

1 Kathryn A. Stebner, State Bar No. 121088
2 Brian S. Umpierre, State Bar No. 236399
3 STEBNER GERTLER & GUADAGNI
4 A Professional Law Corporation
5 870 Market St., Ste. 1285
6 San Francisco, CA 94102
7 Tel: (415) 362-9800
8 Fax: (415) 362-9801
9 Email: kathryn@sggklaw.com
10 brian@sggklaw.com

11 Guy B. Wallace, State Bar No. 176151
12 SCHNEIDER WALLACE
13 COTTRELL KONECKY LLP
14 2000 Powell Street, Suite 1400
15 Emeryville, CA 94608
16 Tel: (415) 421-7100
17 Fax: (415) 421-7105
18 Email: gwallace@schneiderwallace.com

19 Christopher J. Healey, State Bar No. 105798
20 DENTONS US LLP
21 4655 Executive Drive, Suite 700
22 San Diego, CA 92121-3128
23 Tel: (619) 236-1414
24 Fax: (619) 645-5328
25 Email: christopher.healey@dentons.com

26 Attorneys for Plaintiffs and the Class

27 UNITED STATES DISTRICT COURT
28 CENTRAL DISTRICT OF CALIFORNIA

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

8 Plaintiffs,

9 vs.

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

13 Defendants.

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

**PLAINTIFFS' REPLY BRIEF IN
SUPPORT OF MOTION FOR
FINAL SETTLEMENT
APPROVAL AND 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

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1 **I. INTRODUCTION**

2 As of November 1, 2024, only two objections (from a Settlement Class
3 exceeding 4,000 persons) have been submitted to the instant settlement. The first
4 objector (David Levy) supports the settlement but objects to Class Counsel’s
5 requests for attorneys’ fees and reimbursement of advanced litigation costs and
6 expenses. The second objector (Lisa Gold) supports the monetary term (\$18.2
7 million), raises two questions about the settlement terms, and likewise opposes the
8 request for fees and costs/expenses.

9 Ms. Gold’s primary concern -- that Sunrise personnel could undercut the
10 Injunction by “gaming” call light responses to residents – does not preclude final
11 settlement approval. The call light data required to be produced by Sunrise under
12 the Injunction will allow Class Counsel to detect and address the potential scenario
13 that Ms. Gold describes, through pattern analysis and follow up inquiries of
14 Sunrise, as necessary. Reply Declaration of Kathryn Stebner (Stebner Reply Decl),
15 ¶¶6-9.

16 Objectors’ challenges to Plaintiffs’ fee application are not well-taken. Under
17 the lodestar analysis that should be applied here, Plaintiffs’ fee request (\$10.5
18 million) is over \$3 million *lower* than Class Counsel’s net lodestar (\$13.6 million),
19 which in turn reflects substantial billing judgment reductions from the total lodestar
20 (over \$15 million). Most importantly, the fee request is amply supported by any fair
21 consideration of the benefits provided to the Settlement Class. In addition to the
22 \$18.2 million in monetary relief, the Staffing, Training and Monitoring (STM)
23 terms under the Injunction add at least another \$9.36 million in settlement value.
24 Dkt. 631-18 (Supp Kennedy Decl), ¶6. Plaintiffs’ requested fee (\$10.5 million)
25 represents roughly 38% of the overall settlement, which falls squarely within range
26 approved in other class action settlements.

27 In the course of addressing questions raised by Objector Gold, Plaintiffs
28 revised the Lodestar Summary to show the Schneider Wallace entries in

1 chronologic order. That revision resulted in a decrease of roughly \$1,070, which
2 reduces the lodestar for Class Counsel through September 24, 2024 to \$15,068,169.
3 As detailed in a separate Cost Summary, the total costs and expenses advanced by
4 Class Counsel on the Sunrise case through September 24, 2024 total \$1,709,196.54.
5 As explained below, Class Counsel have applied a courtesy reduction for certain
6 cost items totaling \$9,568.68, which reduces Plaintiffs' costs reimbursement
7 request to \$1,699,627.86. The Updated Lodestar Summary and the Cost Summary
8 are attached to the Reply Declaration of Christopher J. Healey (Healey Reply Decl),
9 ¶2-3, Exs. 1-2.

10 **II. FINAL APPROVAL**

11 **A. Favorable Class Reaction**

12 As of November 1, 2024, Class Counsel are aware of only two objections
13 (from a Settlement Class exceeding 4,000 persons). Healey Reply Decl, ¶5. The
14 first objector (David Levy) supports the settlement but objects to Class Counsel's
15 anticipated fee request (as disclosed in the Settlement Class Notice). Dkt. 633. The
16 second objector (Lisa Gold) supports the monetary term (\$18.2 million), raises two
17 questions about the settlement terms, and opposes Class Counsel's requests for fees
18 and costs.¹

19 The Settlement Administrator (CPT) reports that, as of November 1, 2024, it
20 has received 19 opt-out requests, seven of which have been confirmed as valid, with
21 the balance under review by CPT. Healey Reply Decl, ¶4.

22 This favorable response from the Settlement Class supports final settlement
23 approval. *In re Stable Road Acquisition Corp.*, 2024 WL 3643393, *10, (C.D. Cal.
24

25
26 ¹ At present, the Gold Objection does not appear on the Court's docket. Class
27 Counsel spoke with Ms. Gold on October 24, 2024. Thereafter, on October 26,
28 2024, Ms. Gold provided a courtesy copy of the objection she stated had been
timely mailed to the Court. Healey Reply Decl, ¶6.

1 April 23, 2024) (“That only one objection and only four requests for exclusion have
2 been received demonstrates the Settlement Class’s positive reaction to the
3 Settlement and supports final approval.”)

4 Additionally, family members for 11 Settlement Class Members have
5 submitted declarations supporting the settlement. Dkt. 622-2; Dkt. 631-24. As have
6 both Named Plaintiffs, Amy Fearn and Elise Ganz. Dkt. 614-6 (Fearn Decl.); Dkt.
7 614-7 (Ganz Decl.); Supplemental Fearn and Ganz Declarations in Support of Final
8 Approval (filed concurrently herewith).

9 **B. Questions Raised by Objector Gold Regarding Settlement**

10 While stating that she supports the \$18.2 million cash term in the Settlement,
11 Ms. Gold asserts several “concerns.” As detailed below, none warrant denial of
12 final settlement approval.

13 **Call Light Data Concerns.** Referencing comments made by the director of a
14 (non-Sunrise) skilled nursing facility, Ms. Gold warns that facility personnel could
15 “game” the call light responses. While Plaintiffs appreciate the concern, Plaintiffs
16 believe the Injunction provides sufficient protections.

17 Specifically, under the Monitoring terms in the Injunction, Sunrise is
18 required to produce the date and time of both the resident’s call and the response by
19 Sunrise personnel. Dkt. 631-4 (Injunction), ¶¶9, 11. From that information, Class
20 Counsel can determine the duration of call light response times within the produced
21 Call Light data. Obviously, a pattern of a long-duration response times would be a
22 red-flag indicator of potential understaffing. Similarly, a pattern of a large number
23 of extremely short-duration response times could indicate that call lights were being
24 shut off without assistance being provided. Generally, assisted living residents will
25 make follow-up calls, if their initial call light requests are not answered in a
26 reasonable time. Reply Stebner Decl, ¶8. As to any of these potential scenarios, the
27 Injunction requires Sunrise to reasonable inquiries from Class Counsel. Dkt. 631-4
28 (Injunction), ¶14.

1 Based on Sunrise’s resident privacy concerns, resident-identifying
2 information (including room numbers) will be redacted from the quarterly Call
3 Light Request/Response Data. However, the room number redaction will not
4 impact Class Counsel’s ability to conduct an appropriate analysis. As Sunrise is
5 required to produce the date and time of both the resident’s call and the response by
6 Sunrise personnel, Dkt. 631-4 (Injunction), ¶¶9, 11, the produced data will include
7 the response time duration information necessary for a pattern analysis. Reply
8 Stebner Decl, ¶¶2-3. Further, Sunrise is required to maintain an electronic record of
9 the room number associated with the resident call and Sunrise’s response. *Id.*, ¶9.
10 Thus, if needed, Class Counsel could obtain that information under paragraph 14 of
11 the Injunction. Dkt. 631-4 (Injunction), ¶14, Reply Stebner Decl, ¶9.

12 Next, Ms. Gold expresses disappointment that not all Sunrise Injunction
13 Communities are required to produce the same amount of Call Light Data. Due to
14 technology limitations at certain facilities, Sunrise required a narrowed scope of
15 produced Call Light Data. Absent a compromise to address Sunrise’s demonstrated
16 burden objection on this issue, Sunrise would not have agreed to the Injunction. *See*
17 Dkt. 631-2 (Healey Decl), ¶¶60-61. The compromise negotiated, however, allows
18 for reasonable spot checks using the Call Light Data produced. Specifically, Class
19 Counsel select the facilities and days required for Sunrise’s data production from
20 the “technology challenged” facilities. Dkt. 631-4 (Injunction), ¶¶11-12. And Class
21 Counsel notify Sunrise of the selected facilities/days for which historical Call Light
22 Data must be produced at the end of each reporting period, *Id.* Thus, Sunrise has an
23 incentive to ensure compliance at all facilities.

24 On balance, the agreed-upon procedure provides an efficient approach to
25 allow Class Counsel to monitor Sunrise’s compliance, while securing Sunrise’s
26 agreement to the Call Light Data requirements. To Class Counsel’s knowledge, no
27 other assisted living settlement has included injunctive relief with these innovative
28 and important provisions.

1 **C. Average Move-In Fee Concern**

2 Ms. Gold questions the validity of Plaintiffs’ estimated average Move-In Fee
3 (\$1,518) included in the comparison with other assisted living facility settlements.
4 As explained in Plaintiffs’ moving papers, the \$1,518 figure is based on Sunrise’s
5 estimate of the aggregate Move-In Fees paid, divided by the number of Settlement
6 Class Members. Dkt. 631-2 (Healey Decl), ¶93. It is consistent with Dr. Kennedy’s
7 analysis of the Move-In Fee billing data that Sunrise produced in discovery. *See*
8 Dkt. 438-39 (Kennedy Decl), ¶38 (total billed Move-In Fees approximately \$20
9 million, divided by estimated 16,000 residents equals average Move-In Fee of
10 \$1250). Further, deposition testimony and interviews of Class Members corroborate
11 Sunrise’s explanation that not all residents paid a Move-In Fee. Healey Reply Decl,
12 ¶7.

13 Moreover, the estimated percentage of Move-In Fee Payment recovery is
14 only one of multiple basis for Class Counsel’s assessment that the instant settlement
15 compares favorably to analogous settlements. Dkt. 631-2 (Healey Decl) ¶¶85-96.

16 **III. PLAINTIFFS’ REQUEST FOR ATTORNEYS’ FEES IS PROPER**

17 From a Settlement Class exceeding 4,000 persons, two objections have been
18 asserted to the fees and cost reimbursement requested by Class Counsel. As
19 preliminary matter, the relatively modest number of fee objections cuts in favor of
20 Class Counsel’s request. *See In re Stable Road Acquisition Corp.*, 2024 WL
21 3643393, at *14. The contentions raised by Objectors do not warrant denial of
22 Plaintiffs’ application for fees or costs reimbursement.

23 **A. Objectors Incorrectly Assume That Attorney Fees Are Capped At**
24 **A Percentage Of The Settlement Fund**

25 Contrary to Mr. Levy’s express argument (and Ms. Gold’s implied
26 contentions), an attorney fee award in a class action settlement is not capped at a
27 percentage of the monetary relief obtained.
28

1 Under the lodestar approach which should be applied here, Dkt. 631-1 (Pls
2 Fee Brief), pp. 11-13, the key factors in determining the reasonableness of a
3 requested fee are the hours worked, the hourly rate charged, and the results
4 obtained. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944 (9th Cir.
5 2011); *see also*, *Lowery v. Rhapsody Int’l, Inc.*, 75 F.4th 985, 992 (9th Cir. 2023).
6 Trial courts have discretion to “cross-check” a requested fee under a “percentage-
7 of-recovery” analysis, but percentage considerations do not cap the fee award.
8 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002).

9 Rather, if a fee award proposed under the lodestar method exceeds 25% of
10 the settlement recovery, courts take a “hard look” at the claimed lodestar to ensure
11 the requested fee is reasonable. *Lowery*, 75 F.4th at 994. Importantly, a higher
12 percentage fee award may be proper where the settlement “provides considerable
13 benefit to society through nonmonetary relief.” *Id.*, 75 F.4th at 994-995; *In re*
14 *Ferrero*, 583 Fed.Appx. 665, 668 (9th Cir. 2014).

15 To varying degrees, both objectors fail to address these controlling legal
16 principles. Mr. Levy urges the Court to cap fees at 27% of the monetary relief
17 obtained. Citing only the class notice, with no apparent consideration of Plaintiffs’
18 actual fee motion, Mr. Levy ignores the key factors under the lodestar analysis. He
19 does not mention, let alone address, the fact that Class Counsel spent over 20,900
20 hours litigating the case for 7+ years, incurred over \$15 million in lodestar fees as
21 calculated under market hourly rates, advanced over \$1.7 million in litigation costs
22 and resolved the case on terms considerably more favorable than settlements
23 reached in comparable lawsuits.

24 Ms. Gold acknowledges that Class Counsel efforts have produced a solid
25 settlement warranting a fair fee award. While not adopting the “hard cap” position
26
27
28

1 underlying the Levy Objection, Ms. Gold expresses concern that Plaintiffs’ request
2 for fees and costs amounts to “68.7 percent” of the Settlement Fund.²

3 **B. Objectors Ignore Economic Value of Injunctive Relief Obtained**

4 Objectors’ arguments are further undercut by the failure to consider the
5 economic value to Settlement Class Members from the injunctive relief obtained.
6 That directly conflicts with the Ninth Circuit’s directive that, in determining an
7 appropriate fee award, courts “must expressly consider the value that the settlement
8 provided to the class, including the value of nonmonetary relief.” *Lowery*, 75 F.4th
9 at 992; *In re Bluetooth*, 654 F.3d at 943–45.

10 Here, record evidence confirms that the Staffing, Training and Monitoring
11 (STM) provisions in the Injunction will result in a quantifiable economic benefit to
12 Settlement Class Members of at least \$9.36 million. Dkt 631-1 (Kennedy Supp
13 Decl), ¶6.

14 Dr. Kennedy’s valuation approach has been approved by multiple courts.
15 Dkt. 631-1 (Pls Fee Brief), pp. 10-11. And his valuation opinion is conservative in
16 multiple respects. It calculates the avoided harm for Settlement Class Members
17 only, even though all Sunrise residents will benefit the STM provisions in the
18 Injunction. Further, it discounts that Settlement Class Member benefit based on
19 conservative assumptions regarding resident attrition. And it calculates the benefit
20 under the STM provisions only, even though other Injunction terms (such as the
21
22

23 ² Both objectors combine litigation costs and requested fees to make their
24 “percentage cap” arguments. But reasonable expenses incurred in securing a class
25 settlement are properly “reimbursed to counsel who has incurred the expense.” *In re*
26 *Anthem, Inc. Data Breach Litigation*, Case No. 15-MD-02617-LHK, 2018 WL
27 3960068, *28 (N.D. Cal. August 17, 2018). Expense awards are routinely granted to
28 “spread the costs of the litigation among the recipients” of the class settlement
benefit. *Wininger v. SI Mgmt. L.P.*, 301 F.3d 1115, 1121 (9th Cir. 2002).

1 Disclosure provisions) provide value even not readily monetized. Dkt. 614-9
2 (Kennedy Decl), ¶¶27-29.

3 Adding the \$9.36 million in economic benefits under the Injunction to the
4 \$18.2 million monetary fund, the overall economic value to the Settlement Class
5 exceeds \$27.56 million. Considering the value of all relief obtained (including
6 injunctive relief) as *Lowery* and other cases require, Plaintiffs’ requested fee is
7 roughly 38% of the overall economic benefits of the settlement (\$10.5 requested fee
8 divided by \$27.56 million settlement value).

9 That falls squarely within the range of approved fee applications in class
10 action settlements. *Andrade-Heymsfield v. NextFoods, Inc.*, Case No. 3:21-cv-
11 01446-BTM-MSB, 2024 WL 3871634, *7 (S.D. Cal. April 8, 2024) (“some
12 [percentage of recovery] awards go up to 50%”); *Cicero v. DirectTV, Inc.*, Case No.
13 EDCV 07-1182, 2010 WL 2991486, at **6-7 (C.D. Cal. July 27, 2010) (case
14 survey shows fee awards ranging from 30-50%); *see also, Lowery*, 75 F.4th at 994
15 (“Except in extraordinary cases, a fee award should not exceed the value that the
16 litigation provided to the class”).

17 **C. Ms. Gold’s Specific Challenges to Class Counsel’s Lodestar**

18 In contrast to the Levy Objection, Ms. Gold raises specific objections to the
19 actual fee request made by Class Counsel, based on a review of Plaintiffs’ motions
20 and supporting materials, including the Lodestar Summary (which Class Counsel
21 provided to her in PDF and Excel format). As detailed below, Plaintiffs respectfully
22 disagree with Mr. Gold’s specific objections. Nevertheless, Ms. Gold’s objections
23 (and Plaintiffs’ responses) further demonstrate that Class Counsel’s lodestar
24 satisfies the “hard look” review required under *Lowery*.

25 **D. Comparison of Per-Class Member Share of Attorneys’ Fees**

26 Ms. Gold argues that, on a per-Class Member basis, the percentage of fees
27 requested here exceeds the percentage awarded in the comparable settlements. But
28

1 there is straightforward explanation for the difference. The instant case required
2 substantially more attorney time to litigate.

3 Specifically, the total lodestar in this case through September 2024 alone
4 exceeds \$15 million. In the next “closest” comparable case (Aegis), the lodestar
5 was roughly \$10.8 million. Dkt. 631-10, p. 31. In Oakmont, the lodestar was
6 roughly \$2.9 million. Dkt. 631-10, pp. 39-41. None of the other cases were litigated
7 through class certification and Daubert motions, let alone appellate proceedings on
8 those motions. And unlike Sunrise, all of the other cases settled well before trial.
9 Healey Reply Decl, ¶8.³

10 **E. Asserted Inaccuracies in Lodestar Billing**

11 Ms. Gold contends the Lodestar Summary reflects “numerous instances” of
12 different lodestar entries for attorney conferences. As a threshold matter, the fact
13 that various counsel billed different amounts of time for conferences does not make
14 the billing entry improper. On telephone conferences, some of the participants may
15 have joined (or left) the call at different times, as necessary to deal with other
16 matters. The same is true for an in-person meeting. Class Counsel’s standard
17 practice is to bill for only the time spent working on the case. Healey Reply Decl,
18 ¶21.

19 The only specific example that Ms. Gold references to support her argument
20 (the December 2023 counsel meeting) illustrates the point. The purpose for that in-
21 person meeting was to prepare for the January 2024 mediation and trial, if no
22

23 ³ The Comparative Settlement chart (which Ms. Gold references in her objection)
24 inadvertently listed the projected preliminary approval date in Sunrise as “5/10/23.”
25 That incorrectly suggests that the case duration for Sunrise and Aegis are roughly
26 equivalent. In Sunrise, preliminary settlement approval was granted (conditionally)
27 on July 26, 2024. Dkt. 626. The case has been in active litigation for over seven
28 years. In contrast, Aegis was settled after roughly 5 years and Oakmont after 3
years, again both prior to class certification or extensive trial preparation.

1 settlement was reached. Based on prior scheduling orders, Class Counsel assumed
2 that trial would be set for mid-2024. The class trial would have involved a
3 significant number of witnesses and required presentation of complex evidence,
4 such as the MedModel staffing analysis. Healey Reply Decl, ¶10.

5 The meeting was held in Texas, to facilitate participation by David Marks
6 and his trial prep team. The meeting occurred over a four-day period (December 4-
7 8, 2023), with various team members attending for different durations. Mr. Marks
8 and members of his team -- attorneys Jacques Ballette, Brent Moss, and Jim
9 Thornton, Harry Fleming (investigator) and Sterling Meachen (graphics expert) –
10 set up the meeting presentations and spent the first day preparing video interviews
11 of key witnesses, preparing potential trial exhibits, identifying critical language in
12 jury instructions/jury questions, and other materials for group discussion. Three
13 other Class Counsel (Chris Healey, Michael Thamer and Megan Yarnall) arrived on
14 December 5 and participated in two full meeting days and left on December 8.
15 Healey Reply Decl, ¶12.

16 Over the course of the meeting, team members worked on delegated tasks in
17 addition to participation in joint sessions. For example, Mr. Marks' trial team
18 worked on the witness video interviews with Megan Yarnall, as her firm headed up
19 the initial efforts to identify potential witnesses. Also, as expected, some team
20 members excused themselves at various times to attend to other work obligations.
21 For these and other reasons, it is not surprising if time entries for the meeting vary.
22 Healey Reply Decl, ¶13.

23 **F. Challenge to Collective Billing For December 2023 Meeting**

24 Ms. Gold calculates the collective time associated with the December 2023
25 meeting was \$130,435, which she views as excessive. The argument overlooks
26 several key considerations.

27 The December 2023 meeting was necessary to prepare for the January 2024
28 mediation, which given prior unsuccessful mediation efforts represented the last

1 realistic opportunity to reach a settlement before a fast-approaching trial date. At
2 the urging of the primary trial counsel (David Marks and Michael Thamer),
3 extensive efforts were devoted to refining jury instructions and jury questionnaires,
4 summarizing key record support to meet the jury charge elements, and most
5 significantly, preparing video interviews of key family members and resident
6 witnesses. Healey Reply Decl, ¶¶14-15.

7 Given an anticipated trial in mid-2024, all of that work had to be undertaken.
8 And by substantially completing those tasks prior to the January 2024 mediation,
9 Class Counsel could credibly demonstrate with tangible work product presented to
10 the mediator that Plaintiffs were ready to try the lawsuit absent a settlement.
11 Without question, the extensive preparation during the December 2023 meeting and
12 thereafter leading to the mediation directly impacted the mediator's case evaluation,
13 which in turn lead to her mediator's proposal (\$18.2 million plus injunctive relief)
14 upon which the settlement is based. Healey Reply Decl, ¶15.

15 Additionally, Ms. Gold questions the different travel time entries for three
16 attorneys who attended the Texas mediation/trial prep meeting. The travel time
17 varied because the three attorneys traveled from different home locations. Chris
18 Healey traveled from San Diego, a relatively modest distance. In contrast, Megan
19 Yarnall (Eureka) and Michael Thamer (Callahan, California) traveled much greater
20 distances, involving multiple stops. Indeed, Mr. Thamer's travel from Callahan
21 required driving to Medford, Oregon, catching a flight to Salt Lake City and then
22 another flight to Texas. Healey Reply Decl, ¶16.

23 The participation of both attorneys was critical. Among other contributions,
24 Ms. Yarnall's office headed up the identification and initial interviews of family
25 members and resident witnesses. Her in-person participation in the follow-up
26 witness interviewing work undertaken by Mr. Marks' trial team was extremely
27 important. The same is true for Mr. Thamer. As the lead trial lawyer in several
28 seminal California elder prosecutions (including the Skilled Healthcare case tried to

1 jury verdict), *see* Dkt. 631-12, ¶12, Mr. Thamer’s input on witness presentation,
2 mediation arguments and overall trial preparation was crucial. Healey Reply Decl,
3 ¶17.

4 As reflected in the reductions shown in the Lodestar Summary, travel to the
5 December 2023 meeting (as with all travel time) has been discounted by 50%.
6 Healey Reply Decl, ¶18; Ex 1 (Updated Lodestar Summary). That reduction is
7 consistent with accepted practice in other class settlements. *In re Washington*
8 *Public Power Supply Sys. Sec. Lit.*, 19 F.3d 1291, 1298–99 (9th Cir. 1994)
9 (approving 50% reduction of “entire duration of the time spent in transit”).

10 **G. Claim of “Double Billed” Hours**

11 Ms. Gold asserts that some tasks – specifically phone calls and meetings”
12 were double (or even triple billed). Ms. Gold provides no support for this assertion.
13 Regardless, the presence of a similar (or even same) description for work performed
14 does not establish double billing. Depending on the day in question, an attorney
15 may have actually participated in the multiple calls or meetings, and properly
16 recorded that time as discrete entries with the same narrative description. See
17 Healey Reply Decl, ¶9.

18 **H. Imposing a Further Negative Multiplier On Class Counsel’s Fees 19 Would Be Unfair and Contrary To California Legislative Intent**

20 Through September 24, 2024, Class Counsel had billed 20,903 hours
21 resulting in lodestar fees of over \$15 million. After billing judgment and other
22 adjustments, Class Counsel’s reduced lodestar is \$13.6 million. Plaintiffs’ fee
23 request (\$10.5 million) is \$3.1 lower than the adjusted lodestar fees, representing a
24 discount of 22.8% discount (.77 negative multiplier). *See* Dkt. 631-2 (Healey Decl),
25 ¶¶106-109.

26 Despite this, Objectors urge the Court to impose a further discount (negative
27 multiplier) on Class Counsel’s fees, but have no legal or factual basis to support the
28 request. Mr. Levy raises no specific objections to Class Counsel’s lodestar, aside
from his flawed fee cap position. Even if the Court were to credit each of Ms.

1 Gold’s arguments (and it should not), Plaintiffs’ fee request is still millions of
2 dollars *below* any fair calculation of Class Counsel’s *reduced* lodestar.

3 An attorney’s lodestar figure is “presumptively reasonable.” *Cunningham v.*
4 *Cnty. of Los Angeles*, 879 F.2d 481, 488 (9th Cir.1988); *In re Bluetooth*, 654 F.3d at
5 941. Courts can adjust lodestar fees “upward or downward” to ensure a reasonable
6 fee award, in consideration of factors such as the “quality of representation, the
7 benefit obtained for the class, the complexity and novelty of the issues presented,
8 and the risk of nonpayment.” *In re Bluetooth*, 654 F.3d at 941-942. But far from
9 justifying a lodestar reduction, application of the *Bluetooth* factors demonstrates an
10 “upward” adjustment would be warranted here.

11 As both Objectors effectively concede, the settlement provides considerable
12 benefits to the Settlement Class. The settlement result underscores the quality
13 representation provided by Class Counsel, particularly given the substantial
14 litigation challenges presented a well-resourced defendant represented by highly
15 skilled and aggressive defense counsel. *See In re American Apparel, Inc. S’holder*
16 *Litig.*, Case No. CV 10-06352 MMM (JCGx), 2014 WL 10212865, at *22 (C.D.
17 Cal. 2014) (court considers “quality of opposing counsel as a measure of the skill
18 required to litigate the case successfully”). The economic loss claims asserted here
19 on a class basis, with the overlay of seeking injunctive relief to address important
20 facility staffing concerns, triggered multiple complex and novel issues. Those
21 issues received extensive consideration by this Court and the Ninth Circuit on
22 appeal.

23 Further, Plaintiffs’ fee request arises under mandatory fee-shifting provisions
24 in California’s Consumer Legal Remedies Act (CLRA) and Elder Financial Abuse
25 statutes. Cal. Civil Code §1780(e); Cal. W&I Code § 15657.5. The Legislative
26 intent underlying those fee provisions is to “incentivize counsel” to protect
27 consumers through “publicly beneficial litigation.” *In re Cobra Sexual Energy*
28 *Sales*, Case No. 2:13-cv-05942-AB-Ex , 2021 WL 4535790, *18 (C.D. Cal. April 7,

1 2021) (CLRA); *Arace v. Medico Investments LLC*, 48 Cal.App.5th 977, 981-982
2 (2020) (Elder Financial Abuse).

3 Imposing a 25% or some other artificial cap on attorneys' fees here would
4 undermine Legislative intent and purpose. Simply put, a hard cap imposed
5 regardless of result obtained and work performed will discourage quality counsel
6 from taking on significant consumer protection cases and staying the course
7 through extended and challenging litigation.

8 The following hypothetical illustrates the point. Assume a reputable law firm
9 is contacted by family members expressing concern that loved ones residing in an
10 assisted living facility are routinely denied promised care. A quick Google check
11 confirms the chain that operates the facility has been sued in the past for
12 insufficient staffing. The case took years to resolve, with the docket reflecting
13 scorched-earth discovery fights, extensive motion practice and significant appellate
14 proceedings. The case was eventually resolved through a favorable settlement,
15 including substantive injunctive relief to address the underlying contentions. Yet,
16 the record shows that the fee request made by prevailing plaintiffs' counsel was
17 reduced to well below market lodestar rates.

18 Far from "incentivizing" the prosecution of meritorious cases, imposing an
19 arbitrary fee cap discourages competent counsel from taking on difficult cases. And
20 yet that is the result that Objectors urge here, despite effectively conceding that this
21 lawsuit was justified and necessary.

22 **IV. REQUEST FOR REIMBURSEMENT OF COSTS/EXPENSES**

23 To further support the request for reimbursement of litigation costs and
24 expenses, Plaintiffs have submitted a detailed Costs Summary. Healey Reply Decl,
25 ¶2. Supplementing the information provided in Plaintiffs' previously filed Lodestar
26 Spreadsheet, Dkt. 631-7, the Costs Summary lists the specific costs/expenses by
27 category for each Class Counsel seeking reimbursement. *See Wren v. RGIS*
28 *Inventory Specialists*, Case No. C-06-05778 JCS, 2011 WL 1230826, at *30 (N.D.

1 Cal. Apr. 1, 2011), supplemented, Case No. C-06-05778 JCS, 2011 WL 1838562
2 (N.D. Cal. May 13, 2011). If requested by the Court, Plaintiffs can provide invoices
3 or other backup for the listed cost/expense items.

4 As detailed in the Cost Summary, the categories of costs/expenses for which
5 reimbursement is sought are the “types of expenses routinely charged to clients who
6 pay hourly.” *In re Stable Road* * 16; *see also, In re Immune Response Sec. Litig.*,
7 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (approving reimbursement for “1)
8 meals, hotels, and transportation; 2) photocopies; 3) postage, telephone, and fax; 4)
9 filing fees; 5) messenger and overnight delivery; 6) online legal research; 7) class
10 action notices; 8) experts, consultants, and investigators; and 9) mediation fees.”).

11 For the Court’s benefit, Plaintiffs provide clarification on two items in the
12 Cost Summary. First, under the Experts/Consultants category, the line entries for
13 several Class Counsel show payments made to Marks Balette as reimbursement for
14 the expert/consultant charges. That is because Marks Balette advanced the initial
15 payments to certain experts (principally MedModel and Dr. Flores) and were
16 subsequently reimbursed by other Class Counsel. Given the reimbursements
17 received from the Class Counsel, the initial expert payments are not included in
18 Marks Balette’s request for costs/expense reimbursement. Healey Reply Decl, ¶22;
19 Ex. 2 (Cost Summary, Marks Balette tab).

20 Second, the Marks Balette expenses include expert consulting fees paid to
21 Blake Peters of Superior Analytics. Mr. Peters is a highly skilled data analyst who
22 reviewed, analyzed and summarized the extremely large volumes of data produced
23 in the case, including the resident assessment data used in the MedModel staffing
24 analysis. Dkt. 631-11, ¶17(e).⁴ Mr. Peters is a contractor who exclusively provides

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26 ⁴ Mr. Peters analyzed and generated specific reports regarding (1) over 9.9 million
27 cells of resident assessment data that identified the care services provided to all
28 Sunrise residents and (2) over 4.0 million cells of punch detail staffing data for all
staff members. Both were necessary inputs for ProModel in order for it to conduct

1 data analytic services to Marks Balette in support of the legal services provided by
2 that firm. The Marks Balette costs/expenses reimbursement request in this case
3 includes \$420,833.75 pertaining to Mr. Peters/Superior Analytics, which consists of
4 the following: (a) an SAS usage fee of \$1.623.75; and (b) a charge of \$419,210 for
5 the data analysis services provided by Mr. Peters/ Superior Analytics on the Sunrise
6 case. The \$419,210 includes an overhead markup of approximately .63 on the
7 \$256,155.52 that Marks Balette paid to Superior Analytics/Peters for work on the
8 Sunrise case. Healey Reply Decl, ¶24. That comports with overhead charges
9 approved in analogous settings. *See In re Anthem, Inc. Data Breach Litigation*,
10 2018 WL 3960068 *18-20 (contract attorneys properly billed as a cost item; court
11 approves overhead markups ranging from 2.69 to 8.6).

12 In her Objection, Ms. Gold expresses generalized concerns with Plaintiffs'
13 litigation costs, but has not yet provided specific objections to Plaintiffs' cost
14 reimbursement request. If specific concerns are raised, Class Counsel will review
15 the same to determine if any further cost reductions are warranted.

16 **V. NO OBJECTION ASSERTED TO SERVICE AWARDS REQUEST**

17 Neither Objector challenges the request for \$15,000 service awards to the
18 Named Plaintiffs (for a total of \$30,000). As detailed in Plaintiffs' opening brief,
19 the requested awards are warranted under applicable law and the considerable
20 contributions made by both Named Plaintiffs.

22 **VI. CONCLUSION**

23 For the reasons set forth herein and the moving briefs, Plaintiffs respectfully
24 request that the Court grant Plaintiffs' motion for final settlement approval and
25

26 _____
27 the over 1.3 million discrete event simulation tests that were performed in this
28 matter. Dkt. 631-11 (Marks Declaration), pp. 10-16.

1 Plaintiffs’ motion for attorneys’ fees, costs and service awards. Proposed orders for
2 both motions are submitted for the Court’s review.

3 Dated: November 1, 2024

Respectfully submitted,

4 _____
s/Christopher J. Healey

5 Christopher J. Healey
6 DENTONS US LLP

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8 Attorneys for Plaintiffs and the Class

9 [Other Counsel Listed on Service Page]
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