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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA-OAKLAND DIVISION

STACIA STINER, et al., on behalf of themselves and similarly situated individuals,

Plaintiffs,

v.

BROOKDALE SENIOR LIVING, INC.; BROOKDALE SENIOR LIVING COMMUNITIES, INC., et al.,

Defendants.

Case No.: 4:17-cv-03962-HSG (LB)

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Judge: Hon. Haywood S. Gilliam, Jr.
Date: October 16, 2025
Time: 2:00 p.m.
Ctrm: 2, Fourth Floor

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD: PLEASE TAKE NOTICE that on October 16, 2025, in Courtroom 2 of the United States District Court for the Northern District of California, located at 1301 Clay Street, Oakland, California, Plaintiffs will and hereby do move the Court for an award of reasonable attorneys' fees, costs and expenses pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. § 12205, California Civil Code § 52(a), California Civil Code § 1021.5, California Civil Code § 1780(e), and California Welfare & Institutions Code § 15657.5(a). This motion is based upon this notice of motion and motion; the accompanying memorandum of points and authorities in support thereof; the Declarations of Guy B. Wallace, Gay Crosthwait Grunfeld, Katherine Stebner, David T. Marks, Jennifer Perez, Claudia Center and Richard M. Pearl; the other records, pleadings, and papers filed in this case; and such other evidence or argument that may be presented at the hearing on this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In this litigation Plaintiffs brought claims under the Americans with Disabilities Act of 1990 ("ADA"), the Unruh Civil Rights Act, Cal. Civ. Code §§ 51 et seq. (the "Unruh Act"), the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq. (the "CLRA"), the Unfair Competition Law, Cal. Civ. Code §§ 17200, et seq. (the "UCL"), and California's elder financial abuse statute, Cal. Welf. & Inst. Code § 15610.30. Plaintiffs obtained substantial injunctive or monetary relief, whether on a class or individual basis, with respect to all of their legal claims.

This case raised groundbreaking, novel and difficult issues regarding the civil rights of elderly persons with mobility and/or vision disabilities. Following over seven years of heavily contested litigation, Plaintiffs have obtained substantial classwide injunctive relief and individual damages, and vindicated the core purposes of the ADA, the Unruh Act and California's consumer protection statute. Of critical importance, Plaintiffs have established that the ADA applies to assisted living facilities. To Plaintiffs' knowledge, this is the first case to ever so hold following contested proceedings. As a result of this vitally important ruling, thousands of vulnerable seniors with disabilities –at Brookdale, and potentially statewide and throughout the nation—will now enjoy the civil rights protections provided by the ADA. This case also established that the minimum disability access requirements of federal law, as set forth in the 2010 Americans with Disabilities Act Accessibility Standards ("2010 ADAS") and the 1991 Americans with Disabilities Act Accessibility Guidelines ("1991 ADAAG"), apply to Brookdale's assisted living facilities, as well as to assisted living facilities more broadly.

Moreover, as this Court found at preliminary approval, the proposed class settlement agreement in this matter provides "comprehensive injunctive relief" to the members of the four subclasses. *Stiner v. Brookdale Senior Living, Inc.*, 2025 WL 1676276, at *6 (N.D. Cal. June 13, 2025). As the Court stated, the settlement "implements substantial renovations to the Brookhurst, San Ramon, and Scotts Valley facilities to bring units and common spaces into compliance with the 2010 ADAS; it ensures that a Brookdale transportation policy provision, which currently allows residents to stay on their mobility aids during transit, remains fixed in place; and it mandates changes to Brookdale's emergency planning procedures, including equipment, transportation, and notice requirements. Moreover, the Agreement modifies the language that Brookdale will use to communicate with current or prospective residents about its staffing levels and establishes a reporting mechanism whereby Brookdale will relay its staffing metrics over the next several years to Plaintiffs' counsel." *Id.* The Court added that "[t]hese substantial benefits place the settlement well within the range of possible approval." *Id.* The substantial relief provided by the settlement will benefit the more than 1,000 members of the subclasses. Indeed, the accompanying Declaration of Claudia Center in Support of Plaintiffs' Motion for Reasonable Attorney's Fees, Costs and Expenses ("Center Decl.") describes how this litigation and the settlement herein have conferred a substantial benefit on persons with disabilities and elders in California and nationally.

It is well-settled that where, as here, the plaintiffs have vindicated the purposes of federal and state civil rights laws, and have obtained significant injunctive relief that will benefit the members of the class as well as the general public, a fully compensatory lodestar-based fee is appropriate. *See, e.g.*, *Gonzalez v. City of Maywood*, 729 F3d 1196, 1209-10 (9th Cir. 2013).

Furthermore, there is no reasonable basis for any reduction in the fees requested herein. Nearly all the work on this matter involved "a common core of facts" which were "based on related legal theories." *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). As a result, it is not feasible or appropriate to apportion fees based on the success or failure of particular issues, motions or stages of the litigation. As the Supreme Court has held, "[w]here a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised." *Id.* at 440; *see also O'Neal v. City of Seattle*, 66 F.3d 1064, 1069 (9th Cir. 1995) (finding attorney's fees available for unsuccessful motion for class certification, which was not considered an unsuccessful "claim" but rather a method of pursuing relief); *infra* at § III.D.7. Based on Plaintiffs' overall level of success in this matter, and the fact that their claims were interrelated, under governing law any reduction for partial success may be addressed by a 10% reduction in Plaintiffs' lodestar. *See, e.g.*, *Muniz v. United Parcel Serv., Inc.*, 738 F.3d 214, 226 (9th Cir. 2013) (approving reduction of 10% in lodestar for limited success in a FEHA case in which the plaintiff was awarded $27,280 in damages and $696,162.78 in attorney's fees); *Prison Legal News v. Ryan*, No. CV-15-00235-PHX-ROS, 2024 WL 1195548, at *3 (D. Ariz. Mar. 20, 2024) (10% reduction sufficient to address any concerns about "limited success"). Here, Plaintiffs only seek compensation for approximately one-third of their combined lodestar and costs. Thus, a reduction of approximately 67% has already been made, and no further reduction is necessary or appropriate.

Plaintiffs now move for the attorney fees and costs to which they are statutorily entitled under both federal and California law. Through July 15, 2025, Class Counsel have spent over 49,483 hours litigating this case. After the exercise of billing judgment as discussed below, their adjusted lodestar equals $40,200,387. This is based on contemporaneous billing records, as well as the hourly rates that they charge to paying clients, that courts have awarded to them, and that an expert has opined are reasonable in light of Bay Area market rates.

Class Counsel also advanced costs and expenses of $3,864,949.72 for which they should be reimbursed. This sum represents litigation costs that counsel expended reasonably in furtherance of this case, including but not limited to substantial expert costs. Adding fees and costs, Class Counsel Plaintiffs seek a substantially discounted award of $14,500,000 for fees, costs and litigation expenses in accordance with § 7 of the Settlement Agreement.

II. RELEVANT PROCEDURAL AND FACTUAL BACKGROUND

This case was fought tenaciously for over seven years, and settled only weeks before trial. The following background thus provides only a brief overview of the history of this matter.

A. Pre-Complaint Investigation

Prior to the filing of the Complaint in 2017, Class Counsel conducted an extensive investigation into complaints about caregiver understaffing and inaccessibility at Brookdale's assisted living facilities (also known as residential care facilities for the elderly or "RCFEs") in California. Declaration of Gay Crosthwait Grunfeld in Support of Plaintiffs' Motion for Reasonable Attorneys' Fees, Costs, and Expenses ("Grunfeld Decl.") ¶¶ 41-44; Declaration of Kathryn Stebner in Support of Plaintiffs' Motion for Reasonable Attorneys' Fees, Costs and Expenses ("Stebner Decl.") ¶ 26; Declaration of Guy B. Wallace in Support of Plaintiffs' Motion for Reasonable Attorneys' Fees, Costs and Expenses ("Wallace Decl.") ¶ 15. In addition, Plaintiffs sent a pre-litigation demand letter to Defendants and met with their General Counsel, but Defendants made no settlement offer. Stebner Decl. ¶ 26; Wallace Decl. ¶ 17.

B. The Complaint

This case was filed on July 13, 2017 on behalf of current or former residents with disabilities who live in assisted living facilities operated by Defendants Brookdale Senior Living, Inc. and Brookdale Senior Living Communities, Inc. (collectively, "Brookdale" or "Defendants"). ECF No. 1. The Fourth Amended Complaint, which is the operative Complaint, was filed on October 23, 2023, and asserted several class and individual claims against Brookdale including: claims under the ADA, the Unruh Act, the CLRA, the UCL, and the Elder Financial Abuse Act. ECF No. 647. Plaintiffs alleged that Defendants violated the ADA and the Unruh Act by, *inter alia*, (1) failing to remove physical access barriers from Brookdale RCFEs that violate the applicable ADA accessibility standards and the California Building Code ("CBC"), (2) maintaining a transportation policy, the Fleet Safety Policy ("FSP"), which required residents using powered mobility devices to transfer out of their devices in order to ride on Brookdale's transportation, in violation of Department of Transportation regulations, see 49 C.F.R. § 37.165(e), as well as failing to comply with the ADA as to other aspects of their transportation services; (3) failing to plan adequately for the safe evacuation of residents with disabilities in emergencies, and (4) refusing to reasonably modify their facility staffing to ensure that residents with disabilities have full and equal access to all of Brookdale's goods and services. *See generally* ECF No. 647. Plaintiffs also alleged that Defendants violated the CLRA, UCL, and Elder Financial Abuse Act by making misleading statements and omissions pertaining to the determination and adequacy of staffing levels at Brookdale RCFEs (the "staffing claims"). *Id.*

C. Defendants' Motions to Dismiss, Compel Arbitration, and to Strike Class Allegations

Defendants filed two rounds of motions to compel certain plaintiffs to arbitration, two motions to dismiss the complaint, and two motions to strike certain allegations in Plaintiffs' complaint. *See Stiner v. Brookdale Senior Living, Inc*., 354 F. Supp. 3d 1046, 1051 (N.D. Cal. 2019), *aff'd in part, rev'd in part and remanded*, 810 F. App'x 531 (9th Cir. 2020) ("*Stiner I*"); ECF Nos. 23 (motion to compel), 59 (same), 24 (motion to dismiss), 60 (same), 25 (motion to strike), 61 (same). While the first set of motions was pending, Plaintiffs sought Court approval to file and filed a Second Amended Complaint with four additional named plaintiffs who were not subject to arbitration, and removed three plaintiffs who were subject to arbitration clauses. See ECF No. 52; *see also* ECF No. 47. During the litigation of those motions, discovery in the case was stayed entirely, and the stay was only lifted in March 2019 (*see* ECF No. 117); the Court had denied Plaintiffs' earlier April 2018 administrative motion to open discovery. ECF Nos. 63, 57.

On January 25, 2019, the Court denied the second set of Defendants' motions to compel arbitration and strike Plaintiffs' allegations, and denied in major part Defendants' motion to dismiss. *Stiner I*, 354 F. Supp. 3d at 1063. Importantly, the Court's January 25, 2019 Order found that the ADA applies to assisted living facilities, the first case to ever so hold based on contested argument, and the first of several orders where the Court came to this conclusion. *Id.* at 1058-59. Defendants then appealed the part of the Court's January 25, 2019 Order denying their motion to compel Plaintiffs Helen Carlson and Lawrence Quinlan to arbitrate their claims, and sought to stay the case and obtain permission to appeal the part of the Order regarding the applicability of the ADA to RCFEs. *See Stiner v. Brookdale Senior Living, Inc.*, 383 F. Supp. 3d 949 (N.D. Cal. 2019) (denying stay and request to certify for interlocutory appeal). In an April 2020 memorandum disposition, the Ninth Circuit affirmed the majority of the Court's denial of Defendants' motion. *Stiner v. Brookdale Senior Living, Inc.*, 810 F. App'x 531 (9th Cir. 2020).

Defendants also filed two motions to strike Plaintiffs' class allegations. ECF Nos. 25, 61. The Court denied Defendants' motion to strike Plaintiffs' class allegations in its Order dated January 25, 2019. ECF No. 85.

After the January 25, 2019 Order, Plaintiffs filed a Third Amended Complaint ("TAC"), adding another putative class representative, Jeanette Algarme. ECF No. 90. On March 8, 2019, Defendants filed their Answer to the TAC. Defendants denied all liability, and asserted forty-six affirmative defenses. ECF No. 110.

D. Overview of Discovery

Fact discovery was extensive and heavily contested. Plaintiffs propounded and responded to 14 sets of document requests and 13 sets of interrogatories, and propounded 14 sets of subpoenas for documents. Wallace Decl. ¶¶ 55-57. Schneider Wallace reviewed and analyzed most of the 3,300,000 pages of documents that Class Counsel received from Defendants and third parties, with specific and assigned groups of documents being reviewed and analyzed by RBGG, the Stebner firm, and the Marks firm. Grunfeld Decl. ¶ 55; Declaration of David T. Marks in Support of Plaintiffs' Motion for Reasonable Attorneys' Fees, Costs and Expenses ("Marks Decl.") ¶¶ 9, 16, 19; Stebner Decl. ¶ 29; Wallace Decl. ¶¶ 13, 59. In light of the volume of discovery, all four firms contributed significantly to the discovery efforts, but each was assigned different responsibilities to avoid duplication of effort. Grunfeld Decl. ¶¶ 52-56, 61-64, 84-87 ; Marks Decl. ¶¶ 9, 16, 19; Stebner Decl. ¶¶ 11-12; Wallace Decl. ¶¶ 13, 59.

Class Counsel took and defended a total of 61 days of depositions. Wallace Decl. ¶ 72. This included nine days of Rule 30(b)(6) depositions and twenty-three expert depositions. Grunfeld Decl. ¶¶ 53-54, 62-64, 87-88; Wallace Decl. ¶ 72. The experts included architects, physicians, staffing experts, statisticians, an expert in accessible transportation for persons with mobility disabilities, and an expert in emergency evacuation of persons with disabilities, among other specialized fields. Marks Decl. ¶¶ 19, 28(e)(xi), 28(g)(8), 29(a), 38, 39; Stebner Decl. ¶¶ 30, 34, 37, 42; Wallace Decl. ¶ 74.

Plaintiffs conducted two days of disability access site inspections of Brookdale's San Ramon, Scotts Valley, Brookhurst, Hemet, Tracy and Fountaingrove facilities. Wallace Decl. ¶ 75. The results of these inspections were set forth in six detailed accessibility reports and further addressed in six more rebuttal expert reports in support of Plaintiffs' claims.

Plaintiffs researched and prepared portions of 44 letter briefs regarding discovery disputes, of which 25 were resolved in whole or in part in favor of Plaintiffs, 10 in favor of Defendants, and 10 of which were not resolved by the Court. Wallace Decl. ¶ 60.

E. Expert Discovery

Plaintiffs worked with ten (10) experts. The experts included architects, physicians, staffing experts, statisticians, an expert in accessible transportation for persons with mobility disabilities, and an expert in emergency evacuation of persons with disabilities, among other specialized fields. Plaintiffs' counsel worked with these experts to produce numerous expert reports, as well as declarations at both the class certification and summary judgment stages. Grunfeld Decl. ¶¶ 26, 58, 73, 88, 91-92; Marks Decl. ¶¶ 10, 28(e) & (g), 29(d) & (e); Stebner Decl. ¶¶ 36-43; Wallace Decl. ¶¶ 33, 36, 47, 78. There were 23 days of expert depositions. Wallace Decl. ¶ 72. Defendants filed motions to exclude motions against almost all of Plaintiffs' experts. With minor exceptions, all of those motions were denied. Wallace Decl. ¶ 76.

F. Class Certification

In August 2021, Plaintiffs filed a motion for class certification, seeking to certify three classes of current or former residents of Brookdale RCFEs to pursue claims for injunctive relief and damages under the ADA, Unruh Act, CLRA, UCL, and Elder Financial Abuse Statute. ECF No. 276-5 at 13. The parties engaged in extensive additional class certification-related discovery prior to Defendants' Opposition, which was filed March 3, 2022, and before Plaintiffs' Reply, filed May 19, 2022. ECF Nos. 363, 506. On March 30, 2023, the Court granted in part and denied in part Plaintiffs' motion, certifying a Rule 23(b)(2) subclass regarding the legality of the Fleet Safety Policy, Brookdale's wheelchair and scooter user transportation policy. *See* ECF No. 592.

On October 19, 2023, Plaintiffs filed their motion for leave to file a motion for certification of subclasses with respect to six facility-based subclasses for their ADA and Unruh Act claims, and two misleading statements and omissions claims subclasses under the UCL and the CLRA. In response, Defendants filed "numerous motions to strike and for sanctions." *Stiner v. Brookdale Senior Living, Inc.*, 2024 WL 1071202, at *1 (N.D. Cal. Feb. 7, 2024). The Court granted Plaintiffs' motion for leave to file their motion for certification of facility-based subclasses, but otherwise denied the motion. The Court also denied all of Defendants' responsive motions. *Id.*

On February 9, 2024, Plaintiffs filed a motion to certify access barrier claims on behalf of subclasses of residents at the six current or former Brookdale RCFEs where the named plaintiffs reside or resided. Plaintiffs' motion sought certification under Rule 23(b)(3) of subclasses seeking damages under the Unruh Act for physical access barriers at all six facilities, and certification under Rule 23(b)(2) of subclasses seeking injunctive relief at the three facilities—Scotts Valley, San Ramon, and Brookhurst—where the named Plaintiffs had standing to pursue such relief. ECF No. 740. On July 22, 2024, the Court granted in part and denied in part Plaintiffs' motion for certification of the subclasses, certifying the three Rule 23(b)(2) subclasses at Brookdale Brookhurst, Scotts Valley, and San Ramon. The Court granted class certification with respect to new construction, and the named Plaintiffs' claims regarding alterations and readily achievable barrier removal proceeded on an individual basis. *Stiner v. Brookdale Senior Living, Inc.*, 2024 WL 3498492, at *7-9 (N.D. Cal., July 22, 2024). The Court declined to certify all of Plaintiffs' proposed Rule 23(b)(3) subclasses. *Id.* at *12.

On August 8, 2024 Defendants filed a motion for decertification. ECF No. 834. The Court denied the motion on November 15, 2024. ECF No. 930.

As part of their work on class certification, Class Counsel performed extensive outreach to the class members. Counsel conducted hundreds of interviews of class members to investigate the access barriers, policies and practices at issue, and drafted more than 150 class member declarations to support the motions for class certification. These declarations served as the basis for identifying potential trial witnesses. Grunfeld Decl. ¶¶ 58-59; Wallace Decl. ¶¶ 32, 33, 36, 41, 47, 73. In addition, Plaintiffs also analyzed voluminous records from the California Department of

Social Services regarding Brookdale's history of failing to properly staff its facilities. Grunfeld Decl. ¶ 55.

G. The Parties' Motions for Summary Judgment

In September 2024, the parties filed cross motions for summary judgment. Brookdale filed a motion seeking summary judgment on all of Plaintiffs' claims (with the exception of their staffing claims as those were stayed at the time Defendants filed their motion, ECF No. 861 at 11 n.1). ECF No. 861. On December 13, 2024, the Court granted Brookdale's motion for summary judgment in part, dismissing Plaintiffs' individual claims and the claims of the three facility-based access barrier subclasses under the Unruh Act for alleged violations of the California Building Code. ECF No. 978 at 5-6, 19. The Court denied summary judgment for Defendants as to all other claims, including the access barrier claims of the Brookhurst Subclass under the ADA, the claim of the FSP Subclass related to Defendants' Fleet Safety Policy, and the individual claims related to emergency evacuation and alleged violations of the ADA regarding alterations and readily achievable access barrier removal. *See generally id.*; *see also* ECF No. 988. On December 26, 2024 the Court denied Plaintiffs' motion for partial summary judgment on the Brookhurst Subclass's access barrier claims on the basis that there were disputed issues of material fact regarding Ms. Algarme's standing, and deferred ruling on the motion with respect to the individual access claims for damages for Plaintiffs who resided at Brookdale Hemet and Fountaingrove. ECF No. 988. On January 17, 2025, the Court clarified that it had also granted summary judgment against Defendants on their arguments that application of the ADA to their facilities would result in a violation of their due process rights and that the injunctive relief claims of the FSP Subclass were moot. ECF No. 1017.

H. Pretrial Preparation

The first trial of three—on the claims of the Brookhurst Subclass seeking remediation of access barriers under the ADA and the FSP Subclass seeking injunctive relief to prevent Defendants from reinstating the illegal Fleet Safety Policy—was set to begin on January 27, 2025, with jury selection to commence on January 24, 2025. ECF Nos. 789, 927. In accordance with the deadlines set by Court's civil standing order, the parties diligently prepared two rounds of pretrial filings: with the initial set filed in late November and early December 2024 and a second, revised set filed after the Court's issuance of the summary judgment order in early January. *See* ECF Nos. 939-976; 995-1003. The parties also briefed a number of additional issues to this Court, including Defendants' motion for a bench trial as to the claims of the Brookhurst Subclass and their request to reopen discovery to obtain Plaintiff Algarme's medical records. ECF Nos. 989, 990.

I. Settlement

In October 2019 and September 2021, the parties participated in two mediation sessions with Judge Edward A. Infante (Ret.) of JAMS, neither of which was successful. Wallace Decl. ¶ 89. Beginning in October 2024, the parties participated in five Mandatory Settlement Conference sessions with Magistrate Judge Joseph C. Spero. Grunfeld Decl. ¶ 102; Wallace Decl. ¶ 90.

Class Counsel refused to discuss attorneys' fees and costs with Defendants until February 2025, after they settled the issues of relief for the certified subclasses and the Plaintiffs. Wallace Decl. ¶ 91. The payment of fees and costs will not diminish the injunctive relief or damages the Settlement guarantees to the class. *Id.* at ¶ 92.

III. ARGUMENT

A. Plaintiffs Are Entitled To Fees and Costs Because They Are Prevailing Parties.

Plaintiffs prevailed on all of the claims alleged in the Fourth Amended Complaint, including their claims under the ADA, the Unruh Act, the CLRA, the UCL and the elder financial abuse statute. ECF No. 1026-1. Plaintiffs are therefore entitled to recover fees and costs under federal and California law. Prevailing parties in cases brought pursuant to the ADA and Unruh Act are entitled to their attorney fees, costs and litigation expenses. 42 U.S.C. § 12205; Cal. Civ. Code § 52(a); Cal. Code Civ. Proc. § 1021.5. Similarly, under the CLRA and elder financial abuse claims, an award of reasonable attorneys' fees and costs is directly authorized by statute. Cal. Civ. Code § 1780(e); Cal. Welf. & Inst. Code § 15657.5(a). A party that obtains a judicially enforceable settlement agreement that provides at least some of the relief sought is a "prevailing party" under these fee-shifting statutes. *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1089 (9th Cir. 2010); *Folsom v. Butte County Assn. of Govts.*, 32 Cal.3d 668, 671 (1982).

B. Fees Should Be Calculated Using the Lodestar Method.

The Ninth Circuit has held that courts should use the lodestar method to determine fees in civil rights class actions involving claims for injunctive relief. *See, e.g.*, *In re Bluetooth Headset Prods. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) ("The 'lodestar method' is appropriate in class actions brought under federal fee-shifting statutes (such as federal civil rights, securities, antitrust, copyright, and patent acts), where the relief sought --and obtained—is often primarily injunctive in nature and thus not easily monetized, but where the legislature has authorized the award of fees to ensure compensation for counsel undertaking socially beneficial litigation."); *Johnson v. MGM Holdings, Inc.*, 943 F.3d 1239, 1242 n.3 (9th Cir. 2019) ("the percentage-of-recovery method is not typically used in civil rights cases").

Indeed, the Supreme Court has held that the lodestar method is the "guiding light" for determining fees in civil rights cases under federal fee-shifting statutes. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 551 (2010). And the Ninth Circuit has specifically held that the lodestar method should be used to determine a reasonable fee in disability rights cases under the ADA. *See, e.g.*, *Vogel v. Harbor Plaza Center, LLC*, 893 F.3d 1152, 1158 (9th Cir. 2018); *Antoninetti v. Chipotle Mex. Grill, Inc.*, 643 F.3d 1165, 1176 (9th Cir. 2010).

Similarly, the California Supreme Court has held that the lodestar method should be used to determine a reasonable fee award in cases involving fee-shifting statutes such as the Unruh Act, the CLRA and the elder financial abuse statute. *See, e.g.*, *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 579 (2004); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1135-36 (2001).

Under federal and California law, there is a strong presumption that the lodestar constitutes a reasonable fee. *See, e.g.*, *Perdue*, 559 U.S. at 554; *Hiken v. Dep't of Def.*, 836 F.3d 1037, 1044 (9th Cir. 2016); *Beaty v. BET Holdings, Inc.*, 222 F.3d 607, 612 (9th Cir. 2000).

C. Plaintiffs Vindicated Important Civil Rights and Achieved Excellent Results.

Plaintiffs achieved substantial results in terms of injunctive relief for the four subclasses and made precedent that will benefit thousands of California seniors for years to come. *See* Center Decl. ¶¶ 10-13, 14, 16-19. First, Plaintiffs prevailed with respect to certain critical issues of law, such as ADA coverage and the applicability of federal disability access standards such as the

ADAAG and the 2010 ADAS to Defendants' facilities. Plaintiffs obtained an important ruling that Defendants are responsible for compliance with the ADA and federal disability access standards even if they are successors-in-interest to other entities that constructed their facilities in the first instance. Previously, Defendants insisted that they were ***not*** covered by the ADA, and that even if they were, they were not responsible for bringing their newly constructed or altered facilities into compliance with the 2010 ADAS. They also claimed that they were not the operators of any of the Brookdale assisted living facilities based on the pretense that their various corporate affiliates are the actual operators of the individual facilities, and that therefore Defendants had no obligations under the ADA or the Unruh Act. The District Court rejected this fiction.

Second, Plaintiffs achieved important changes in Brookdale's written policies that will benefit residents with mobility and/or vision disabilities throughout California. Plaintiffs achieved a permanent change in Defendants' unlawful "Fleet Safety Policy," which applied statewide, and which wrongfully required power wheelchair and scooter users to transfer out of their mobility devices if they wanted to use Brookdale's transportation services. This policy violated the ADA Title III regulations and the Unruh Act, and denied residents who used wheelchairs full and equal access to Brookdale's vans and busses. It also exposed residents with mobility disabilities to safety risks relating to falls and pressure sores by forcing them to make unnecessary transfers out of their power wheelchairs and scooters.

In addition, Plaintiffs obtained a permanent change in Defendants' written policy of requiring residents with mobility disabilities to pay for any access fixes to their units. This policy and practice was set forth in Brookdale's corporate form Residency Agreements, which are used throughout California. Under Defendants' prior policy, residents were informed that they would be required to pay for disability access improvements or repairs to their units, which was a violation of the ADA and the Unruh Act.

Further, Plaintiffs obtained another change in the language of the Residency Agreement, requiring Defendants to clearly disclose that they do not make any representations or warranties regarding the staffing levels offered by their assisted living facilities. The absence of such a disclosure was a material omission that formed the basis for Plaintiffs' claims under the CLRA, the

UCL, and the elder financial abuse statute. These changes to the language of the Residency Agreement will provide residents with notice that Brookdale does not necessarily provide sufficient staffing to deliver the services specified in the residents' Personal Services Plans. As a result of this disclosure, prospective residents will have more complete information with which to make their decision as to whether to enter one of Brookdale's assisted living facilities. Defendants also will monitor and report on whether actual staffing provided at the San Ramon and Scotts Valley facilities was below Brookdale staffing benchmarks on a semi-annual basis for a two-year period. These reporting requirements encourage the timely delivery of promised services and allow Counsel to monitor Brookdale's compliance with the settlement. In combination, these terms materially increase the likelihood that Brookdale residents will receive promised care services.

Defendants will be required to take important steps to bring its Brookhurst, San Ramon and Scotts Valley facilities into compliance with the accessibility requirements of the 2010 ADAS. At each of these facilities, Defendants will be required to bring the exterior and interior common areas into full compliance with the 2010 ADAS. In addition, Defendants will be required to provide a specific number of fully accessible residential units at each facility, including compliant roll-in showers that will make it far easier and safer for residents with mobility disabilities to bathe. These access improvements will confer great benefits on the thousands of residents with mobility and/or vision disabilities who will use these facilities both now and during the coming years.

In addition, Defendants will be required to make significant improvements to the emergency evacuation plans for the San Ramon and Scotts Valley facilities, thus benefitting current and future residents with mobility and/or vision disabilities at those locations. As a practical matter, the changes to the emergency evacuation plans at those facilities will also provide a model for changes to the emergency evacuation plans for Brookdale's other facilities in California, thus benefitting residents with mobility and/or vision disabilities statewide. The significant improvements required by the settlement agreement, including among others, the use of assembly areas that are accessible, the use of vehicles during evacuations that have the capacity to transport the residents' mobility devices, and the opportunity for residents with mobility and/or vision disabilities to participate in emergency evacuation drills, will all provide vital benefits to residents with disabilities during emergencies such as fires, floods, earthquakes and other disasters.

Plaintiffs also obtained important rulings that mandatory transfers from wheelchairs are prohibited by the ADA regulations, and that residents with disabilities have viable claims under the ADA and the Unruh Act for full and equal access to emergency evacuation services. The foregoing are groundbreaking findings or rulings that will benefit not just the members of the four subclasses, but will also benefit elderly person with mobility and/or vision disabilities who seek to use assisted living facilities both in California and throughout the United States.

The Ninth Circuit has held that where, as here, the plaintiffs achieve substantial injunctive relief that vindicates the purposes of federal civil rights statutes, a fully compensatory fee is warranted. *See, e.g.*, *McCown v. City of Fontana*, 565 F.3d 1097, 1105 (9th Cir. 2009); *Morales v. City of San Rafael*, 96 F.3d 359, 364-65 (9th Cir. 1996). California law is in accord. *See, e.g.*, *Harman v. City & County of San Francisco*, 158 Cal. App. 4th 407, 426-27 (Cal. Ct. Appeal 2007) ("In 'civil rights cases' such as this one which seek to vindicate important public interests whose value transcends the ultimate dollar amounts awarded to civil rights claimants in compensation, 'a trial court does not under California law abuse its discretion simply by awarding fees in an amount higher, even very much higher, than the damages awarded,' where successful litigation causes conduct which the civil rights statutes were enacted to deter to be exposed and corrected.") (quoting *Beaty v. BET Holdings, Inc.*, 222 F.3d 607, 612-13 (9th Cir. 2000)).

Here, Plaintiffs have fully vindicated the core purposes of disability nondiscrimination and consumer protection laws. Congress enacted the ADA to enable persons with disabilities to live full and independent lives to the maximum extent possible. 42 U.S.C. § 12101(a)(7). Congress sought to achieve this purpose by requiring public accommodations to provide persons with disabilities with full and equal access to and enjoyment of their facilities and services. This includes full and equal access to transportation and emergency evacuation services, as well as the removal of access barriers that impede or limit the ability of persons with disabilities to have equal access to public facilities. *See, e.g.*, *Cohen v. City of Culver City*, 754 F.3d 690, 694-95 (9th Cir. 2014); *Ability Ctr. of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 909 (6th Cir. 2004) ("Congress, aside from merely hoping to curtail intentional discrimination against the disabled, aimed to improve the quality of the lives of the disabled by requiring that public entities —as well as other entities subject to the Act's requirements—eliminate barriers to physical access, including barriers inherent in existing facilities.").

Similarly, California's disability civil rights statutes have the principal purposes of eliminating physical access barriers and facilitating the full and equal participation of persons with disabilities in all aspects of public life. *See, e.g.*, *Munson v. Del Taco, Inc.*, 46 Cal. 4th 661, 673 (2009) ("[t]he Legislature having decided, in the 1992 amendment, to pursue the Unruh Civil Rights Act's goal of equality by incorporating ADA accessibility law into California's own law"); *Donald v. Café Royale, Inc.*, 218 Cal. App. 3d 168, 177-78 (Cal. Ct. App. 1990).

D. Plaintiffs' Lodestar Is Reasonable, Particularly Given Significant Reductions.

The lodestar method multiplies the reasonable number of hours worked by the market rates for the attorney. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008); *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977). That number can then be adjusted upward or downward based on the other factors that go into determining a reasonable attorney's fee. *See, e.g.*, *Moreno*, 534 F.3d at 1111; *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975) (citing *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).

The lodestar for Class Counsel herein is $40,200,387. This figure derives from contemporaneous time records—after reducing them in the interest of billing judgment—and the hourly rates for similarly skilled counsel handling similarly complex litigation in this District.

1. Class Counsel's hourly rates are reasonable.

Counsel are entitled to the prevailing market hourly rates for attorneys of similar skill and experience handling similarly complex litigation in the relevant community. *Blum*, 465 U.S. at 895 n.11; *Davis v. City & Cnty. of San Francisco*, 976 F.2d 1536, 1548 (9th Cir. 1992); *Children's Hosp. & Med. Ctr. v. Boma*, 97 Cal. App. 4th 740, 783 (Cal. Ct. App. 2002). The "relevant community" is the forum district for the case. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992). In accordance with governing law, Plaintiffs seek 2025 rates to compensate for delay in payment over the course of this eight-year litigation. *See, e.g.*, *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (to compensate for delayed payment, lodestar should be calculated using "the prevailing rate as of the date of the fee request" or by "using historical rates and compensating for delays with a prime-rate enhancement").

Market rates for civil-rights matters are "governed by the same standards which prevail in other types of equally complex federal litigation . . . ." *Hensley*, 461 U.S. at 430 n.4. There are three typical ways to establish the market rate for an attorney in a fee-shifting case: the rates that this District recently approved for the same or comparable counsel, the rates at which counsel have been paid recently by fee-paying clients on an hourly basis, and the sworn declarations of counsel with extensive knowledge of the rates charged and awarded in the relevant market. *See, e.g.*, *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008); *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

The requested rates for counsel here are supported by all three of these standard methods. Some of Class Counsel have had rates approved recently in this District; others have charged hourly rates to cash-paying clients within the past few years; and all of them are discussed by Richard M. Pearl, an expert on attorney fees, who confirms that the hourly rates requested by Class Counsel are well within the range of those charged by similar attorneys who handle similarly complex litigation in this District. Declaration of Richard M. Pearl in Support of Plaintiffs' Motion for Reasonable Attorneys' Fees, Costs and Expenses ("Pearl Decl.") ¶ 11.

Class Counsel are highly regarded members of the civil-rights bar who have extensive experience in complex civil litigation, including disability rights class actions. A summary of each Class Counsel firm is below—with supporting information contained in accompanying declarations. The rates requested by Class Counsel for each person who billed in this case are reasonable in this District for the work performed in this case. Pearl Decl. ¶¶ 11, 12, 28; *see also* Wallace Decl. ¶¶ 120-134 (listing qualifications of counsel and staff and their rates); Grunfeld Decl. ¶¶ 2-21, 30 (listing qualifications of counsel and staff and their rates); Stebner Decl. ¶¶ 4-7, 20-21, 24-28, 51-52 (listing qualifications of counsel and staff and their rates); Marks Decl. ¶¶ 24, 27, 30, 32, 34 (listing qualifications of counsel and staff and their rates).

Schneider Wallace is one of the nation's premier law firms that litigates disability rights and other consumer rights cases. The rates for Schneider Wallace's attorneys range from $750 to

$1,350. Wallace Decl. ¶ 145. Upon review of their experience, other qualifications, the nature of their work, and the results achieved in this case, Mr. Pearl has opined that these rates are well within the range of those charged by similarly qualified counsel and staff for comparable litigation in the Northern District of California. Pearl Decl. ¶¶ 12, 13, 28.

Mr. Wallace's hourly rate of $1,350 is in line with rates charged by similarly skilled Bay Area attorneys handling complex litigation in this district. *Id.* Mr. Wallace is well-recognized as one of the nation's leading litigators in the field of systemic disability access. *See, e.g.*, *Lopez v. San Francisco Unified Sch. Dist.*, 385 F. Supp. 2d 981, 991 (N.D. Cal. 2005). His rates have been approved recently by a number of courts within this District. Wallace Decl. ¶¶ 113, 117.

RBGG is one of the country's leading civil-rights law firms that litigates class and complex public interest cases nationally on behalf of plaintiffs, including class action disability-access cases. Grunfeld Decl. ¶¶ 3-5. The rates for RBGG's attorneys range from $500 to $1,675, and the rates for the firm's paralegals and other non-attorney staff range from $350 to $470. Grunfeld Decl. ¶¶ 21, 30. RBGG's rates have been approved recently by a number of courts in this District and paid by defendants in settlement of several civil rights cases. *Id.* ¶ 22.

Upon review of their experience, other qualifications, the nature of their work and the results achieved in this case, Mr. Pearl has opined that these rates are reasonable for similar counsel and staff in this District. Pearl Decl. ¶¶ 12, 13, 28.

Ms. Grunfeld's hourly rate of $1,325 is reasonable for an attorney with her extensive litigation experience and high caliber of work in this District. Pearl Decl. ¶¶ 12, 13, 28. Ms. Grunfeld is widely regarded as one of the finest and most experienced civil rights litigators in California, with decades of expertise in achieving systemic injunctive relief on behalf of classes of clients. Grunfeld Decl. ¶¶ 2-6.

Stebner Gertler & Guadagni is a renowned law firm that litigates civil rights and elder abuse cases, including complex civil matters and class actions. Stebner Decl. ¶¶ 3-7. The rates for the Stebner firm's attorneys range from $925 to $1,300. *Id.*, ¶¶ 51-52. Upon review of their experience, qualifications, the nature of their work, and the results achieved, Mr. Pearl has opined that these rates are reasonable for similar counsel and staff performing similar work in the Northern District of California. Pearl Decl. ¶¶ 12, 13, 28.

Marks, Balette, Young & Moss is a national law firm that litigates civil rights and elder abuse class action cases, including cases involving allegations of understaffing. Marks Decl. ¶¶ 2-8. The rates for the Marks firm's attorneys range from $800 to $1,050, and the rate for the firm's non-attorney staff is $275. *Id.* at ¶ 24. Upon review of their experience, qualifications, the nature of their work, and the results achieved, Mr. Pearl has opined that these rates are reasonable for similar counsel and staff in the Northern District of California. Pearl Decl. ¶¶ 12, 13, 28.

Based on Plaintiffs' evidentiary showing submitted herewith, the Court should find that Class Counsel's hourly rates are reasonable.

2. <u>The number of hours claimed is reasonable.</u>

The hours sought by counsel were recorded contemporaneously and reasonably spent in furtherance of the claims in this case. Class Counsel worked extremely hard on this litigation. They devoted a substantial number of hours to this matter—without unnecessary duplication of work—because the case required it and Defendants' litigation positions demanded it.

Counsel should be compensated for all time that they reasonably expended in pursuit of the litigation. *Hensley*, 461 U.S. at 433. In reviewing time records, courts recognize that attorneys representing the prevailing party should be compensated for "every item of service" that a reasonable lawyer would have performed to protect the client's interest. *Armstrong v. Davis*, 318 F.3d 965, 971 (9th Cir. 2003) (quoting *Hasbrouck v. Texaco, Inc.*, 879 F.2d 632, 638 (9th Cir. 1989)); *Ramon v. County of Santa Clara*, 173 Cal. App. 4th 915, 925 (Cal. Ct. App. 2009). That is true regardless of whether a particular motion or subject of counsel's time was successful. *Jacobson v. Persolve, LLC*, Case No. 14-CV-00735-LHK, 2016 WL 7230873, at *11 (N.D. Cal. Dec. 14, 2016) (noting that time for a particular task should not be reduced on grounds that it was unsuccessful) (citing cases). Time should be compensated so long as it was part of a reasonable attempt to advance the position of the class or the individual plaintiffs. *Id.*

The time devoted by each attorney and staff member for this matter is detailed in Class Counsel's accompanying Declarations. Wallace Decl. ¶140 & Exh. A; Grunfeld Decl. ¶¶ 30, 106

& Exh. X, Y; Stebner Decl. ¶ 47 & Exh. A; Marks Decl. ¶ 25 & Exh. A. All of this time was reasonable and necessary to prosecute this case on behalf of the Plaintiff subclasses. *Id.*

Counsel's time records and declarations are strong evidence that their hours are reasonable. *See, e.g.*, *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1081 (N.D. Cal. 2010) ("An attorney's sworn testimony that, in fact, it took the time claimed is evidence of considerable weight on the issue of the time required.") (citations omitted); *Horsford v. Bd. of Trustees of Cal. State Univ.*, 132 Cal. App. 4th 359, 396 (Cal. Ct. App. 2005) (stating that "the verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous"). The Ninth Circuit repeatedly has instructed district courts to "defer to the winning lawyer[s'] professional judgment as to how much time [they were] required to spend on the case." *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1111 (9th Cir. 2014) (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)); *Kerkeles v. City of San Jose*, 243 Cal. App. 4th 88, 104 (Cal. Ct. App. 2015).

Here, Class Counsel's records show that they reasonably spent time on the categories of work discussed above, including but not limited to, pre-complaint investigation, drafting the complaint, opposing Defendants' various motions to dismiss and to strike, discovery regarding Plaintiffs' wide-ranging legal claims, class certification, dispositive motions, trial preparation and settlement. *See* discussion *supra* at § II. All of this work is compensable under the ADA and California law. *See, e.g.*, *Hensley*, 461 U.S. at 431; *Simers v. Los Angeles Times Communications, LLC*, 104 Cal. App. 5th 940, 947 (Cal. Ct. App. 2024) ("'Compensation is ordinarily warranted,' even for unsuccessful litigation forays, 'unless the unsuccessful forays address discrete unrelated claims, are pursued in bad faith, or are pursued incompetently, i.e., are such that a reasonably competent lawyer would not have pursued them.'") (quoting *City of Sacramento v. Drew*, 207 Cal. App. 3d 1287, 1303 (1989)).

3. <u>Plaintiffs' staffing was appropriate given the demands of this litigation, and Defendants' aggressive defense utilizing numerous firms and lawyers.</u>

As the Ninth Circuit has recognized, "broad-based class litigation often requires the participation of multiple attorneys." *Davis v. City & Cnty. of San Francisco,* 976 F.2d 1536, 1544

(9th Cir. 1992). The presence of multiple attorneys in complex litigation is both common and desirable. *See, e.g., Democratic Party of Wash. State v. Reed*, 388 F.3d 1281, 1287 (9th Cir. 2004); *Probe v. State Teachers' Ret. Sys.*, 780 F.2d 776, 785 (9th Cir. 1986). In fact, Defendants used multiple attorneys from five different defense firms: Seyfarth Shaw LLP; Moore & Lee, P.C.; O'Melveny & Myers LLP; Baird Holm, LLP, and Quintairos, Prieto, Wood & Boyer P.A. Thus, Defendants used numerous lawyers from multiple law firms to defend this case. Indeed, during discovery Defendants had 130 lawyers working behind the scenes on document review. Grunfeld Decl. ¶ 37; Discovery Hearing Transcript of March 18, 2021, ECF No. 224, at 21:13-19 ["We had to have 130 attorneys review the documents. We spent 22,000 hours."]). As the court said in *Patrick v. Bd. of Trs. of the Minneola Indep. Sch. Dist*., 603 F. Supp. 754, 759 (E.D. Tex. 1984), "what is sauce for the goose is sauce for the gander."

Given the necessity for multiple counsel, a reduction for duplication is "warranted only if the attorneys are *unreasonably* doing the *same* work." *Johnson v. Univ. Coll. of the Univ. of Ala. in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983) (emphasis in original). Here, Class Counsel made every effort to assign tasks among the four firms to maximize efficiency. Generally, primary responsibility was assigned to a single firm for each required task—for example, drafting a motion, taking a deposition, propounding a set of written discovery—in order to minimize the duplication of effort. Grunfeld Decl. ¶¶ 26, 44; Marks Decl. ¶ 9; Stebner Decl. ¶¶ 13, 23; Wallace Decl. ¶ 16.

Moreover, it is well-settled that a reasonable fee award must take into account whether the defendant mounted an aggressive defense. *See, e.g.*, *Frank Music Corp. v. MGM, Inc.*, 886 F.2d 1545, 1557 (9th Cir. 1989) ("Time spent by plaintiffs' counsel responding to motions or actions by the defendant should not be excluded from the fee award. 'Although [defendants] had the right to play hardball in contesting [plaintiffs'] claims, it is also appropriate that [defendants] bear the cost of their obstructionist strategy.'"); *Dept. of Fair Employment & Housing v. Law School Admission Council, Inc.*, No. 12-cv-01830-JCS, 2018 WL 5791869, at *5 (N.D. Cal. Nov. 5, 2018) ("deference to the hours a party actually devoted to litigation is particularly appropriate where its adversary adopted a full-court-press strategy of vigorously litigating all possible issues in a case"); *Peak-Las Positas Partners v. Bollag*, 172 Cal. App. 4th 101, 114 (Cal. Ct. App. 2009) ("A defendant 'cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response.'") (citation omitted).

Defendants' litigation tactics greatly increased the amount of time Class Counsel needed to spend on this case. At the outset of this litigation, Defendants filed two comprehensive motions to dismiss Plaintiffs' claims and to strike Plaintiffs' class allegations. Plaintiffs prevailed on both motions. Defendants also stonewalled much of Plaintiffs' discovery. Plaintiffs were forced to file over forty (40) motions to compel, and prevailed in significant part on twenty-five of those motions. Defendants filed *Daubert* motions against all of Plaintiffs' experts, both at the class certification stage and thereafter. With minor exceptions, Defendants' *Daubert* motions were denied. After the Court granted, in part, Plaintiffs' motion for certification of subclasses, Defendants then filed a motion for decertification, which was denied. Defendants also filed a comprehensive motion for summary judgment, all of which was denied with the exception of Defendants' argument that Plaintiffs were unable to show intentional discrimination under the Unruh Act with respect to violations of the California Building Code. Defendants filed five motions to strike Plaintiffs' pleadings, all of which were denied. Wallace Decl. ¶¶ 20, 23. Finally, Defendants filed three motions for sanctions against Class Counsel, all of which were denied.

4. <u>Class Counsel have exercised substantial billing judgment.</u>

Class Counsel's total lodestar is $40,200,387. Wallace Decl. ¶¶ 138-39, 145 (calculating firm lodestar); Grunfeld Decl. ¶¶ 31, 106 (same); Stebner Decl. ¶47 (same); Marks Decl. ¶ 53 (same). However, in the exercise of billing judgment, Class Counsel have calculated a reduced lodestar based on a reduction in the number of hours they devoted to this matter. Wallace Decl. ¶¶ 136-141; Grunfeld Decl. ¶¶ 28-31, 105-106; Stebner Decl. ¶ 21, 47; Marks Decl. ¶ ¶ 50-54. They cut administrative and clerical time and small billers. *Id.* They then decreased by 10% percent their remaining hours. *Id.* In short, Counsel have exercised extensive billing judgment. *Davis v. City & Cnty. of San Francisco*, 976 F.2d 1536, 1543 (9th Cir. 1992) (5% billing reduction sufficient to address clerical time and other billing errors), *vacated in part on other grounds*, 984 F.2d 345 (9th Cir. 1993).

5. <u>The requested fees are far below Class Counsel's lodestar and costs.</u>

Even with the above-referenced billing judgment reductions, the fees requested represent a discount of over 67% from Class Counsel's net lodestar fees and costs. Wallace Decl. ¶¶ 106, 146. This substantial "negative multiplier" further supports the reasonableness of the fee request. *See, e.g.*, *Taylor v. Shutterfly, Inc*., 2021 WL 5810294, at *8-9 (N.D. Cal. Dec. 7, 2021); *Walsh v. Kindred Healthcare,* No. C 11-00050 JSW, 2013 WL 6623224, at *3 (N.D. Cal. Dec. 16, 2013).

6. <u>No further reduction is warranted because Plaintiffs' claims were interrelated and based on the same facts.</u>

Generally, "lack of success" on arguments made regarding related claims does not warrant a lodestar reduction. *Hensley*, 461 U.S. at 435, n.11 (absent lack of success on "unrelated claims," the failure to "prevail on every contention" raised is generally not a "sufficient reason for reducing a fee"). Federal and California courts apply a "high threshold for triggering decreases due to limited success," particularly in cases that "vindicate important public interests." *Beaty*, 222 F.3d at 612. Claims are unrelated if they are "distinct in both fact and law. *Muniz*, 738 F.3d at 224. In addition, "[t]o deduct time, the court must find that the time deducted did not aid in proving the successful claims." *Id.*

Here, it is plain that Plaintiffs' claims are "related" within the meaning of applicable law. With respect to Plaintiffs' claims under the ADA, as elements of their claim Plaintiffs were required to show that Defendants operated a place of public accommodation and that Defendants either owned or operated their California assisted living facilities. *See, e.g.*, *Arizona ex rel. Goddard v. Harkins Amusement Enterprises, Inc.*, 603 F.3d 666, 670 (9th Cir. 2010). As the Court is aware, Defendants heavily disputed these issues up until the pretrial conference held on December 13, 2024, and reserved their right to contest these issues on appeal. Because a violation of the ADA constitutes a violation of the Unruh Act, Cal. Civ. Code § 51(f), it is clear that Plaintiffs' ADA and Unruh Act claims were interrelated. Further, Plaintiffs' claims under California's UCL included that Defendants had violated the UCL by failing to remove access barriers from their facilities in violation of the ADA and the Unruh Act. ECF No. 647 at ¶ 277(b).

As discussed, Plaintiffs have also obtained monetary and injunctive relief regarding their claims under the CLRA, the UCL and the elder financial abuse statute that Defendants engaged in false and misleading statements and omissions regarding the staffing and services provided by their assisted living facilities. These claims (often referred to by the parties as the "staffing claims") were based on the same legal theory and shared the same facts, *i.e.*, that Defendants' corporate form Residency Agreements failed to sufficiently disclose to residents that Defendants did not have enough staff to provide residents with the services identified in their Personal Services Plans on a consistent and timely basis. Plaintiffs' discovery and evidence regarding Defendants' policies and practices about staffing, and whether they were sufficient to provide promised services to the residents, was the same for each of these claims. The "staffing" claims of the eight named plaintiffs regarding six of the Brookdale facilities were set to go to trial after the trial of the class claims, and the work Plaintiffs' counsel did on the staffing claims and Defendants' staffing models throughout the litigation would have been critical to that trial.

Importantly, under governing law there is no requirement that the plaintiff in a civil rights case prevail on every contention in order to be entitled to a fully compensatory lodestar fee. *See, e.g.*, *Aguirre v. Los Angeles Unified Sch. Dist.*, 461 F.3d 1114, 1121 (9th Cir. 2006) (the rule in *Hensley* "is broad enough, in appropriate cases, to permit an award of full fees even where a party did not prevail on every contention") (citing *Hensley*, 461 U.S. at 435). Similarly, there is no requirement that a party prevail on every claim, or obtain every form of relief sought in their complaint, in order to obtain a fully compensatory fee award. *See, e.g.*, *Hensley*, 461 U.S. at 435 n. 11 ("[it is not] necessarily significant that a prevailing plaintiff did not receive all the relief requested"); *Gates v. Deukmejian*, 987 F.2d 1392, 1404 (9th Cir. 1992) ("[A] district court should not reduce the lodestar merely because the prevailing party did not receive the type of relief that it requested … This is especially true in civil rights cases."); *Harman*, 158 Cal. App. 4th at 427.

Furthermore, in civil rights and consumer protections cases the Supreme Court and the Ninth Circuit have repeatedly rejected any "rule of proportionality" between the damages sought or obtained by the plaintiff(s) and the award of fees to counsel. *See, e.g.*, *City of Riverside v. Rivera*, 477 U.S. 561, 574-75 (1986); *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1209 (9th Cir. 2013)

("It is not per se unreasonable for attorneys to receive a fee award that exceeds the amount recovered by their clients. This is especially true in civil rights cases, where the dollar amount lawyers recover for their clients is not the sole measure of the results the prevailing parties' attorneys obtained."); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1033 (9th Cir. 2012) (same); *accord Harman*, 158 Cal. App. 4th at 426-27.

7. The Ninth Circuit has rejected the argument that the denial of class certification requires a reduced fee award.

Under governing law no further reduction is appropriate based on this Court's denial, in part, of Plaintiffs' initial motion for class certification. In *O'Neal v. City of Seattle*, 66 F.3d 1064 (9th Cir. 1995), the plaintiff, who was a new tenant, obtained a permanent injunction preventing the City from terminating water service based on a prior tenant's unpaid account. During the litigation, the plaintiff made an unsuccessful motion for class certification. The district court awarded the plaintiff attorneys' fees for the unsuccessful class certification motion. The Ninth Circuit affirmed, finding that "the motion itself was not a separate claim, but rather a method of pursuing [the plaintiff's] ultimately successful claims." 66 F.3d at 1069; *see also Pierce v. County of Orange*, 905 F. Supp. 2d 1017, 1032 (C.D. Cal. 2012) (following *O'Neal* and awarding fees for unsuccessful opposition to motion for decertification). The same is true herein.

Further, the discovery and attorney work that was performed in connection with Plaintiffs' initial class certification motion became the foundation of Plaintiffs' successful motion for certification of subclasses, and also involved much of the evidence that Plaintiffs would have presented at the three planned trials and that ultimately led to the favorable settlement of this case. Indeed, courts have recognized that unsuccessful motions for class certification are "related" work that should be compensated under *Hensley*. *See, e.g.*, *Z.F. by and through M.A.F. and J.F. v. Ripon Unified Sch. Dist. (RUSD)*, No. 2:10-cv-00523-TLN-CKD, 2017 WL 1064679, at *5 (E.D. Cal. Mar. 21, 2017) ("Applying the first part of the *Hensley* test, the Court finds that the unsuccessful class certification motion was related to Plaintiffs' successful claims. The class certification motion was based on common issues and facts relating to the litigation as a whole and cannot be properly viewed as separate. The class certification motion is more properly viewed as "alternative legal grounds for a desired outcome" brought in good faith, and the Court cannot rely on its ultimate denial as grounds for attorneys' fee reduction. *Hensley*, 461 U.S. at 435.").

E. Plaintiffs' Litigation Costs Are Recoverable and Reasonable.

The ADA authorizes the recovery of reasonable costs and expenses that counsel advanced to further the litigation. 42 U.S.C. § 12205; Cal. Civ. Code § 1780(e). Recoverable costs include expert fees, deposition transcripts, travel, mediation fees, telephone, copying and printing, and the array of other litigation-based costs that are needed to prosecute a case of this magnitude. *Lovell v. Chandler*, 303 F.3d 1039, 1058 (9th Cir. 2002); *Davis*, 976 F.2d at 1556.

Through July 15, 2025, Class Counsel have incurred $3,864,949.72 in recoverable litigation costs and expenses. Wallace Decl. ¶ 146; Declaration of Jennifer Perez in Support of Plaintiffs' Motion for Reasonable Attorneys' Fees, Costs and Expenses ("Perez Decl.") ¶ 20; Grunfeld Decl. ¶¶ 108-112 & Exh. Z. Most of these costs already have been paid by Class Counsel years ago. All of these costs were reasonably incurred to advance the litigation. *Id.*

F. Plaintiffs' Requested Award of Fees, Costs and Expenses Is Reasonable.

Class Counsel's lodestar is $40,200,387. Adding this figure to the recoverable costs that Class Counsel advanced provides a total fee-and-cost award of $44,065,337. Wallace Decl. ¶ 146. However, Plaintiffs move for a far lower amount of fees, costs and expenses: $14,500,000.00.

This amount is very reasonable in light of the amount of work reasonably devoted to this matter, the results obtained, and the substantial costs that counsel advanced in order to prosecute this case for the benefit of the Plaintiffs and certified subclasses. Further, these fees and costs will not decrease any recovery or benefit to members of the subclasses.

IV. CONCLUSION

For the reasons stated, Plaintiffs respectfully request that the Court grant this motion in full.

DATED: August 7, 2025

Respectfully submitted,

By: */s/ Guy B. Wallace*
Guy B. Wallace

Attorneys for Plaintiffs and the Certified Subclasses