is evidence of considerable weight” on the issue of the time required for
24 particular task) (cleaned up).

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

1 An attorney’s lodestar figure is “presumptively reasonable.” *Cunningham v.*
2 *Cnty. of Los Angeles*, 879 F.2d 481, 488 (9th Cir.1988); *In re Bluetooth*, 654 F.3d at
3 941. However, submitted lodestar hours should reflect the exercise of “billing
4 judgment” to address “any excessive, redundant, or unnecessary hours.” *Fair*
5 *Housing of Marin v. Combs*, 285 F.3d 899, 908 (9th Cir. 2002).

6 Courts can adjust lodestar fees “upward or downward” to ensure a reasonable
7 fee award, in consideration of factors such as the “quality of representation, the
8 benefit obtained for the class, the complexity and novelty of the issues presented,
9 and the risk of nonpayment.” *In re Bluetooth*, 654 F.3d at 941-942.

10 Here, Class Counsel have submitted Declarations² (and a Lodestar
11 Summary spreadsheet) attesting to over 20,900 hours worked on this case which
12 amount to total lodestar fees exceeding \$15 million. The submitted Declarations
13 and Lodestar Summary detail the work performed and specific tasks undertaken in
14 the successful prosecution of this case.

15 Class Counsel have discounted gross lodestar hours in specific areas
16 (general potentially duplicate or unnecessary time), Class Counsel conference
17 calls, unsuccessful motion to add a “subject to arbitration” class representative,
18 and travel time. Dkt. 632-1, pp. 16-18. After these billing judgment reductions,
19 the net lodestar fees exceed \$13.6 million. Dkt. 631-2 (Healey Decl.), ¶¶106-108;
20 Dkt. 631-7 (Healey Decl., Ex. 4).

21 The Court finds net lodestar hours and fees submitted by Class Counsel are
22 reasonable and appropriate, given the work performed and results achieved in the
23 case.

24
25 **B. Class Counsel’s Hourly Rates**

26
27 ² Declarations have been submitted by Class Counsel Kathryn Stebner, Chris
28 Healey, Guy Wallace, Michael Thamer, Megan Yarnall, David Mark and Stefanie
Warren, appellate specialist, Monique Olivier. Dkts. 631-11 through 631-17.

1 The second step is determining the reasonable market value of the attorneys’
2 services at an hourly rate. *Ketchum*, 24 Cal.4th at 1134; *Camacho v. Bridgeport*
3 *Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008).

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

12 Multiple courts (including this Court) have found the “annual Real Rate
13 Report” to be a “useful guidepost” for assessing reasonable rates in the Central
14 District. *Sarabia*, *8 (collecting cases). Here, the hourly rates charged by Class
15 Counsel are within the Third Quartile rates in the current Real Rate Report (2023
16 Report). Compare Dkt. 631-7 (Healey Decl., Ex. 4 (Lodestar Spreadsheet, Summary
17 Tab, listing hourly rates)) with Dkt. 631-8 (Healey Decl., Ex. 5 (2023 Real Rate
18 Report), pp. 16, 25, 29-30).

19 The Third Quartile rates in the Real Rate Report are the appropriate guideline
20 here. Class Counsel have literally decades of experience successfully prosecuting
21 class actions involving understaffing claims asserted against assisted living and
22 skilled nursing facilities. Dkt. 631-11 (Marks Decl.), ¶¶3-7; Dkt. 631-12 (Thamer
23 Decl.), ¶¶2-3; Dkt. 631-13 (Stebner Decl.), ¶¶3-6; Dkt. 631-2 (Healey Decl.), ¶¶6-9.
24 Multiple courts have approved hourly rates for many of Class Counsel, at levels
25 commensurate with the rates requested here. Dkt. 631-2 (Healey Decl.), ¶136; Dkt.
26 631-10 (Healey Decl.), Ex. 7.

27 Further, given the delay in payment over this 7-year litigation, Class Counsel
28 could have applied current hourly rates to prior time entries. *Stetson v. Grissom*, 821

1 F.3d 1157, 1166 (9th Cir. 2016) (to compensate for delayed payment, lodestar
2 should be calculated using “the prevailing rate as of the date of the fee request” or by
3 “using historical rates and compensating for delays with a prime-rate
4 enhancement”). Here, four firms (Marks, Trails Law Group, Thamer, Oliver)
5 charged the same rate for all hours worked. Three firms (Dentons, Stebner, Janssen)
6 increased rates during the litigation but did not retroactively apply the higher rates.
7 Consistent with Stetson, Schneider Wallace applied higher rates to prior work, but
8 capped rates at 2023 levels. Dkt. 631-2 (Healey Decl.), ¶132.

9 Accordingly, the Court finds the hourly rates requested by Class Counsel
10 to be reasonable and in line with the market rates charged by skilled counsel in
11 the Central District in similar complex civil litigation.

12 **C. Benefits Provided To Settlement Class**

13 The key consideration in any fee request is whether the “value provided to
14 the class, including the value of nonmonetary relief” justifies the fee award.
15 *Lowery*, 75 F.4th at 993; *In re Bluetooth*, 654 F.3d at 943-45.

16 Here, the \$18.2 million cash payment represents at least 34% of the likely
17 trial recovery and exceeds the cash payments obtained in comparable settlements.
18 Dkt. 631-2 (Healey Decl.), ¶¶83, 91. Further, the Staffing Training Monitoring
19 (STM) provisions in the Injunction result in avoided economic harm benefit of at
20 least \$9.36 million for Settlement Class Members who reside in Sunrise facilities
21 during the Injunction term. Dkt. 631-18 (Supp. Kennedy Decl.), ¶6. Dr.
22 Kennedy’s analysis is based on an “avoided economic harm” methodology, (Dkt.
23 614-9, ¶¶16-22), which has been approved by multiple courts. *Troy v. Aegis*
24 *Senior Communities, LLC*, Case No. 16-cv-03991-JSW, 2021 WL 6129106, *4
25 (N.D. Cal. Aug. 23, 2021); *Walsh v. Kindred Healthcare*, Case No. C 11-00050
26 JSW, 2013 WL 6623190, **3-4 (N.D. Cal. Dec. 16, 2013); *see also, Heredia v.*
27 *Sunrise Senior Living LLC*, Case No. 22-55332, 2023 WL 4930840, at *3 (9th
28 Cir. Aug. 2, 2023).

1 Combined, the cash and injunctive relief provides an overall value of at
2 least \$27.56 million for the Settlement Class. The Injunction also results in other
3 (non-monetized) benefits, such as the benefits to consumers from the Disclosure
4 provisions. Dkt. 614-9. ¶¶27-29. Even if not easily monetized, the Disclosure
5 provisions provide societal benefits properly considered in determining an
6 appropriate fee award here. *In re Ferrero*, 583 Fed. Appx. at 668 (“meaningful”
7 injunction that is “consistent with the relief” sought in the lawsuit supports
8 approval of fee award); *Lowery*, 75 F.4th at 992, n.1.

9 **D. Percentage-Of-Recovery Cross-Check**

10 Plaintiffs’ fee request of \$10.5 million represents roughly 38% of the
11 overall \$27.56 million in economic value provided to the Settlement Class
12 ((\$18.2 million cash plus \$9.36 million benefit from STM Injunction provisions).
13 That falls within the range approved in other cases. *In re Ferrero*, 583 Fed.Appx.
14 at 668 (approving fee award of \$985,920 where settlement benefits are \$550,000
15 cash plus (non-monetized) injunctive relief requiring changes to product labels
16 and advertising); *Andrade-Heymsfield v. Nextfoods, Inc.*, Case No. 3:21-cv-
17 01446-BTM-MSB, 2024 WL 3871634, at *7 (S.D. Cal. Apr. 8, 2024) (“some
18 [percentage of recovery] awards go up to 50%”); *Cicero v. DirectTV, Inc.*, Case
19 No. EDCV 07-1182; 2010 WL 2991486, at **6-7 (C.D. Cal. July 27, 2010)
20 (survey of class action “suggests that 50% is the upper limit, with 30-50%
21 commonly awarded in cases in which the common fund is relatively small”).

22 Under *Lowery*, if the requested fee “exceeds 25% of the benefit to the
23 class,” a “hard and probing look” is warranted to ensure the award is reasonable.
24 *Lowery*, 75 F.4th at 994. Here, Class Counsel’s lodestar hours are supported by
25 detailed time entries and the “net” lodestar numbers reflect “billing judgment”
26 adjustments. The hourly rates charged fall squarely within market (as confirmed
27 by the Real Rate Report and other sources) and do not include a “delayed
28 payment” adjustment. The requested fee (\$10.5 million) represents a discount of

1 \$3.1 million from Class Counsel’s net lodestar fees. Additionally, the fee request
2 is \$400,000 below the amount permitted under the Settlement Stipulation. Dkt.
3 631-3 (SS), ¶9.1.

4 Further, in considering whether an adjustment from the 25% benchmark is
5 warranted, courts generally consider the results achieved, risk of litigation, skill
6 required and quality of work, and litigation burdens and whether settlement
7 produced non-cash benefits, such as injunctive relief. *Vizcaino*, 290 F.3d at
8 1048–50; *Sarabia*, 2023 WL 3432160, at *5. These considerations further
9 reinforce the reasonableness of the instant lodestar fee request.

10 With respect to “results achieved,” the key question is the value provided
11 to the class in terms of cash and nonmonetary relief. *Lowery*, 75 F.4th at 993; *In*
12 *re Bluetooth*, 654 F.3d at 943-45. Here, the \$18.2 million cash exceeds the
13 monetary benefits in comparable settlements. Dkt. 631-2 (Healey Decl.), ¶¶91-
14 92. And the STM Injunction provisions alone provide an additional monetized
15 benefit of \$6.36 million to Settlement Class Members. Dkt. 631-18 (Supp.
16 Kennedy Decl.), ¶6.

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

25 The successful prosecution of this case required skillful lawyering,
26 particularly given Sunrise’s resources and choice of defense counsel. In addition
27 to other high-quality counsel, Sunrise was represented by Gibson Dunn, one of
28 the most prestigious and aggressive law firms in the county. *In re American*

1 *Apparel, Inc. S'holder Litig.*, Case No. CV 10-06352 MMM (JCGx), 2014 WL
2 10212865, at *22 (C.D. Cal. July 28, 2014) (court considers “quality of opposing
3 counsel as a measure of the skill required to litigate the case successfully”).

4 The case presented significant litigation burdens. Over seven years of
5 litigation, Class Counsel worked over 20,900 hours on case investigation,
6 discovery, motion practice, class certification, appellate proceedings and other
7 tasks. Dkt. 631-2 (Healey Decl.), ¶¶106-111. The class certification and Daubert
8 motions, in particular, required extensive analysis and presentation of merits
9 proof. In addition, Class Counsel advanced over \$1.7 million in expert costs and
10 other litigation expenses, including significant costs associated with MedModel’s
11 staffing shortfall analysis. *Id.* (Healey Decl.), ¶134; Dkt. 631-7 (Healey Decl.),
12 Ex. 4 (Lodestar Spreadsheet). The protracted proceedings and substantial cost
13 advancement support a higher percentage fee award. *Vizcaino*, 290 F.3d at 1050.

14 With respect to “non-cash” considerations, both Settlement Class Members
15 and Non-Class residents will benefit from the Injunction provisions bolstering
16 facility staffing, as they rely on the same pool of care providers. *See* Dkt. 614-8
17 (Flores 4/17/24 Decl.), ¶¶13-14. Further, the general consuming public will
18 benefit from improved disclosures in Sunrise’s admission contract with respect to
19 how resident assessments impact facility staffing levels. Dkt. 631-4 (Injunction),
20 ¶¶1-4. The “meaningful” injunctive relief resulting in a “considerable benefit to
21 society” supports Plaintiffs’ requested fee. *See Lowery*, 75 F.4th at 994-995; *In re*
22 *Ferrero*, 583 Fed.Appx. at 668.

23 **E. Additional Considerations**

24 Imposing a 25% or other artificial cap on attorneys’ fees here would
25 undermine the Legislative intent under the CLRA and Elder Financial Abuse
26 statutes to encourage meritorious lawsuits through the mandatory fee-shifting
27 provisions. *In re Cobra Sexual Energy Sales*, 2021 WL 45355790, *18 (CLRA
28 fee shifting designed to “incentivize counsel” to protect consumers through

1 “publicly beneficial litigation); *Delaney v. Baker*, 20 Cal.4th 23, 33 (1999) (fee
2 provision in elder abuse statute enacted to encourage “attorneys to take up the
3 cause”).

4 Accordingly, the Court GRANTS Plaintiffs’ Motion for attorneys’ fees in
5 the amount of \$_____.

6 **II. REIMBURSEMENT OF LITIGATION EXPENSES**

7 Class Counsel are entitled to reimbursement of reasonable out-of-pocket
8 costs and expenses advanced in investigating, prosecuting, and settling this case.
9 Fed. R. Civ. P. 23(h); *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)
10 (approving reimbursement reasonable expenses that would “normally be charged to
11 a fee paying client”); *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003). The
12 California Consumers Legal Remedies Act and the California financial elder abuse
13 statute, provide for reimbursement of costs incurred. Cal. Civil Code §§ 1750 et
14 seq., 1780(e); Cal. W&I Code § 15657.5.

15 Here, Class Counsel have capped the requested reimbursement for litigation
16 costs and expenses at \$1.7 million. As supported by Class Counsel’s declarations,
17 these costs and expenses were reasonably necessary for the prosecution of the
18 lawsuit. Upon review of Class Counsel’s declarations and attached exhibits, the
19 Court finds that the requested expenses are reasonable and should be reimbursed.

20 Accordingly, the Court GRANTS Plaintiffs’ Motion for reimbursement of
21 reasonable litigation expenses and costs in the amount of \$_____.

22 **III. SERVICE AWARDS FOR NAMED PLAINTIFFS**

23 The two Named Plaintiffs respectfully seek service awards of \$15,000 each
24 (\$30,000 total). The requests are within the range permitted under the Settlement
25 Stipulation. Dkt. 631-3 (SS), ¶9.3.

26 The requested awards are warranted, given the “strong commitment” to the
27 class shown here by the named Plaintiffs. *Garner v. State Farm Mut. Auto. Ins.*
28 *Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, **18 & n.8 (N.D. Cal. Apr.

1 22, 2010) (approving \$20,000 service award; collecting cases). Specifically, both
2 Plaintiffs devoted considerable time and effort throughout their extended service
3 (close to five years) in this litigation. They participated in numerous conferences
4 with Class Counsel on case status, deposition preparation, and settlement related
5 matters. Both were subjected to intense full-day depositions, which forced the
6 witnesses to revisit painful and difficult experiences by beloved family members.
7 And perhaps most telling, both turned down substantial individual settlement
8 offers. Dkt. 614-7 (Ganz 4/17/24 Decl.), ¶¶36-37,40; Dkt. 614-6 (Fearn 4/17/24
9 Decl.), ¶¶31-32, 34.

10 The requested amounts are within the range approved by other courts within
11 the Ninth Circuit. *See, e.g., Chen v. Western Digital Corp.*, Case No. 8:19-cv-
12 00909-JLS-DFM, 2021 WL 9720778, *18 (C.D. Cal. Jan. 5, 2021) (granting
13 \$18,000 service award); *Singer v. Becton Dickinson & Co.*, Case No. 08-CV-821-
14 IEG (BLM), 2009 WL 4809646, at *6 (S.D. Cal. Dec. 9, 2009) (approving \$25,000
15 service award); *Garner*, 2010 WL 1687832, at *17 (approving \$20,000 service
16 award).

17 Accordingly, the Court GRANTS service awards in the amount of \$ _____ to
18 both Named Plaintiffs (for a total of \$ _____).

19 **IT IS SO ORDERED.**

20
21 Dated: _____

22 _____
23 Hon. Josephine L. Staton
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