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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 Helen Ganz,
5 by and through her Guardian ad Litem,
6 Elise 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)

**DECLARATION OF
CHRISTOPHER J. HEALEY IN
SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL CLASS
SETTLEMENT APPROVAL;
MOTION FOR ATTORNEYS'
FEES, COSTS AND SERVICE
AWARDS**

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

1 I, Christopher J. Healey, hereby declare,

2 1. I am an attorney duly licensed to practice before all the courts of the
3 State of California and am a member in good standing of the State Bar of
4 California. I am a partner in the law firm of Dentons US LLP (“Dentons”) and am
5 one of the Class Counsel in the above captioned matter (the “Action”). I am
6 submitting this Declaration in support of Plaintiffs’ Motion for Final Approval of
7 Class Settlement and Plaintiffs’ Motion for Attorneys’ Fees, Costs and Service
8 Awards. Unless otherwise indicated, I have personal knowledge of the facts set
9 forth herein. If called upon to testify, I could and would do so competently.

10 **Background and Experience**

11 2. Over the course of this 7+ year litigation, I have been privileged to
12 work with talented and dedicated co-counsel and supporting personnel, representing
13 the interests of Named Plaintiffs and the certified Class. The credentials and
14 experience of these extraordinary lawyers and support personnel are set forth in the
15 declarations submitted by other Class Counsel in support of Plaintiffs’ motions.

16 3. Along with the other Class Counsel, I have substantial experience in
17 class action litigation and, in particular, class action cases involving nurse staffing
18 in nursing homes.

19 4. I was admitted to the State Bar of California in 1982. From 1982
20 through 1984, I served as a law clerk to the Honorable William B. Enright, United
21 States District Court Judge for the Southern District of California. I have tried
22 more than ten cases to verdict before a jury or judge. My primary area of expertise
23 is class action litigation.

24 5. From 2010 through the present, I have been listed in The Best Lawyers
25 in America® publication in the areas of Mass Torts, Commercial Litigation, and
26 Bet the Company Litigation (for 2024). I have an “AV” rating from Martindale-
27 Hubbell. Since 2008, I have been selected as a San Diego California “Super
28 Lawyer” (Class Actions). In 2015, I was listed as a Southern California “Super

1 Lawyer” (Class Actions). In 2011, I was included in the “Top 100 Attorneys” for
2 California by the Los Angeles Daily Journal. I am a former Board Member on the
3 Association of Business Trial Lawyers (San Diego Chapter). I have written and
4 lectured on litigation and class action issues.

5 6. For most of my 40-plus years of law practice, I have primarily
6 defended clients sued in consumer and business class actions. In approximately
7 2006, however, I joined with co-counsel, Michael Thamer, Tim Needham and other
8 attorneys to prosecute a class action on behalf of nursing home residents filed
9 against Skilled Healthcare (“Skilled”) to address understaffing and related issues in
10 22 facilities owned or operated by Skilled throughout California. We obtained class
11 certification and, after extensive trial court proceedings, defeated Skilled’s motion
12 to decertify the class. After a trial lasted approximately six months, the jury
13 awarded over \$670 million to the plaintiff class. The case settled before the
14 punitive damages phase for \$50 million and injunctive relief to address the
15 underlying staffing violations.

16 7. Mr. Thamer, Mr. Needham and I jointly received a California Lawyer
17 of the Year (CLAY) award in 2010 for our work in the Skilled Healthcare lawsuit.
18 We were also named Consumer Attorneys of the Year (2010) by Public Justice and
19 CAOC for work on that case.

20 8. Along with other Class Counsel, I have been approved by California
21 state and federal courts to serve as Class Counsel in multiple other consumer class
22 actions involving nurse staffing allegations in nursing homes.

23 9. Along with other Class Counsel, Dentons’ attorneys have been at the
24 forefront on nurse understaffing and related issues in nursing homes resulting in
25 reported decisions, including decisions concerning class actions involving
26 understaffing allegations. *See e.g., Conservatorship of Gregory* (2000) 80 Cal.
27 App. 4th 514; *Fitzhugh v. Granada Healthcare LLC* (2007) 150 Cal. App. 4th 469;
28 *Shuts v. Covenant Holdco LLC* (2012) 208 Cal.App.4th 609; *Walsh v. Kindred*

1 *Healthcare* (N.D. Cal 2011) 798 F. Supp. 2d 1073; *Wehlage v. EmPres Healthcare*
2 *, Inc.* (N.D. Cal 2011) 791 F. Supp. 2d 774; *Winans v. Emeritus Corp.*, 2014 WL
3 970177 (N.D. Cal. Mar. 5, 2014); *Newirth v. Aegis Senior Communities LLC*, 2017
4 WL 3328073 (N.D. Cal. May 18, 2017); *Heredia v. Sunrise Senior Living LLC*,
5 2019 WL 5149854 (C.D. Cal. Mar. 4, 2019); [add Heredia 9th Cir].

6 **Coordination Between Class Counsel**

7 10. This complex class action case required diverse areas of specialized
8 expertise, ranging from an experienced understanding of how assisted living
9 facilities operate and staff, to the nuances of class certification proceedings at trial
10 and appellate levels, to the detailed trial preparation by seasoned jury trial
11 attorneys.

12 11. Multiple firms were needed to share the workload. During the course
13 of this litigation, Sunrise was represented by at least ten lawyers from Gibson Dunn
14 and Snell & Wilmer, not counting Sunrise's settlement counsel, Charlie Lee
15 (Moore & Lee, LLP).

16 12. Further, multiple firms were required by Plaintiffs to share the burden
17 of significant litigation costs and expenses. That included costs associated with the
18 state-of-the-art MedModel computer simulation analysis, which supported the key
19 shortfall analysis of Sunrise facility staffing.

20 13. In an effort to minimize duplication of effort, the respective Class
21 Counsel firms took lead responsibility for various aspects of the case prosecution.
22 The complete description of work performed is contained in the detailed billing
23 records submitted to the Court in connection with Plaintiffs' fee application. An
24 overview of the responsibilities between Class Counsel is summarized here.

25 14. **Dentons US, LLP.** Dentons had lead responsibility for responding to
26 Sunrise's pleading challenges, including multiple motions to dismiss and Sunrise's
27 motion to strike equitable relief. Along with Schneider Wallace, Dentons also had
28 co-lead responsibility on the class certification issues, including multiple motions at

1 the trial court level and appellate proceedings before the Ninth Circuit. As Dentons'
2 lead partner, I argued the pleading challenges, class motions and the Ninth Circuit
3 appeal.

4 15. Former Dentons' partner, Robert Cocchia, had primary responsibility
5 for meet and confer and motion practice on Plaintiffs' initial discovery requests.
6 When Mr. Cocchia left Dentons in approximately June 2020, the Schneider Wallace
7 and Stebner firms assumed primary responsibility on discovery meet and confer
8 efforts, supported by Stefanie Warren (Trails Law Group), with Dentons assisting
9 on discovery motion practice.

10 16. With assistance from Stefanie Warren and other Class Counsel, I
11 deposed multiple Sunrise personnel, including Sunrise's FRCP 30(b)(6) witness
12 (Jeff Slichta) and Sunrise's damages expert (Robert Walker). Along with Guy
13 Wallace, I had lead responsibility for interfacing with Plaintiffs' damage expert,
14 Patrick Kennedy.

15 17. Dentons also had lead responsibility for drafting Plaintiffs' mediation
16 briefs, the Settlement Stipulation and exhibits (excluding the Injunction), as well as
17 Plaintiffs' motion for preliminary settlement approval and the instant fee
18 application.

19 18. **Schneider, Wallace, Cottrell, Konecky.** Schneider Wallace ("SW")
20 had co-lead responsibility on class certification issues in the case. Schneider
21 Wallace, Guy Wallace, has prosecuted plaintiffs-side class actions throughout his
22 29-year career. In contrast, I defended class actions for a substantial portion of my
23 career. Given the importance of class certification to the overall case success, I
24 believe the diverse perspectives justified shared lead responsibility on this issue.

25 19. Along with the Stebner firm, Schneider Wallace shared lead
26 responsibility for drafting Plaintiffs' initial and amended complaints, discovery
27 meet and confer (after Mr. Cocchia's departure), and defending the Named
28 Plaintiffs' depositions. Schneider Wallace also supported witness investigation

1 efforts and oversaw the Relativity database that Class Counsel shared to access
2 produced documents and data.

3 20. **Stebner, Gertler & Guadagni.** Kathryn Stebner is a recognized
4 expert in elder abuse and facility understaffing issues. As with other Class Counsel,
5 David Marks and Michael Thamer, Ms. Stebner has substantial trial experience,
6 with substantial trial experience on elder abuse issues.

7 21. The Stebner firm was engaged by the Named Plaintiffs and handled
8 client communications regarding case status throughout the lawsuit. With
9 Schneider Wallace, the Stebner firm defended the Named Plaintiffs' depositions.
10 Ms. Stebner deposed multiple Sunrise employees and consulted on other
11 depositions of defense personnel. After Mr. Cocchia's departure, Brian Umpierre
12 of the Stebner firm had lead responsibility on meet and confer on document and
13 data discovery, supported by the Schneider Wallace firm and other Class Counsel.

14 22. Ms. Stebner also played a crucial role in the January 2024 mediation
15 and subsequent settlement negotiations, relying on substantial prior experience with
16 Sunrise's settlement counsel, Charlie Lee. Those efforts included critical
17 negotiations regarding the stipulated Injunction.

18 23. **Marks, Balette, Giessel & Young.** With a career spanning over 45
19 years, David Marks has a national reputation as a preeminent trial lawyer on elder
20 abuse generally and understaffing claims specifically. The Marks firm had lead
21 responsibility interfacing with and defending depositions of Plaintiffs' staffing
22 experts, Christina Flores and Dale Schroyer. That work included lead
23 responsibility in interfacing with Mr. Schroyer on the MedModel staffing analysis.
24 Mr. Marks also deposed Sunrise expert witnesses (Rob Crandall and Michael
25 Ward) who challenged Plaintiffs' staffing analysis.

26 24. Supported by Kathryn Stebner and Michael Thamer, David Marks
27 provided the crucial "trial lawyer" perspective throughout the case. For example, at
28 Mr. Marks' direction, a subset of Class Counsel engaged in a multi-day trial

1 preparation in advance of the January 2024 mediation. As a result, Plaintiffs’
2 mediation presentation included powerful witness interviews, along with detailed
3 jury instructions, verdict forms and other trial materials, all of which reinforced
4 Plaintiffs’ commitment to try the lawsuit if an appropriate settlement was not
5 reached.

6 25. **Law Offices of Michael Thamer.** Michael Thamer is a nationally
7 recognized trial lawyer in elder abuse and understaffing claims. Mr. Thamer was
8 the lead trial lawyer in the seminal Skilled Healthcare class lawsuit, which resulted
9 in a \$630 million verdict. Mr. Thamer had lead responsibility on the first
10 deposition of a Sunrise employee (Joseph Villaneuva), which served as a
11 springboard for subsequent discovery efforts. Mr. Thamer provided trial lawyer
12 oversight throughout the lawsuit, including at both mediations and in extensive trial
13 preparation that preceded the January 2024 mediation.

14 26. **Janssen, Malloy LLP.** The Janssen firm has extensive experience in
15 litigating elder abuse and understaffing claims, including the Skilled Healthcare
16 trial. Lead by Megan Yarnall (partner) and Karen Ellis (senior paralegal), the
17 Janssen firm had lead responsibility for identifying and interview potential trial
18 witnesses. Over 250 potential witnesses were interviewed, many of which kindly
19 sat for extensive interviews that provided real world support for Plaintiffs’ claims in
20 connection with the January 2024 mediation.

21 27. Ms. Yarnall had responsibility for document review and investigation
22 regarding the “happy resident” declarations submitted in support of Sunrise’s
23 defense. She also reviewed extensive Department of Social Service (DSS) records
24 to identify deficiencies and complaints regarding Sunrise facilities.

25 28. Ms. Yarnall also had co-lead responsibility in the defense of multiple
26 third party witnesses who were deposed by Sunrise. Former Janssen partner, Tim
27 Needham, also deposed Sunrise’s staffing expert (Edna Musoke).

28 29. **Trails Law Group APC.** Stefanie Warren of Trails Law Group is a

1 former Dentons' attorney with substantial experience on class litigation. She
2 supported depositions of multiple Sunrise employees, including the deposition of
3 Sunrise's PMK witness (Jeff Slichta).

4 30. **Oliver & Schreiber LLP.** Monique Oliver is a preeminent appellate
5 advocate, with extensive experience before the Ninth Circuit. She provided crucial
6 support on Plaintiffs' appellate briefing and oral argument preparation.¹

7 **Case Investigation and Discovery**

8 31. Plaintiffs engaged in substantial investigation and discovery in this
9 case. Those efforts included extensive review of publicly-available documents
10 regarding Sunrise and its California facilities, interviews with third party witnesses,
11 and extensive written and deposition discovery during the lawsuit.

12 **Investigation**

13 32. Plaintiffs' investigation efforts included an extensive review by Class
14 Counsel of citations issued by and complaints lodged with California's Department
15 of Social Services. Dkt. 288-42 (Yarnall Decl), ¶¶2-10.

16 33. Class Counsel (and investigators working at Class Counsel's direction)
17 interviewed numerous potential witnesses, including approximately 250 family
18 members of current or former Sunrise residents. As indicated, the Janssen and
19 Marks firms took the lead on this work. As a result of these efforts, Plaintiffs'
20 mediation presentation included previews of trial testimony from multiple
21 witnesses with first-hand experience of understaffed conditions at Sunrise facilities.

22 **Document Discovery**

23 34. With respect to formal discovery efforts, parties engaged in extensive
24 document discovery. Class Counsel (and personnel working at Class Counsel's
25 direction) reviewed and analyzed substantial volume of documents and data
26

27 ¹ Although not one of the Class Counsel listed in the Court's certification order, for
28 ease of reference, Ms. Oliver's lodestar is included in the Class Counsel Lodestar
Summary.

1 produced by Sunrise. In total, Sunrise produced over 190,000 pages (in nearly
2 9,400 separate documents). Sunrise’s production comprised more than 115 GB of
3 data, including 762 Excel files, 244 PowerPoint files, 2,850 PDFs, and over 2,400
4 email communications. Sunrise also produced about 670 pages in 86 documents of
5 expert materials. In response to Sunrise’s discovery requests, Plaintiffs produced
6 approximately 18,600 pages of documents. In addition, Plaintiffs produced roughly
7 1100 pages of expert witness materials and documents relied on by Plaintiffs’
8 expert witnesses.

9 35. Additionally, the parties both served and responded to interrogatory
10 discovery. Plaintiffs’ interrogatory discovery included *Belaire-West* identification
11 of putative class members.

12 **Deposition Discovery**

13 36. In addition to written discovery, the parties engaged in substantial
14 deposition discovery. Plaintiffs took ten depositions, consisting of six lay witnesses
15 (including the deposition of Jeff Slichta, Sunrise’s Rule 30(b)(6) designee), and
16 Sunrise’s four expert witnesses. Additionally, Plaintiffs interviewed Tiffany Nobece,
17 who was produced by Sunrise in response to the Court-ordered Care Labor
18 Management (CLM) inspection. Sunrise conducted nine depositions, including the
19 two named Plaintiffs, four family members of absent class members and Plaintiffs’
20 three experts.

21 **Expert Discovery**

22 37. Through their retained expert witnesses, Plaintiffs also undertook
23 extensive review and analysis of key issues in the lawsuit, including Sunrise’s
24 staffing policies, the impact of those policies on facility staffing levels, and the
25 impact of staffing levels on the provision of care services to Sunrise residents. Dkt.
26 438-40 (Flores Decl), ¶¶22-46. Plaintiffs’ experts reviewed extensive electronic
27 resident assessment data, staffing data and other records to analyze staffing at
28 Sunrise facilities. Dkt. 242-2 (Schroyer Reply Decl), ¶¶70-71; Dkt. 438-55

1 (Kennedy Reply Decl), ¶18. That work included the staffing shortfall analysis
2 undertaken using the MedModel discrete event simulation program. Schroyer Reply
3 Decl, ¶¶59-73.

4 **Discovery Meet/Confer and Motion Practice**

5 38. Obtaining discovery from Sunrise was challenging and time-
6 consuming. Over the course of the litigation, Class Counsel prepared and sent
7 hundreds of discovery-related correspondence (letters or emails), engaged in 48
8 telephonic meet and conferences with defense counsel, briefed and argued and
9 argued 11 discovery motions.

10 **Case Proceedings**

11 39. This action has been vigorously litigated from inception. Plaintiffs
12 initially filed this action on June 27, 2017 in California state court. After Sunrise
13 removed the case to Federal court, Sunrise filed motions to compel arbitration or
14 dismiss and to transfer venue to the Central District. Dkt. 15. By order dated
15 October 31, 2018, the Northern District court compelled arbitration and stayed the
16 proceedings as to plaintiff Audrey Heredia, transferred venue to the Central District,
17 but deferred ruling on Sunrise's other motions. Dkt. 42. On January 9, 2019, Sunrise
18 filed a renewed motion to dismiss and further moved to strike the class allegations.
19 Dkt. 54. On March 4, 2019, this Court denied Sunrise motions. Dkt. 65.

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

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

1 with the Court, Dkts 614-3, but are attached as **Exhibits 1 and 1.1** to this
2 Declaration for ease of review. The Settlement Addendum, executed on or about
3 June 10, 2024 as discussed below, is attached as **Exhibit 2** to this Declaration.

4 46. Plaintiffs' motion for preliminary settlement approval was filed on
5 April 17, 2024, supported by declarations from Counsel, multiple experts (Dr.
6 Kennedy and Dr. Flores), Named Plaintiffs and multiple class members. Dkts 614,
7 614-6 thru 614-9, 622-2.

8 47. After in-person oral argument, on May 31, 2024, the Court continued
9 the motion to allow the parties to revise the proposed distribution of settlement
10 payments. Thereafter, the parties negotiated a revised settlement payment formula
11 accounting for a Class Member's duration of stay at Sunrise. See Dkt 624-1
12 (attaching Settlement Addendum). On July 26, 2024, the Court conditionally
13 granted preliminary settlement approval, subject to requested changes to the
14 Settlement Class Notice. Dkt. 626. After those changes were made, on August 8,
15 2024, the Court granted Plaintiffs' motion for preliminary settlement approval. Dkt
16 628.

17 **Settlement Terms**

18 **Settlement Fund**

19 48. Under the settlement agreement, Sunrise has agreed to pay \$18.2
20 million into a Settlement Fund to resolve all monetary obligations owed under the
21 settlement.

22 49. The Settlement Fund will be used to pay for class notice/settlement
23 administration costs, service awards to the named Plaintiffs, attorneys' fees and
24 reimbursement of litigation costs advanced by Class Counsel, with all amounts
25 subject to Court approval. SS, ¶¶1.16, 9.1, 9.4.

26 50. Factoring in an agreed-upon reserve of \$25,000 to cover late claims,
27 SS, ¶1.28, if Plaintiffs requested (and the Court approved) the maximum amounts
28 permitted to be requested under the Settlement Stipulation, the Net Settlement

1 Payment amount available to fund Settlement Awards would have been
2 approximately \$5.1 million. As detailed below, due to Class Counsel’s reductions
3 in the amounts requested for attorneys’ fees and reimbursement of litigation
4 expenses, the projected Net Settlement Payment amount available to fund
5 Settlement Awards will be approximately \$5.87 million. See Updated Comparative
6 Settlements Summary, attached as **Exhibit 3** to this Declaration. The actual
7 amount of the Net Settlement Payment will depend on the amounts of fees, costs
8 and service awards approved by the Court.

9 **Payments to Settlement Class Members**

10 51. The Settlement Stipulation provides for cash payments to Settlement
11 Class Members (or if deceased, their legal successors) on a direct distribution basis,
12 with no claim form requirement to obtain payment. The Settlement Class includes
13 all persons falling within the scope of the litigation class certified by the Court, See
14 Dkts. 504, 606, as well as “not subject to arbitration” residents from Sunrise of
15 Cupertino and Sunrise of Orange, two facilities that Sunrise opened in the Fall of
16 2023.

17 52. The Settlement Awards will be paid to Settlement Class Members (or
18 if deceased, their legal successors) with no claim form requirement. The Settlement
19 Administrator will mail settlement checks to each Settlement Class Member (or, if
20 applicable, their successor or authorized representative) for whom a valid address
21 has been provided by Defendant or located by the Administrator through address
22 update procedures.

23 53. For Settlement Class Members for whom no current address has been
24 located, the Administrator is authorized to make payment pursuant to a
25 “Distribution Request.” SS, ¶¶7.4, 7.5. The Distribution Request is not a claim
26 requirement. Rather, it is a mechanism to help ensure that settlement payments are
27 made to Settlement Class Members (or their legal successors), if they are entitled to
28 such payment.

1 54. Sunrise previously estimated that there would be approximately 3500
2 Settlement Class Members. After reviewing resident files, Sunrise determined that
3 4183 residents properly fall within the definition of the Settlement Class. Based on
4 the updated Settlement Class size, and the fees/costs reductions referenced above, I
5 estimate the average per-Settlement Class Member payments (for the initial round
6 of distribution payments) will be approximately \$1,403. See Exhibit 3 (Updated
7 Comparative Settlements Summary).

8 55. The actual per-Class Member payments will depend on the duration of
9 the Settlement Class Member's tenure at their Sunrise facility, pursuant to the
10 revised plan for allocating settlement funds to Settlement Class Members.
11 Specifically, in response to the Court's comments at the May 31, 2024 hearing on
12 Plaintiffs' motion for preliminary settlement approval, the parties agreed to revise
13 the proposed formula for calculating settlement payments to include consideration
14 of the duration of each class member's residency at a Sunrise facility. Under the
15 proposed allocation plan, each Settlement Class Member would be paid a "Base
16 Payment" of \$500 plus an additional "Residency Days Payment," calculated based
17 on the resident's duration of stay at a Sunrise California Community. The proposed
18 plan is confirmed in the Settlement Addendum, attached as Exhibit 2 hereto.

19 56. Class Counsel believe the updated plan for allocation of settlement
20 payments is appropriate. The proposed \$500 Base Payment is reasonable given the
21 common economic injury that, per Plaintiffs' allegations, all Settlement Class
22 Members share just by transacting with Sunrise. The amounts paid in Move-In
23 Fees by Sunrise residents appear to range from roughly \$1000 to \$5000 based on
24 anecdotal evidence available. In contrast, in other assisted living facility litigation
25 where the settlement payments were calculated based on move-in or equivalent fees
26 paid, the differences between class members was \$20,000 or more. While some
27 Settlement Class Members paid no Move-In Fee, they arguably incurred
28 "transaction costs" and other injury by contracting with Sunrise, as opposed to

1 pursuing alternative service providers. In addition, Settlement Class Members
2 sustained alleged injuries as a result of monthly Service Fees paid. The updated
3 distribution plan under the Settlement Addendum reasonably accounts for varying
4 amounts paid by adjusting the “Residency Days Payment” based on the resident’s
5 duration of stay.

6 **Stipulated Injunction**

7 57. The Settlement Stipulation includes Sunrise’s agreement to a
8 Stipulated Injunction, which is subject to Court approval, will commence 60 days
9 after the Effective Date and remain in place for thirty months (2.5 years) from that
10 date.

11 58. Dr. Flores’ declaration in support of the preliminary approval motion
12 describes how the Injunction terms (in particular, the Staffing, Training and
13 Monitoring requirements) will materially increase the likelihood that Sunrise’s
14 future staffing policies will ensure facility staffing is sufficient to timely provide
15 promised care services to Sunrise residents. Among other terms, the Injunction
16 eliminates the “round down” provision included in Sunrise’s Daily Labor Report
17 (DLR) staffing formula. Injunction, ¶7.

18 59. As part of the Monitoring Requirements, Sunrise must provide reports
19 to Class Counsel showing facilities’ response times to resident requests for
20 assistance (“Call Light Request/Response Data”) on a quarterly basis. Injunction,
21 ¶¶9-12. As the call light data shows how quickly Sunrise responds to resident
22 requests, it provides an effective way to monitor whether facility staffing is
23 sufficient to meet resident needs.

24 60. Due to differing technical capabilities in capturing call light data, the
25 quantity of data required for production varies by facility. Specifically, based on
26 discussions with Sunrise’s counsel, Class Counsel are advised that four of the
27 sixteen Sunrise Injunction Facilities (Cupertino, Orange, Rocklin and Yorba Linda)
28 have the present technological capability to provide the Call Light Data (with

1 resident identifying information redacted) in a database-ready format. Sunrise has
2 explained that the remaining twelve Sunrise Injunction Facilities lack that
3 capability and, as such, need to manually redact identifying information in order to
4 produce the Call Light Data in a usable format.

5 61. Given this limitation, the parties agreed to the data production
6 procedures detailed in paragraphs 11 and 12 of the Injunction. Under those terms,
7 Sunrise must produce more extensive data for the four “technologically capable”
8 facilities. Data production from the remaining “less technologically capable”
9 facilities is more limited (*i.e.*, three 24-hour periods of data within the reporting
10 quarter). Injunction, ¶¶11-2.

11 62. Importantly, Class Counsel select the facilities and days required for
12 Sunrise’s data production. Injunction, ¶¶11-12. Class Counsel provide notice of the
13 selections at the end of the reporting period, *Id.*, so Sunrise has an incentive to
14 ensure compliance at all facilities. Likewise, the procedure provides an efficient
15 approach to allow Class Counsel to monitor Sunrise’s compliance at all facilities.

16 63. In multiple respects, the Injunction terms exceed the scope of
17 injunctive relief that Plaintiffs would likely could have obtained at trial. In the
18 Second Amended Complaint, Plaintiffs sought injunctive relief to address Sunrise’s
19 alleged deceptive practices. SAC, Prayer, ¶¶9-10. If Plaintiffs had sought provisions
20 such as the Staffing and Monitoring Requirements through the litigation injunction,
21 Sunrise would likely have opposed on equitable abstention and other grounds.
22 While Plaintiffs do not agree that such defenses are valid, avoiding that litigation
23 risk is another reason why the Stipulated Injunction provides important benefits to
24 the Settlement Class and all Sunrise residents.

25 **Reserve Fund/Potential Cy Pres Recipient**

26 64. The Settlement Stipulation authorizes the Administrator to hold a
27 reserve of \$25,000 to pay late-submitted Distribution Requests or to handle other
28 valid requests from Settlement Class Members, or their successors or authorized

1 representatives. The proposed Reserve Fund amount is \$25,000. If the
2 Administrator determines that monies left in the Reserve Fund (after all late claims
3 are addressed) cannot be economically distributed to Settlement Class Members,
4 the balance is to be distributed cy pres, subject to the Court’s approval. SS, ¶7.9.

5 65. The proposed cy pres recipient is Groceries for Seniors, a non-profit
6 that provides free food to elderly people in need. Neither of the named Plaintiffs
7 have any relationship to Groceries for Seniors, nor do any Class Counsel.

8 **Authorization to Seek Court-Awarded Fees, Costs, Service Awards**

9 66. The Settlement Stipulation permits Plaintiffs to request attorneys’ fees
10 not to exceed \$10.9 million and reimbursement of litigation expenses/costs not to
11 exceed \$2 million. As detailed below, Plaintiffs’ requests for attorneys’ fees and
12 costs reimbursement are below the amounts permitted under the Settlement
13 Stipulation.

14 67. In addition, the Settlement Stipulation authorizes requests for Court-
15 approval of service awards in the amount of \$15,000 to each of the two Named
16 Plaintiffs (for a total of \$30,000).

17 68. There are no “clear sailing” provisions in the Settlement Stipulation.
18 Rather, the agreement caps the maximum amounts that can be requested. If the
19 Court awards less than the requested amounts, all non-awarded funds revert to the
20 Settlement Fund for distribution to Settlement Class Members. SS, ¶¶9.3, 9.4. No
21 portion of the Settlement Fund reverts to Sunrise. SS, ¶7.9.

22 **Fairness Assessment**

23 **Strength of Plaintiffs’ Claims**

24 69. Plaintiffs’ strongest claim is for upfront Move-In Fees, which are
25 generally paid before any services are provided and thus are arguably not subject to
26 Sunrise’s offset argument. But the total Move-In Fees paid by or on behalf of class
27 members here (roughly \$6.35 million) is considerably lower than the move-in or
28 equivalent entry fees paid in comparable assisted living settlements. See Exhibit 3

1 (Updated Comparable Settlements Summary).

2 70. Plaintiffs' potential claim for allegedly overpriced fees for care
3 services and mediation management fees ("Service Fees") is larger (roughly \$48
4 million), but is subject to Sunrise's offset argument, given the value of services
5 actually provided. Plaintiffs contend the MedModel staffing shortfall analysis
6 provides an appropriate basis to calculate the offset. Sunrise argues to the contrary
7 and the offset issue presents a potential challenge at trial. Specifically, Plaintiffs
8 arguably bear the burden of convincing the jury that the MedModel analysis
9 provides an appropriate basis to calculate damages. While Class Counsel strongly
10 believe the MedModel approach would pass scrutiny, Sunrise has arguments that
11 could potentially resonate with the jury. These include Sunrise's evidence of
12 resident satisfaction and the argument that few residents complained or moved out
13 of Sunrise facilities.

14 71. Plaintiffs also assert claims for CLRA statutory damages. While the
15 statutory requirements for CLRA statutory damages are straightforward, the jury
16 must expressly find "an additional award" (*i.e.*, over and above the CLRA
17 compensatory damages) is "appropriate." Cal. Civ. Code § 1780(b)(1) (C).
18 Plaintiffs' trial risks include the possibility that a jury might determine the evidence
19 does not warrant a statutory damages award.

20 72. Plaintiffs contend the CLRA statutory damage award is subject to
21 trebling under Cal. Civ. Code § 3345(b). Sunrise sharply disputes the availability of
22 the trebling remedy, arguing the lack of specific statutory authorization undercuts
23 Plaintiffs' position. The applicable Legislature history appears to support trebling,
24 and CLRA remedies are cumulative to other remedies provided by law. Cal. Civ.
25 Code § 1752. But to date, no court decision has been located that directly confirms
26 Plaintiffs' position.

27 73. Although Class Counsel believe the law allows trebling of the CLRA
28 statutory damages, trebling (if available) would be at the jury's discretion. Cal. Civ.

1 Code section 3345(b). At trial, the jury could determine that Plaintiffs’ underlying
2 remedies for compensatory damages and CLRA statutory damages are sufficient to
3 address the claimed injuries, such that trebling is not warranted. Further, similar to
4 a claim for punitive damages, there is a risk the jury would view the trebling
5 request as overreaching. The overreach risk would increase if Sunrise’s resident
6 satisfaction defense gets traction with the jury.

7 **Risk, Complexity and Likely Duration of Further Litigation**

8 74. Overall, Class Counsel believe Plaintiffs will prevail on the merits at
9 trial. But as detailed above, multiple potential hurdles must be cleared to prevail on
10 liability and damages.

11 75. Before getting to trial, Plaintiffs additional potential hurdles. Sunrise
12 has asserted that it will move to decertify the class. See discussion below. Sunrise
13 has also indicated that it will file a motion for summary judgment. One potential
14 argument is Sunrise’s contention that Plaintiffs cannot satisfy the “funds of the
15 elder” liability element for the Elder Financial Abuse claim, given that fees for
16 some residents were supposedly paid solely from funds owned by family members
17 or others. To date, Sunrise has yet to provide evidence that this “other payor”
18 defense presents a substantial risk to the Class.

19 76. With respect to the complexity and duration of further proceedings,
20 absent a settlement, the parties (and the Court) would expend significant additional
21 time and resources to resolve this litigation. Under the Court’s prior order, Sunrise
22 is required to produce additional substantial discovery, including production of the
23 staffing and assessment data required for a MedModel staffing analysis as to the
24 full class period. At least two additional Sunrise lay witnesses would need to be
25 deposed. Pending the results of those depositions, Plaintiffs may seek additional lay
26 witness depositions. Per prior Court orders, Plaintiffs’ access to additional lay
27 witness depositions is subject to further discovery motion before the Discovery
28 Master and potentially this Court.

1 77. Additional expert witness discovery would also have been required to
2 prepare for trial. At present, Plaintiffs have three expert witnesses for trial (Dr.
3 Flores, Dr. Kennedy, Mr. Schroyer). Sunrise has six trial experts (Edna Musoke,
4 Dr. Ward, Robert Crandall, Dr. Walker, Prof. Berger, and Josh Allen). Discovery
5 motion practice regarding expert testimony is possible. Trial motions to exclude or
6 limit expert testimony under Daubert or other grounds appear virtually certain.
7 Further, Sunrise has stated that it will assert motions for summary judgment and
8 class decertification.

9 78. Plaintiffs estimate the class trial would take roughly 20 court days,
10 inclusive of jury selection. Depending on how the Court rules on Sunrise's
11 anticipated arguments for defense trial proof, the trial duration could be longer.
12 Pretrial proceedings, including motions in limine (*non-Daubert*) will likely be
13 extensive.

14 79. If Plaintiffs prevail at trial, appellate proceedings by Sunrise would
15 appear highly likely. As demonstrated throughout this case, Sunrise has the
16 resources and disposition to aggressively litigate a wide range of issues. Even if the
17 trial result is affirmed in full, appellate proceedings could add another 18-24
18 months to the final resolution of the lawsuit. The potential for years of delayed
19 recovery is a significant concern in any lawsuit. That is particularly true here, given
20 the elderly status of most class members.

21 **Risk of Maintaining Class Certification**

22 80. This Court granted Plaintiffs' motion for class certification and was
23 affirmed on appeal. Sunrise has asserted that it will seek to decertify the class,
24 arguing for example that any reliance on resident-specific evidence to support
25 Plaintiffs' claims would necessarily defeat predominant common questions. Also,
26 as to the Elder Financial Abuse claims, Sunrise contends that payments made by
27 family members or third parties triggers individualized inquiries with respect to the
28 "funds of an elder" element.

1 81. Class Counsel do not believe that expert discovery or trial evidence
2 would warrant an order decertifying the class. Plaintiffs do have some risk,
3 however, that Sunrise will pursue a post-trial appeal that includes attacks on the
4 class certification rulings. As Sunrise’s success in obtaining Rule 23(f)
5 interlocutory review of the initial class certification order demonstrates, that risk is
6 more than negligible.

7 **Range of Possible Trial Recovery**

8 82. Class Counsel’s updated estimate of the maximum trial recovery is
9 roughly \$129.45 million, consisting of the following estimated amounts:

10 a) Move-In Fees damages of \$6.35 million. This number is based on
11 Sunrise’s estimate that the average Move-In Fee paid was \$1518 per class member.
12 Multiplied by the adjusted number of Settlement Class Members (4,183), that
13 yields an estimated Move-In Fee class damages of \$6.35 million. This number is
14 also consistent with Dr. Kennedy’s litigation damage estimate, Dkt. 439-39
15 (Kennedy Decl), ¶38, adjusted to reflect the narrowed class to “non-arbitration”
16 residents who resided in a Sunrise California Facility during the Class Period.

17 b) Service Fees damages of approximately \$60.4 million. Again, this number
18 is based on Dr. Kennedy’s initial litigation damages opinion, Dkt. 439-39 (Kennedy
19 Decl), ¶42, adjusted for the actual number of Settlement Class Members.

20 c) CLRA statutory damages of \$20.9 million. This number is calculated by
21 multiplying the maximum CLRA damage award (\$5000) by the updated Settlement
22 Class size (4183 persons).

23 d) Enhanced CLRA statutory damages of \$41.8 million. This number
24 assumes Cal. Civ. Code § 3345(b) applies and is calculated by doubling the \$20.9
25 million in statutory damages, which added to the base CLRA statutory damages
26 totals the maximum treble award potentially available under Section 3345(b).

27 83. Class Counsel’s updated estimate of the reasonably achievable trial
28 recovery estimate is roughly \$52.75 million. That estimate is calculated as follows:

1 a) Move-In Fees recovery is assumed to be the full \$6.35 million stated
2 above.

3 b) Service Fees recovery is estimated at \$25.5 million. This estimate assumes
4 the jury awards Service Fees damages for the first six months of Service Fees paid,
5 multiplied by the likely MedModel staffing shortfall percentage (roughly 31%).
6 This assumes the average month Service Fees are roughly \$3,282 and applies the
7 updated size of the Settlement Class. While conservative, limiting the Service Fees
8 claim under this approach arguably minimizes (if not negates) the potential impact
9 of Sunrise’s resident satisfaction arguments.

10 c) CLRA statutory damages recovery is assumed to be the full amount of
11 \$20.9 million. Trebling of statutory damages under Section 3345(b) is not included
12 under this scenario, given the possibility that a jury may view the base CLRA
13 statutory damages as a sufficient additional award. And civil verdicts in federal
14 court must be unanimous.

15 84. As with any lawsuit, the true “low end” recovery at trial is zero. The
16 Class has some risk that Sunrise will obtain a defense verdict. Given the evidence,
17 however, Class Counsel rate the likelihood of a defense verdict as low.

18 **Comparable Assisted Living Facility Settlements**

19 85. Class Counsel have litigated four other California class actions against
20 companies that owned or operated assisted living facilities in California that
21 resulted in Court-approved settlements: *Winans v. Emeritus Corporation*, N.D. Cal.
22 Case No. 3:13-cv-03962-HSG, which settled in 2015; *Carnes v. Atria Senior*
23 *Living, Inc*, N.D. Cal. Case No. 3:14-cv-02727-VC, which settled in 2016; *Lollock,*
24 *et al. v. Oakmont Senior Living, LLC, et al.*, Alameda Superior Court Case No.
25 RG17875110, which settled in 2020; and *Newirth v. Aegis Senior Communities*
26 *LLC*, N.D. Cal. Case No. 16-cv-03991-JSW, which settled in 2021.

27 86. In general, these other lawsuits involved claims similar to those
28 asserted in the instant action against Sunrise. In all of those cases, the plaintiffs

1 asserted California consumer protection claims based on allegations that defendants
2 misleadingly failed to disclose to consumer that their staffing policies failed to
3 ensure facility staffing sufficient to provide services determined necessary through
4 the resident assessment process and promised in admission contracts.

5 87. As in the Sunrise case, in Oakmont and Aegis, plaintiffs supported
6 expert analysis of the projected staffing shortfalls allegedly caused by defendants'
7 staffing policies, with discrete event simulation modeling using the state-of-the-art
8 MedModel computer program. The MedModel analysis was not applied in
9 Emeritus or Atria.

10 88. In all four other settlements, defendants agreed to some form of
11 injunctive relief/changed practice, in addition to monetary relief. In Oakmont and
12 Aegis, the defendants stipulated to Court-ordered injunctions that included facility
13 staffing provisions and disclosure provisions. In Atria, the defendant stipulated to a
14 Court-ordered injunction that included disclosure provisions only. In Emeritus, the
15 defendant agreed (as a term in the settlement agreement) to phase out a challenged
16 resident assessment system and to refrain from representing that system is used to
17 determine facility staffing.

18 89. None of the other settlements included a requirement (as included in
19 the Sunrise injunction) that defendants provide call light response data to facilitate
20 monitoring of defendants' compliance with injunction terms.

21 90. With respect to the monetary payments and related settlement
22 considerations, the Comparable Settlements Summary attached as Exhibit 3 hereto
23 compares the projected Sunrise settlement to settlements in the other assisted living
24 facility cases. The summary is based on my review of filings and court orders in the
25 other case settlements. Where specific data points were not available, conservative
26 estimates were included based on the best information located. However, I believe
27 the summary provides an accurate estimate of the monetary and related issues in the
28 other settlements.

1 91. As the summary reflects, the proposed Sunrise settlement compares
2 favorably to the prior settlements in multiple respects. As to the overall settlement
3 amount, the \$18.2 million total monetary payment in Sunrise exceeds the amounts
4 paid in all comparable settlements. For the closest comparable settlement payment
5 (\$16.25 million in Aegis), the class size was over twice the Sunrise settlement class
6 (9,455 settlement class members in Aegis compared to the 4,183 Sunrise settlement
7 class members).

8 92. With respect to net settlement payments to class members, assuming
9 the maximum potential requests for fees/expenses/service awards are granted, the
10 projected initial per-class member payment amount is \$1,403. That exceeds the
11 average initial per-class member payments in all the other settlements. The Sunrise
12 projected initial average class member payment is over twice the “blended” average
13 per-class member payment (\$605) for the other settlements. (The blended average
14 is calculated by adding (Aegis (\$904), Oakmont (\$725), Emeritus (\$500) and Atria
15 (\$291) to reach a total of \$2,420 and dividing by four.)

16 93. Further, the Sunrise settlement compares favorably from the
17 perspective of the percentage of average Move-In Fee paid by resident. As
18 explained above, the Move-In Fees claim is likely the strongest damages claim, as it
19 is arguably not subject to an offset defense by Sunrise. As is true for other assisted
20 living chains, not all Sunrise residents pay an initial Move-In Fee, as facilities have
21 discretion to waive the fee. But for settlement comparison purposes, the above
22 summary calculates the average Move-In Fee Per Resident by dividing the total
23 Move-In Fees collected by the number of class members. For Sunrise the average
24 Move-In Fee is estimated at \$1,518, so the projected initial settlement payment per
25 class member (\$1,403) represents over 92% of the average Move-In Fee. That is
26 considerably higher than the “percentage of Move-In Fee” recovery in the Aegis
27 (15.83%) and Oakmont (42.45%) settlements. Note that some companies (such as
28 Aegis) use a different terminology (*e.g.*, “Community Fee”) to describe the initial

1 Move-In Fee.

2 94. The \$1,403 per class member average payment in Sunrise is the lowest
3 possible amount that will be paid to Settlement Class Members. If the Court awards
4 less than the maximum amounts permitted to be requested under the Settlement
5 Stipulation, all unawarded amounts will remain in the Settlement Fund and thus
6 increase the distribution to class members. SS, ¶¶9.3, 9.4.

7 95. Further, it is likely that there will be uncashed checks from the initial
8 round of settlement payments. Under the Settlement Stipulation, all monies from
9 uncashed checks revert to the Settlement Fund for supplemental distribution to the
10 Settlement Class Members (or their legal successors) that cashed initial settlement
11 checks. SS, ¶7.9. In the other settlements, a significant percentage of initial
12 settlement checks were uncashed. In Aegis, the percentage of uncashed initial
13 checks was approximately 38%; in Oakmont, the percentage was approximately
14 35%.

15 96. The Settlement Administrator here (CPT) is tasked with undertaking
16 all reasonable efforts to ensure that settlement checks are delivered to Settlement
17 Class Members (or their legal successors). The Settlement Stipulation and CPT's
18 bid proposal include multiple provisions designed to reduce uncashed checks to the
19 extent possible, such as rigorous address checking with skip tracing, a generous
20 cash checking period and a reserve fund to pay late requests for payment. SS,
21 ¶¶7.4-7.8; CPT Bid, pp. 2-3. Nevertheless, if Sunrise tracks the settlement
22 administration in the other settlements, it is very likely that some distributed checks
23 will go uncashed.

24
25 **Percentage-of-Recovery Considerations**

26 97. I estimate the economic value of benefits provided to Settlement Class
27 Members as result of the Settlement Stipulation is at least \$27.56 million. That
28 estimate is based on the following calculation of the two primary settlement

1 benefits that are reasonably subject to economic valuation: (a) the \$18.2 million
2 cash payment and (b) the Staffing, Training and Monitoring (“STM”) provisions
3 under the Injunction, which per Dr. Kennedy’s updated analysis, have an estimated
4 economic value to the Settlement Class Members currently residing in Sunrise
5 Injunction Communities of at least \$9.36 million.

6 98. With respect to the valuation of the STM provisions in the Injunction,
7 Dr. Kennedy previously opined that those provisions had an economic value to
8 current resident Settlement Class Members in excess of \$4.459 million. Dkt 614-9,
9 ¶25. That opinion was based on the assumption that the current resident Class
10 Members represented roughly 20% of the total current residents in the Sunrise
11 Injunction Communities. *Id.*, ¶26.

12 99. Based on the Settlement Class Member List information provided by
13 Sunrise, CPT advises that 503 Settlement Class Members currently reside in the
14 Injunction Communities. Sunrise has confirmed that a total of 1,194 residents
15 (Class and non-Class) reside in the Injunction Communities. Thus, the current
16 resident Settlement Class Members represent 42.1% of the total residents in the
17 Sunrise Injunction Communities.

18 100. Given this additional information, Dr. Kennedy’s updated estimate of
19 the economic value of the STM Injunction provisions to current resident Settlement
20 Class Members in the Sunrise Injunction Communities is approximately \$9.36
21 million, as confirmed in Dr. Kennedy’s supplemental declaration.

22 **Class Counsel Support For Settlement**

23 101. Class Counsel have substantial experience in class action litigation
24 involving understaffing and related claims against assisted living facilities. That
25 experience includes the prosecution of the comparable cases referenced above that
26 resulted in Court-approved settlements.

27 102. Class Counsel have vigorously investigated the factual and legal issues
28 raised in this action. That investigation informed the positions taken by Plaintiffs in

1 the settlement negotiations. It also informs Class Counsel’s consideration of the
2 proposed settlement.

3 103. For the reasons described in Plaintiffs’ motion and this Declaration,
4 Class Counsel recommend the settlement for Court approval. The per-class
5 member cash payments that exceed the settlement payments achieved in
6 comparable settlements and. The overall settlement value represents a significant
7 percentage of likely trial relief. And the Injunction obtained through the settlement
8 includes substantive, verifiable provisions that materially increase the likelihood
9 that future staffing at Sunrise facilities will be sufficient to meet resident needs.

10 104. Given the length of litigation and aggressive defense mounted by
11 Sunrise, the anticipated request for attorneys’ fees and cost reimbursement
12 represents a larger percentage than awarded in other settlements. Class Counsel
13 believe the requests are supported under governing law as applied here, but if the
14 Court disagrees, the Settlement Stipulation expressly provides that unawarded
15 amounts will be used to increase settlement payments to Settlement Class
16 Members.

17 105. Further, the settlement provides a certain result now, without the
18 considerable delay in case resolution that would likely result if the case proceeds to
19 trial and potential appeal. That consideration is particularly important given the
20 advanced age and frail condition of many Settlement Class Members. And
21 settlement approval accelerates implementation of the important injunctive relief
22 obtained.

23 **Request for Attorneys’ Fees**

24 **Lodestar Fees – All Firms**

25 106. Through September 24, 2024, Class Counsel and appellate specialist
26 Monique Oliver have collectively worked 20,903.4 hours on this case and incurred
27 total lodestar fees of \$15,069,239. See Class Counsel Lodestar Spreadsheet, which
28 is attached as **Exhibit 4** to this Declaration.

1 107. Class Counsel have reviewed the detailed billings for their respective
2 firms and reduced hours where appropriate, as detailed below.

3 108. The collective reduction from these billing judgment adjustments for
4 the Class Counsel and Olivier firms is \$1,431,470 (2442 hours). After billing
5 judgment and other reductions, as detailed below, the net lodestar fees for the
6 collective Class Counsel are \$13,637,770.

7 109. With these billing judgment reductions, I estimate that the \$10.5
8 million fee request represents a discount of approximately 23% (.77 negative
9 multiplier) from Class Counsel's net lodestar fees.

10 110. Class Counsel have submitted detailed billing records attached to their
11 respective declarations that describe work performed on the case. That includes
12 time spent on case investigation, witnesses interviews, complaint preparation,
13 litigating multiple pleading challenges, written discovery, lay and expert deposition
14 discovery, extensive discovery motion practice, multiple class certification and
15 Daubert motions, appellate proceedings regarding the same, multiple mediation
16 sessions, negotiating and documenting the Settlement Stipulation, Injunction, Class
17 Notice, and briefing and arguing for settlement approval.

18 111. In accordance with the Court's directive, detailed billing records for all
19 Class Counsel have been provided in Excel spreadsheet format. A single
20 spreadsheet has been provided with tabs for each Class Counsel firm. In addition
21 to the data fields required by the Court, Class Counsel have included line item
22 entries showing the above-referenced lodestar reductions.

23 **Dentons Lodestar Fees**

24 112. Dentons' timekeepers provided legal services that supported the
25 prosecution of this action.

26 113. Over the course of this litigation, as of September 24, 2024, Dentons
27 attorneys, paralegal and other personnel have worked over 5,769 hours on the case,
28 resulting in a total lodestar of at least \$4,646,413. The primary Dentons timekeepers

1 who have worked on the case include the following personnel.

2 114. **Chris Healey.** I served as the lead partner supervising work by
3 Dentons' personnel on the Sunrise case. I had lead or co-lead responsibility on
4 drafting opposition papers to Sunrise's change of venue motion, motions to dismiss,
5 motion to strike class allegations, motion to strike equitable relief. I also outlined
6 Plaintiffs' opposition to Sunrise's motion for summary judgment, which was
7 withdrawn before formal opposition was required. With the Schneider Wallace
8 firm, I had co-lead responsibility for preparing and arguing Plaintiffs' initial and
9 amended motions for class certification, responding to Sunrise's Daubert motion to
10 strike Plaintiffs' expert witness testimony, responding to Sunrises' Rule 23(f)
11 petition for interlocutory review of the class certification order, and preparing and
12 arguing Plaintiffs response to Sunrise's merits appeal.

13 115. With support from other Class Counsel, I deposed Sunrise's Rule
14 30(b)(6) witness (Jeff Slichta) and Sunrise's damages expert (Jonathan Walker). I
15 had primary responsibility for interfacing with Plaintiffs' damages' expert (Patrick
16 Kennedy PhD) and participated in analysis efforts pertaining to Plaintiffs' staffing
17 experts (Cristina Flores PhD and Dale Schroyer). In coordination with Kathryn
18 Stebner, I had lead responsibility on periodic conference calls to coordinate efforts
19 of Plaintiffs' counsel. I had lead or co-lead responsibility in the preparation of
20 mediation briefing and participated in the multiple mediations and subsequent
21 settlement negotiations that eventually led to the instant settlement. I had lead
22 responsibility for drafting of settlement documentation, drafting of settlement
23 approval papers and handling oral argument for Plaintiffs in the approval hearings.
24 I have lead responsibility for drafting Plaintiffs' motion for fees, costs and service
25 awards.

26 116. **Robert Cocchia.** Robert Cocchia is former Dentons litigation partner
27 who had lead responsibility on pursuing responses to Plaintiffs' initial discovery.
28 Mr. Cocchia left Dentons in approximately June 2020. Prior to that time, Mr.

1 Cocchia devoted substantial time to discovery meet and confer calls with opposing
2 counsel, preparing and arguing discovery motions to Magistrate Judge Early (before
3 Judge Guilford was appointed as Discovery Referee). Robert Cocchia helped
4 oversee associate research on specific projects and provided support on case
5 strategy and trial preparation issues.

6 117. **Alisha Lapkewych, Anastasiya Menshikova, Charles Hayes, Carl**
7 **Lehman.** These former Dentons' associates conducted research, drafting and
8 analysis on various legal issues in the lawsuit. The specific research, analysis and
9 other work performed is described in the Dentons tab in the Lodestar Spreadsheet.

10 118. **Carmen Valero.** A law librarian with over 35 years of experience,
11 Carmen Valero provided extensive and invaluable assistance on legal research
12 issues supporting Dentons' work product in the Sunrise matter. As a general
13 practice, Dentons attorneys working on this matter would provide Ms. Valero with
14 a description of the issue that required legal research. From that description, Ms.
15 Valero would conduct Westlaw, Lexis and other searches, time and again
16 demonstrating an uncanny ability to find relevant authority. Ms. Valero's efforts
17 significantly accelerated and made more efficient the Dentons research efforts on
18 numerous issues in the case.

19 119. **Kathryn Howard, Tracy Myrick, Cheryl Sykes.** These Dentons'
20 paralegals supported the organization and control of documents and data obtained
21 during case discovery. Kathryn Howard also conducted cite checks on various
22 briefs filed.

23 **Lodestar Reductions**

24 120. As reflected in the Lodestar Spreadsheet, Class Counsel have reduced
25 lodestar hours and fees for potentially duplicative, excessive or unnecessary time.
26 See Lodestar Spreadsheet, "General" reduction column. In addition, lodestar
27 hours/fees were reduced for time spent on conference calls with collective Class
28 Counsel firms, Plaintiffs' motion to add Peter Falkenberg as a "not subject to

1 arbitration” plaintiff, and case-related travel. See Lodestar Spreadsheet, “CC
2 Conferences”, “Falkenberg” and “Travel” reduction columns.

3 121. As stated above, the collective reductions in the lodestar fees for Class
4 Counsel total \$1,431,470 (2442.74 hours).

5 122. As stated above, with these adjustments, the collective net lodestar for
6 Class Counsel is \$13,637,769.

7 123. The Dentons lodestar fees have been reduced by \$326,271 (426.8
8 hours) based on a review of the time entries and application of the above reduction
9 categories. The specific line item reductions for Dentons lodestar are shown in the
10 Class Counsel Lodestar Spreadsheet under the Dentons tab.

11 124. In addition, over the course of the litigation, I applied courtesy
12 discounts to multiple entries for my time in this matter. In total, Dentons records
13 show 520 discrete discounts were applied for a total courtesy discount of \$399,770,
14 based on the hourly rate in effect when the discount applied. Approximately 30%
15 of these courtesy discounts were applied to cover time spent on administrative
16 tasks. The remaining 70%, however, reflect discounts on time spent on billable
17 legal tasks performed where I felt a reduction from my hourly rate was warranted.
18 Thus, in addition the Lodestar Reductions shown on the Lodestar Spreadsheet, I
19 estimated that the Dentons lodestar has been further discounted by roughly
20 \$279,000 (70% of \$399,770).

21 **Anticipated Future Work**

22 125. Class Counsel will incur additional fees, given the additional work
23 likely to be required in this matter. That includes additional time for furthering
24 briefing on the final approval and motion for fees, costs and service awards.
25 Importantly, additional time will be require to monitor Sunrise’s compliance
26 through review of Call Light Data and other information. I estimate the additional
27 legal fees could equal or exceed \$100,000.

28

Hourly Billing Rates

126. Attached as **Exhibit 5** hereto is a true and correct copy of the 2023 Real Rate Report. My office was advised that the 2024 report will not be available until early 2025, so the 2023 report is the most current Real Rate Report available.

127. At page 16, the 2023 Real Rate Report lists the following rates for Los Angeles Litigation attorneys:

	<u>First Quartile</u>	<u>Median</u>	<u>Third Quartile</u>
Partner	\$525	\$840	\$1,159
Associate	\$431	\$680	\$880

128. At pages 20-21 and 25-26, the 2023 Real Rate Report lists the following rates for Los Angeles associates and partners, broken down by years of experience:

<u>Associates</u>	<u>First Quartile</u>	<u>Median</u>	<u>Third Quartile</u>
Less than 3 years	\$440	\$570	\$670
3 years to less than 7 years	\$512	\$761	\$875
7 or more years	\$464	\$674	\$888

<u>Partners</u>	<u>First Quartile</u>	<u>Median</u>	<u>Third Quartile</u>
Less than 21 years	\$548	\$747	\$1,102
More than 21 years	\$518	\$802	\$1,188

129. In response to an inquiry from my office, the Real Rate Report publisher (Wolters Kluwer ELM Solution) explained that the “Third Quartile” represents “attorneys whose rates fall between the 50th and 75th percentiles. Attorneys in the Third Quartile typically charge higher rates than those in the First Quartile but are below the top 25% of the rate distribution.” A true and correct copy of the Wolters Kluwer email dated September 16, 2024 is attached hereto as

1 **Exhibit 6** to this Declaration.

2 130. Here, the hourly rates charged by Class Counsel for attorneys working
3 on this case compare favorably with the rates listed in the 2023 Real Rate Report.
4 Class Counsel's hourly rates are listed in the Class Counsel Lodestar Spreadsheet,
5 and summarized in the Summary tab of that spreadsheet.

6 131. Further, in approving class action settlements involving other assisted
7 living chains, multiple courts have approved hourly rates for many of the Class
8 Counsel. Copies of the fee awards in the comparable settlements are attached
9 collectively as **Exhibit 7** to this Declaration. Those fee awards were made in
10 lawsuits litigated in prior years in other venues other than Los Angeles, but are
11 provided for whatever benefit to the Court.

12 132. As shown in the Class Counsel Lodestar Spreadsheet, Dentons
13 increased hourly rates during the litigation, but did not retroactively apply the
14 higher hourly rates to prior work. Dentons capped rate increases at 2023 rates. I
15 understand the same is true for the Stebner and Janssen firms. Per the Lodestar
16 Spreadsheet, Michael Thamer, Trail Law Group, the Marks firm and Monique
17 Oliver charged the same hourly rate for all worked performed on the case. The
18 Schneider Wallace firm applied increased hourly rates to prior work performed, but
19 to my understanding, capped rate increases at 2023 rates.

20 **Reimbursement of Litigation Costs/Expenses**

21 133. As of September 24, 2024, Denton has advanced litigation costs of
22 \$460,624.56 in the prosecution of this case, as summarized in the Lodestar
23 Spreadsheet (Dentons tab). I estimate that Dentons will incur additional expert costs
24 of approximately \$2,000 related to Dr. Kennedy's supplemental expert declaration.

25 134. As of September 24, 2024, Class Counsel collectively have advanced
26 litigation costs and expenses of \$1,709,247.54 in the prosecution of this case. Those
27 costs and expenses are listed by category in the Lodestar Spreadsheet, under the
28 tabs for each Class Counsel firm.

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Class Notice/Settlement Administration

135. The actions taken by the Settlement Administrator, CPT Group, Inc (“CPT”) to provide notice of the settlement to the Settlement Class are set forth in the separate declaration of Irvin Garcia (CPT).

136. As confirmed in Mr. Garcia’s declaration, on August 27, 2024, CPT substantially completed dissemination of the Settlement Class Notice by mail and email. Thereafter, on September 6, 2024, CPT disseminated Settlement Class Notices to an additional 139 Settlement Class Members identified by Sunrise.

137. Pursuant to the Settlement Stipulation, the “Class Notice Date” is August 27, 2024. The Settlement Class Notices issued by CPT provide that the deadline for any Settlement Class Member to object or opt-out is October 26, 2024.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed on September 26, 2024 at San Diego, California

/s/Christopher J. Healey
Christopher J. Healey

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INDEX OF EXHIBITS TO
DECLARATION OF CHRISTOPHER J. HEALEY

<u>Exhibit No.</u>	<u>Description</u>
1	Stipulation of Settlement (“SS”)
1.1	Ex. 1 (SS) - Injunction
2	Settlement Addendum
3	Updated Comparative Settlements Summary
4	Class Counsel Lodestar Spreadsheet
5	Real Rate Report (2023)
6	Email from Real Rate Report
7	Fee Awards – Comparative Settlements