Guy B. Wallace – 176151
Mark T. Johnson – 76904
Jennifer U. Bybee – 302212
Travis C. Close – 308673
Rachel L. Steyer – 330064
SCHNEIDER WALLACE COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608-1863
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
Email: gwallace@schneiderwallace.com
mjohnson@schneiderwallace.com
juhrowczik@schneiderwallace.com
tclose@schneiderwallace.com
rsteyer@schneiderwallace.com

Gay Crosthwait Grunfeld – 121944
Jenny S. Yelin – 273601
Adrienne Spiegel – 330482
Maya Campbell – 345180
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
Telephone: (415) 433-6830
Facsimile: (415) 433-7104
Email: ggrunfeld@rbgg.com
jyelin@rbgg.com
aspiegel@rbgg.com
mcampbell@rbgg.com

Kathryn A. Stebner – 121088
Brian S. Umpierre – 236399
STEBNER GERTLER & GUADAGNI A Professional Law Corporation
870 Market Street, Suite 1285
San Francisco, California 94102-2918
Telephone: (415) 362-9800
Facsimile: (415) 362-9801
Email: kathryn@sgg-lawfirm.com
brian@sgg-lawfirm.com

David T. Marks – *pro hac vice*
MARKS, BALETTE, GIESSEL & YOUNG, P.L.L.C.
7521 Westview Drive
Houston, Texas 77055
Telephone: (713) 681-3070
Facsimile: (713) 681-2811
Email: davidm@marksfirm.com

Attorneys for Plaintiffs and the Certified Subclasses

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

STACIA STINER; RALPH CARLSON, in his capacity as Trustee of the Beverly E. Carlson and Helen V. Carlson Joint Trust; LORESIA VALLETTE, in her capacity as representative of the Lawrence Quinlan Trust; MICHELE LYTLE, in her capacity as Trustee of the Boris Family Revocable Trust; RALPH SCHMIDT, by and through his Guardian Ad Litem, HEATHER FISHER; PATRICIA LINDSTROM, as successor-in-interest to the Estate of ARTHUR LINDSTROM; BERNIE JESTRABEK-HART; and JEANETTE ALGARME; on their own behalves and on behalf of others similarly situated,

Plaintiffs,

v.

BROOKDALE SENIOR LIVING, INC.; BROOKDALE SENIOR LIVING COMMUNITIES, INC.; and DOES 1 through 100,

Defendants.

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

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT FOR INJUNCTIVE RELIEF

Judge: Hon. Haywood S. Gilliam, Jr.

May 1, 2025
2:00 p.m.
Courtroom 2, 4th Floor

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NOTICE OF MOTION AND MOTION AND STATEMENT OF REQUESTED RELIEF

TO ALL PARTIES AND THEIR COUNSEL OF RECORD: PLEASE TAKE NOTICE THAT on May 1, 2025, at 2:00 p.m. or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Haywood S. Gilliam, Jr., located at 1301 Clay Street, Oakland, California, Plaintiffs and Subclass Representatives Stacia Stiner, Bernie Jestrabek-Hart, and Jeanette Algarme (together, the "Plaintiffs" or "Class Representatives"), by and through Class Counsel will and hereby do move the Court for entry of an Order granting preliminary approval of the proposed class settlement agreement for injunctive relief (the "Proposed Settlement" or "Proposed Agreement") submitted herewith as Exhibit A to the Declaration of Gay Crosthwait Grunfeld in support of this Motion; and scheduling a fairness hearing regarding final approval of the Proposed Settlement. As discussed more fully in the Memorandum of Points and Authorities, below, the Proposed Settlement: (1) represents a comprehensive settlement of the declaratory and injunctive relief claims raised by the four certified subclasses in this case; (2) offers a fair and equitable result to those affected by it; and (3) will result in significant long-term benefits for both the Subclass Members as well as for Defendants Brookdale Senior Living, Inc. and Brookdale Senior Living Communities, Inc. ("Defendants" or "Brookdale"). The Motion is based upon this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the attached Declaration of Guy B. Wallace and Declaration of Gay Crosthwait Grunfeld with the exhibits attached thereto; all pleadings and papers on file in this action; and any oral argument this Court permits.

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs and Class Representatives Stacia Stiner, Bernie Jestrabek-Hart, and Jeanette Algarme ("Plaintiffs" or "Class Representatives") request that the Court grant preliminary approval of the Proposed Settlement. The Proposed Settlement provides significant and lasting injunctive relief to four certified subclasses: (1) the Fleet Safety Policy Subclass ("FSP Subclass"), comprised of certain residents of all Brookdale Residential Care Facilities for the Elderly ("RCFE") in California who use powered wheelchairs, scooters, or other powered mobility aids; (2) the Brookhurst Subclass, comprised of certain residents with mobility and vision disabilities who live at Brookdale Brookhurst; (3) the San Ramon Subclass, comprised of certain residents with mobility and vision disabilities who live at Brookdale San Ramon; and (4) the Scotts Valley Subclass, comprised of certain residents with mobility and vision disabilities who live at Brookdale Scotts Valley.

The Proposed Settlement requires Defendants to implement several important changes that will benefit members of the certified subclasses. These include renovating the indoor and outdoor common areas and a subset of residential units of the Brookhurst, San Ramon, and Scotts Valley RCFEs to make them compliant with the 2010 Americans with Disabilities Act Standards for Accessible Design ("2010 ADAS"), providing additional modifications to residentials units that residents with disabilities at those RCFEs require without charging the residents, and maintaining—for all California Brookdale RCFEs—a transportation policy that allows residents with mobility disabilities to remain in their mobility devices when they ride on a Brookdale van or bus consistent with the Americans with Disabilities Act of 1990 ("ADA") Title III regulations. The Settlement provides significant relief to all four subclasses, even the two (Scotts Valley and San Ramon) whose claims the Court dismissed in its December 13, 2024 summary judgment order, an excellent result. The Proposed Settlement is fair, adequate, and reasonable, and is the product of serious, informed, and non-collusive negotiations between experienced and knowledgeable counsel and Class Representatives. It satisfies all criteria for preliminary approval under Rule 23 of the Federal Rules of Civil Procedure.

Accordingly, Plaintiffs respectfully request that the Court grant preliminary approval of the

Proposed Settlement and set a final fairness hearing.

FACTUAL AND PROCEDURAL BACKGROUND

This seven and a half year old case, which raised groundbreaking, novel, and difficult issues regarding the civil rights of elderly persons with mobility and/or vision disabilities, has been litigated vigorously by both sides since its initiation. As described more fully below, there were four key phases of the case: (1) litigation of Defendants' two sets of motions to compel arbitration, to dismiss Plaintiffs' complaint, and to strike key allegations, followed by an appeal to the Ninth Circuit regarding the arbitration motion denial; (2) two rounds of class certification briefing, culminating in the Court's certification of four subclasses, specifically the FSP subclass and three facility-based subclasses, pursuant to Rule 23(b)(2) for declaratory and injunctive relief only; (3) the parties' hard fought cross-motions for summary judgment; and (4) the preparation for the first of what would have been three trials in the case, set for January 2025. Declaration of Gay Crosthwait Grunfeld in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement for Injunctive Relief ("Grunfeld Decl.") ¶ 5. Throughout the pendency of the case, the parties have engaged in extensive motion practice, taken approximately 62 depositions, retained and produced reports from 15 experts, and exchanged more than 3.3 million pages of documents. *Id.* ¶ 4. And Plaintiffs' accessibility experts have conducted two rounds of day-long access inspections of the Brookdale California RCFEs at issue. *Id*.

A. Initial Case Proceedings

This case was filed on July 13, 2017 on behalf of current or former residents with disabilities who live in RCFEs operated by Defendants Brookdale Senior Living, Inc. and Brookdale Senior Living Communities, Inc. and/or their affiliates (collectively, "Brookdale" or "Defendants"). ECF No. 1. Plaintiffs filed the operative complaint, the Fourth Amended Complaint, on October 23, 2023, which asserted several class and individual claims against Brookdale, including: claims under the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) ("ADA"), the Unruh Civil Rights Act (Cal. Civ. Code §§ 51 *et seq.*) ("Unruh Act"), the Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*) ("CLRA"), California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq.*) ("UCL"), and

California's Elder Financial Abuse Act (Cal. Welf. & Inst. Code §§ 15610.30). 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") ("Access Barrier Claims"), (2) maintaining a transportation policy, the Fleet Safety Policy ("FSP"), which allegedly 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* 28 C.F.R. § 36.310(c); 49 C.F.R. § 37.21(a)(3); 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 ("Emergency Evacuation Claims"), 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 ("Staffing Discrimination Claims") (collectively, the "Discrimination Claims"). *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.*

After several amendments, including to eliminate plaintiffs who were subject to arbitration clauses, eight named plaintiffs—Stacia Stiner, Bernie Jestrabek-Hart, Jeannette Algarme, Ralph Schmidt, Edward Boris, Helen Carlson, Lawrence Quinlan, and Arthur Lindstrom—remained in the case. ECF No. 647. All eight plaintiffs reside or resided at one of six RCFEs currently or formerly operated by Brookdale: Ms. Stiner currently lives at Brookdale San Ramon, Ms. Jestrabek-Hart currently lives at Brookdale Scotts Valley, Ms. Algarme lived at Brookdale Brookhurst, Mr. Lindstrom lived at Brookdale Scotts Valley until his death, Mr. Boris and Ms. Carlson both lived at the facility formerly known as Brookdale Fountaingrove prior to their deaths, Mr. Quinlan lived at the facility known at Brookdale Hemet prior to his death, and Mr. Schmidt formerly lived at Brookdale Tracy. *See generally id.*

During the first phase of the case, from July 2017 to August 2021, 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). 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 it 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) ("*Stiner II*") (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, finding that Ms. Carlson was not bound to arbitrate any of her claims and that Mr. Quinlan could litigate his ADA and Unruh Act claims but was required to arbitrate his claims under the CLRA, UCL, and Elder Financial Abuse Statute. *Stiner v. Brookdale Senior Living, Inc.*, 810 F. App'x 531 (9th Cir. 2020).

Throughout this period, Plaintiffs also vigorously pursued written discovery, including through more than fifteen informal discovery motions, and took many depositions to support their class certification motion, including at least eight Rule 30(b)(6) depositions. Grunfeld Decl. ¶ 6. In April 2021, Defendants also filed a motion to deny class certification, which the Court promptly and summarily denied. ECF Nos. 238; 250.

B. Certification of the Subclasses

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.[1] On March 30, 2023, the Court granted in part and denied in part Plaintiffs' motion, certifying only one Rule 23(b)(2) subclass regarding the legality of the Fleet Safety Policy, Brookdale's wheelchair and scooter user transportation policy (the "FSP Subclass"). *See Stiner v. Brookdale Senior Living, Inc.*, 665 F. Supp. 3d 1150 (N.D. Cal. 2023) ("*Stiner III*"), *opinion clarified,* No. 17-CV-03962-HSG, 2024 WL 3498492 (N.D. Cal. July 22, 2024) . Plaintiffs sought permission from the Ninth Circuit to appeal the Court's March 30, 2023 Order pursuant to Rule 23(f), *see* ECF No. 600-1, but the Ninth Circuit declined to allow the appeal. *Stiner v. Brookdale Senior Living, Inc.*, No. 23-80030, Dkt. No. 13 (9th Cir. May 31, 2023). The Court paused the litigation while the Rule 23(f) petition was pending. ECF Nos. 607; 628.

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 named plaintiffs claimed to have 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, Brookdale Scotts Valley, and Brookdale San Ramon (the "Access Barrier Subclasses," collectively with the FSP Subclass, the "Certified Subclasses"). *Stiner v. Brookdale Senior Living, Inc.*, No. 4:17-cv-03962-HSG (LB), 2024 WL 3498492 (N.D. Cal., July 22, 2024) ("*Stiner IV*"). The Court granted class certification with respect to new construction, and the named Plaintiffs' claims regarding alterations and readily achievable barrier removal proceeded on

[1] Citations are to ECF pagination unless otherwise indicated.

an individual basis. *Id.* at *7-9. The Court declined to certify any of Plaintiffs' proposed Rule 23(b)(3) subclasses. *Id.* at *12.

From 2021 to the end of 2024, the parties continued to engage in active discovery. During that period, the parties completed many additional depositions and briefed approximately eighteen additional discovery disputes to Magistrate Judge Beeler. Grunfeld Decl. ¶ 7. Fact discovery closed on August 1, 2024 and expert discovery concluded on September 12, 2024. ECF No. 789.

C. The Court Grants Defendants' Motion for Summary Judgment In Part

In September 2024, the parties filed cross motions for summary judgment. Plaintiffs filed a motion for partial summary judgment, seeking final determination of seven key issues. ECF No. 856 at 10-11. Brookdale filed a motion seeking summary judgment on all of Plaintiffs' claims.[2] ECF No. 861. On December 13, 2024, the Court granted Brookdale's motion for summary judgment in part, dismissing the claims of the San Ramon and Scotts Valley Subclasses as well as Plaintiffs' individual claims and the claims of the Brookhurst Subclass 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.

D. Trial 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 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

[2] Brookdale's Motion for Summary Judgment did not seek summary judgment on Plaintiffs' staffing claims as those claims had been stayed at the time of the filing of the motion. ECF No. 861 at 11 n.1.

filings: an 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; 995-1002. 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. The parties attended the Final Pretrial Conference on January 14, 2025. ECF No. 1009.

E. Settlement Negotiations

In October 2019 and September 2021, the parties participated in two mediation sessions with Judge Edward A. Infante (Ret.) through JAMS, neither of which was successful. Grunfeld Decl. ¶ 8. Beginning in October 2024, the parties participated in four Mandatory Settlement Conference sessions with Magistrate Judge Joseph C. Spero. *Id.* Judge Spero also facilitated additional settlement communications outside of the scheduled mediation sessions, and the parties also worked directly through several meet and confers and the exchange of many drafts to reach a final agreement in principle, culminating in a February 6, 2025 confidential term sheet and then the final Class Action Agreement and an Individual Settlement resolving the individual claims of the eight named plaintiffs, a courtesy copy of which Plaintiffs will submit to the Court's chambers for the Court's reference. *Id.*

SUMMARY OF THE PROPOSED SETTLEMENT

The Proposed Class Action Settlement Agreement is attached as Exhibit A to the Declaration of Gay Crosthwait Grunfeld (hereinafter "Agreement"). The Agreement resolves Plaintiffs' claims for declaratory and injunctive relief as to the four certified subclasses. Defendants have also agreed to pay up to $5,000 to each of the three class representatives, Stacia Stiner, Bernie Jestrabek-Hart, and Jeanette Algarme, as service awards if the Court approves the settlement.

Specifically, the Agreement includes the following requirements:

Injunctive Relief for the Access Barrier Subclasses

The Agreement requires that Brookdale bring the interior and exterior common areas of Brookdale Brookhurst, Brookdale San Ramon, and Brookdale Scotts Valley into compliance with

the 2010 ADAS, the most recent federal accessibility standards. Agreement §§ 4.1-4.3.[3] Further, Defendants will renovate several resident units at each of the three RCFEs to fully comply with Section 223.3 of the 2010 ADAS, which requires units in long-term care facilities to include certain accessibility features: at Brookhurst 4 studio units, 4 one-bedroom units, 1 "large" one-bedroom unit, and 1 one-bedroom two-bath unit will be renovated to be in compliance with § 223.3; at San Ramon 3 studio units, 3 one-bedroom units will be renovated; and at Scotts Valley 5 studio units, 5 one-bedroom units; 1 two-bedroom units, and 1 "combined unit" will be renovated. All units renovated to the § 223.3 standards shall provide a roll-in shower compartment that complies with the 2010 ADAS Section 608.2.2 or an alternate roll-in shower compartment that complies with the 2010 ADAS Section 608.2.3. *Id.*

At Brookdale Brookhurst, Defendants have agreed to renovate an additional 3 studio units, 4 one-bedroom units, 1 "large" one-bedroom unit, and 1 one-bedroom two-bath unit pursuant to Section 233 of the 2010 ADAS, which allows for residential dwelling units to include features that do not strictly comply with the ADAS requirements, as long as they can be easily modified if necessary to provide compliant access to residents with mobility and/or vision disabilities. Agreement § 4.1; *see, e.g.*, ADAS § 606.2 Clear Floor Space (allowing residential dwelling units to include cabinets underneath lavatories and sinks as long as they can be easily removed and other conditions are met).

Importantly, the Agreement also prohibits Defendants from requiring any resident to pay for any of the remediation Defendants have agreed to perform at the three RCFEs, and it likewise prohibits Defendants from requiring a resident of those facilities "who needs a modification to their unit to accommodate his or her mobility and/or vision disability to pay for such modifications." Agreement § 4.4.

Brookdale has committed to "mak[ing] a good faith effort" to prepare designs and plans—including providing a cost estimate—for the accessibility improvements to Brookhurst no later

[3] For all of the remediation work, the Agreement provides a "safe harbor" consistent with the 2010 ADAS—if features comply with the 1991 ADA Accessibility Guidelines (ADAAG) but do not comply with the 2010 ADAS, Defendants are not required to bring those features into compliance with the 2010 guidelines. *See* 28 C.F.R. § 36.406(a)(5)(ii); Agreement § 4.5.

than June 1, 2025, and to prepare plans and cost estimates for the accessibility improvements to the other two RCFEs within one year of final approval of the Agreement. Agreement § 4.7. Defendants will also remediate all barriers identified as "readily achievable" by the U.S. Department of Justice within two years of the final approval order, and they have agreed to complete all of the access work within five years of final approval unless the work cannot be completed within five years for reasons outside the Parties' control. *See* 28 C.F.R. § 36.304; Agreement §§ 4.6, 4.8.

The Parties have agreed to negotiate and agree upon a certified/licensed architect with a CASp certification ("CASp Architect") to oversee the improvements. Agreement § 4.9. In the event that the Parties are unable to agree on a CASp Architect, one will be appointed by the Court. *Id.* The CASp Architect will have the opportunity to review the plans for the remediation work before Brookdale submits them to the local building departments for approval, as will Plaintiffs' counsel. *Id.* § 4.10. And Class Counsel, accompanied by Defendants' counsel and the CASp Architect, will have an opportunity to inspect the final work performed. *Id.* The CASp may require revisionary work after the inspection, which Brookdale has agreed to complete within a reasonable period of time. *Id.*

To ensure the access barrier remediation is completed even if Brookdale ceases operating one of the three RCFEs, the parties have agreed to a series of safeguards. First, Defendants must notify Class Counsel of any change in the owner, lessee, or licensee of any of the three RCFEs, and Defendants have agreed to offer the subsequent owner, operator, manager, or lessor/lessee, as applicable, a capital expenditure credit to cover all of the remaining access barrier remediation work. Agreement § 4.13. Defendants have also agreed to make good faith efforts to enter into an agreement with the landlord for Brookhurst that would either commit the landlord to doing the access work required by the Agreement or allow Defendants to complete the work even if they no longer operate the RCFE. *Id.* § 4.14. Plaintiffs will be a third-party beneficiary of this agreement. *Id.* If Defendants are not able to enter such an agreement by June 1, 2025, Defendants will deposit the amount of the capital expenditure credit for the Brookhurst work in an interest-bearing escrow account under the jurisdiction of this Court by July 1, 2025, and those funds shall be used

exclusively for the remediation work, unless the work cannot be completed within five years for reasons outside the Parties' control. *Id.* Similarly, if Defendants sell the San Ramon or Scotts Valley RCFEs prior to completing the work, Defendants agree to either complete the work before the sale, require in the sale agreement that the work be completed by the purchaser on the original timeframes (and make Plaintiffs a third-party beneficiary of that agreement), or require in the sale agreement that the purchaser will allow Defendants to complete the work. *Id.* §§ 4.15, 4.16.

Injunctive Relief for FSP Subclass

The Agreement requires Brookdale to maintain the operative "Transporting Residents on Community Vehicles Policy," and not alter as it pertains to "the provision permitting residents to remain on wheelchairs, scooters, or other powered mobility aids while being transported on a Brookdale RCFE vehicle . . . , consistent with the current language contained in the Transporting Residents on Community Vehicles Policy."[4] Agreement § 5. In other words, Defendants have agreed not to reinstate the former Fleet Safety Policy, which Plaintiffs contended violated the ADA by requiring residents who use electric wheelchairs and scooters to transfer out of their mobility devices in order to ride on a Brookdale van or bus.

Class Representative Incentive Awards

To compensate them for their service to the subclasses they represent over the course of several years of litigation, Brookdale has also agreed to provide the three class representatives—Stacia Stiner, Bernie Jestrabek-Hart, and Jeannette Algarme—incentive awards in an amount not to exceed $5,000 assuming the Court approves those awards. Agreement § 6.

Additional Injunctive Relief

As a settlement of the individual injunctive relief claims of Ms. Stiner and Ms. Jestrabek-Hart regarding emergency evacuation procedures and Brookdale's allegedly false and misleading statements and omissions regarding staffing, Brookdale has agreed to additional injunctive relief that Plaintiffs believe will confer a significant benefit on the San Ramon and Scotts Valley subclasses, even though they were not certified to pursue those claims. Grunfeld Decl., Ex. B

[4] The Agreement allows Defendants to modify that provision of the policy if a change in the law or regulations requires them to do so. Agreement § 5.2.

(Stipulated Injunction) ¶¶ 19-24. In particular, for these two RCFEs, Defendants have committed to contracting with transportation services that are able to deploy, to the extent available at the time of evacuation, vehicles with the capacity to carry residents' mobility devices, maintaining enough fuel to keep the RCFE self-reliant for 72 hours, maintaining a database of each resident's evacuation ability and disability-related needs, and regularly discussing emergency evacuation procedures at Resident and Family Council meetings. *Id.* ¶ 19. As to staffing, Brookdale has agreed to instruct staff at San Ramon and Scotts Valley to refrain from making certain oral or written statements to current and prospective residents about how the RCFE sets staffing, to continue using its new clearer Residency Agreement language, to set staffing at those two RCFEs using reasonable metrics such as "assessment procedures, the experience and/or education of the staff, the ability of staff to perform various tasks in parallel, the physical layout of the facility," and to provide regular reporting for a period of two years to Plaintiffs' counsel about the caregiver staffing decisions at those two RCFEs. *Id.* ¶¶ 20-24.

Attorneys' Fees, Costs, and Expenses

The parties have agreed that Plaintiffs will seek no more than $14,500,000 in attorneys' fees, costs, and expenses, and that Defendants will not oppose their motion for an award up to that amount. Agreement § 7. Plaintiffs' anticipated request of $14,500,000 is approximately one-third of the total amount Plaintiffs' have incurred to date in attorney's fees, costs, and expenses. Grunfeld Decl. ¶ 24.

ARGUMENT

Federal Rule of Civil Procedure 23(e) conditions the settlement of any class action on court approval. *Frank v. Gaos*, 586 U.S. 485, 492 (2019). The Ninth Circuit recognizes the "overriding public interest in settling and quieting litigation … particularly … in class action suits …." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976)*; see also Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (There is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned."); *In re Hyundai & Kia Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (same). However, in recognition of the complexity of class actions and the risks settlements pose to the recovery of the class,

Federal Rule of Civil Procedure 23(e) mandates that approval of a class action settlement requires "a solid record" that the proposed settlement is "fair, reasonable and adequate." Advisory Committee's Notes to 2018 Amendment, Fed. R. Civ. P. 23; Fed. R. Civ. P. 23(e)(1)-(2).

A court may probe the parties' consensual agreement only "to ensure that it is 'fair, adequate, and free from collusion.'" *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)); *see* Fed. R. Civ. P. 23(e)(2) (the court may approve settlement "only after a hearing and only on finding that it is fair, reasonable, and adequate").

At the preliminary approval stage, the Court need only find that the proposed settlement is within the range of reasonableness. *See In re Celera Corp. Sec. Litig.*, No. 5:10-cv-02604-EJD, 2015 WL 1482303, at *3 (N.D. Cal. Mar. 31, 2015); *see also* William B. Rubenstein, Newberg on Class Actions, § 13.15 (5th ed. 2016) ("Newberg"). "At this point, the court's role is to determine whether the settlement terms fall within a reasonable range of possible settlements, with 'proper deference to the private consensual decision of the parties' to reach an agreement rather than to continue litigating." *Toolajian v. Air Methods Corp.*, No. 18-cv-06722-AGT, 2020 WL 8674094, at *7 (N.D. Cal. Apr. 24, 2020) (quoting *In re Google Referrer Header Privacy Litig.*, No. 5:10-CV-04809 EJD, 2014 WL 1266091, at *6 (N.D. Cal. Mar. 26, 2014)).

I. THE PROPOSED SETTLEMENT AGREEMENT IS FAIR, REASONABLE, AND SHOULD BE GRANTED PRELIMINARY APPROVAL

To determine whether an agreement is fundamentally fair, adequate, and reasonable, the Court may preview the factors that ultimately inform final approval: (1) the strength of plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *See Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir. 2020) . Courts have found an absence of collusion when settlement negotiations are conducted by a third-party mediator. *See, e.g., In re Hyundai & Kia Econ. Litig.*, 926 F.3d at 569; *The Civil Rights*

Educ. & Enf't Ctr. v. RLJ Lodging Tr, No. 15–cv–0224–YGR, 2016 WL 314400, at *11 (N.D. Cal. Jan. 25, 2016).

Accordingly, at preliminary approval, so long as the settlement agreement falls into the range of possible approval, with deference to the result of the parties' arms-length negotiations and the judgment of experienced counsel following sufficient investigation and discovery—the settlement should be preliminarily approved.

Here, the Agreement is fundamentally fair, adequate, and reasonable. The parties reached the Settlement Agreement after four settlement conference sessions with Magistrate Judge Joseph C. Spero and significant direct negotiations. Grunfeld Decl. ¶ 8. In coming to agreement on the Agreement terms, the Parties exchanged numerous draft written proposals over several months. *Id.*; Declaration of Guy B. Wallace in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement for Injunctive Relief ("Wallace Decl.") ¶ 6. Class Counsel collectively have extensive expertise in disability law, class action cases, and in litigation regarding the rights of elderly people residing in RCFE settings. Grunfeld Decl. ¶¶ 9-11; Wallace Decl. ¶¶ 2-5. The Parties have investigated the factual and legal issues raised in this action, conducted extensive fact and expert discovery, vigorously litigated the matter over seven and a half years, and diligently negotiated the Agreement. Grunfeld Decl. ¶¶ 4-8; Wallace Decl. ¶ 7.

Class Counsel believes that the Agreement is an acceptable alternative to litigating the remainder of this case. Grunfeld Decl. ¶¶ 12-23; Wallace Decl. ¶¶ 7-10. In addition to the trial on the ADA claims on behalf of the Brookhurst and FSP subclasses, which would have lasted at least two weeks, the Parties also would have needed to complete two more jury trials of approximately the same length, as well as significant additional expert discovery and motion practice regarding the individual consumer statutory claims, and it is very likely that one or both parties would have appealed the verdict in the first class-wide trial. Grunfeld Decl. ¶ 17; Wallace Decl. ¶ 7.

Both sides faced significant risks in continuing in the litigation, and Class Counsel determined that the risks to class members of pursuing the class claims was outweighed by the certainty of the excellent relief in the Agreement. Grunfeld Decl. ¶¶ 12-23; Wallace Decl. ¶¶ 7-10. Notably, even though the claims of two of the subclasses—the Unruh Act claims based on

California Building Code violations brought by the San Ramon and Scotts Valley subclasses—were entirely dismissed in the Court's December 13, 2024 summary judgment order, the settlement provides substantial relief for those subclasses, requiring renovation of all indoor and outdoor common areas and several residential units to be fully compliant with the most recent federal accessibility standards regardless of whether Defendants sell the properties before the work is completed. Grunfeld Decl. ¶ 18; Wallace Decl. ¶¶ 8-9. Three Brookdale RCFEs will now be made fully accessible to people with mobility and/or vision disabilities; this is an excellent outcome, given that none of them previously complied with federal or state accessibility standards. *Id.* Moreover, Defendants' agreement not to reinstate the FSP provides significant protection to residents of Brookdale RCFEs across California who use electric wheelchairs and scooters. Grunfeld Decl. ¶ 19. Current and future residents will be ensured that they will not have to transfer out of their mobility devices, consistent with the terms of the current Transporting Residents on Community Vehicles Policy, in order to take advantage of Brookdale's transportation services. *Id.*

Plaintiffs faced significant risks in the continued litigation. Defendants opposed the case strenuously at every turn in the seven and a half years since Plaintiffs filed it, including in the period immediately preceding the scheduled trial. Grunfeld Decl. ¶¶ 12-23; Wallace Decl. ¶¶ 7-10. The Unruh Act new construction claims of the Scotts Valley and San Ramon subclasses could only have been revived through a successful appeal. Grunfeld Decl. ¶ 18. There was a significant chance that Plaintiffs would have lost one or both of the claims going to trial in the first trial—the Brookhurst Subclass's claims hinged almost entirely on the testimony of one person, Plaintiff Jeanette Algarme, an elderly former resident of the facility whose standing Defendants repeatedly attacked and who needed to testify credibly that she would re-visit the facility, and there was a possibility that the Court would have agreed to give Defendants' proposed instruction to the jury regarding the FSP claim, allowing for a verdict in Defendants' favor. Grunfeld Decl. ¶ 20; Wallace Decl. ¶ 7.

Moreover, courts have long recognized the inherent risks and "vagaries of litigation," and emphasized the comparative benefits of "immediate recovery by way of the compromise to the

mere possibility of relief in the future, after protracted and expensive litigation." *Nat'l Rural Telecomm's Coop. v. DIRECTTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004). The "inherent" risks of protracted litigation, trial and appeal are all factors that militate in favor of settlement in access cases under the ADA. *See, e.g.*, *Californians for Disability Rights, Inc. v. Cal. Dept. of Transp.*, No. C 06—5125 SBA, 2010 WL 2228531, at *3 (N.D. Cal. June 2, 2010) ("The settlement affords significant and immediate relief that may never have materialized had the trial concluded."). Proceeding to trial, and the inevitable appeals of those decisions, could have added three years or more to the resolution of this case. Given the importance of the accessibility of these RCFEs to the elderly residents with disabilities, the potential for years of delayed relief is a genuine concern. And throughout the litigation, Plaintiffs faced an uphill battle finding current residents willing to testify about conditions inside the RCFEs. Grunfeld Decl. ¶ 21; Wallace Decl. ¶ 7. This hampered Plaintiffs' ability to marshal evidence about the current conditions and to persuade individuals to serve as class representatives. *Id.*

Overall, Class Counsel views the Agreement as a successful compromise that will afford great benefit to the subclasses and that will result in genuine improvement in their circumstance and quality of life. Grunfeld Decl. ¶¶ 12-23; Wallace Decl. ¶¶ 7-10. That qualified, well-informed counsel endorse the Agreement as being fair, reasonable, and adequate weighs in favor of preliminary approval.

II. THE AGREEMENT REGARDING ATTORNEYS' FEES, COSTS, AND EXPENSES WAS FREE FROM COLLUSION

The Court is required to examine the Proposed Agreement, including any agreement about attorney's fees and costs, to consider whether it is the "product of collusion." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). A higher level of scrutiny is required where parties resolve a class action prior to class certification, a factor that is not present here. *Id.* at 946-47. While an agreement on attorney's fees that states that the defendant will not oppose a certain amount is one of a few potential signals of a collusive agreement, *see id.*, such an agreement does not necessarily indicate collusion, particularly where the relief provided to the class is substantial and extensive. *Cf. id.*; *Kastler v. Oh My Green, Inc.*, No. 19-CV-02411-HSG,

2021 WL 3604714, at *8–9 (N.D. Cal. Aug. 13, 2021) (granting preliminary approval of settlement with clear sailing provision because "Class Counsel obtained results for the prospective class members," the requested fees were significantly below the plaintiffs' lodestar, and class members were still receiving the majority of the benefit from the agreement); *Richards v. Chime Fin., Inc.*, No. 19-CV-06864-HSG, 2020 WL 6318713, at *8 (N.D. Cal. Oct. 28, 2020) (same).

Here, the members of the subclasses are receiving very significant injunctive relief, even though the Court dismissed the claims of two of the subclasses at summary judgment, including extensive remediation work at three RCFEs. Grunfeld Decl. ¶¶ 12-17; Wallace Decl. ¶¶ 8-10. And the requested amount is only approximately one-third of the fees and costs Plaintiffs have incurred during their nearly eight years of working on this case without any payment. Grunfeld Decl. ¶ 24. These factors alone weigh against any finding of collusive behavior. But there are also none of the other red flags the Ninth Circuit warned about in *In Re Bluetooth*—there could not have been any fund for monetary distribution to class members because the classes were certified to pursue only injunctive relief (and the injunctive relief obtained here is substantial), so there is no concern that Class Counsel are taking a disproportionate share of the settlement or that fees the Court does not award will revert to Defendants rather than going to the class. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 947.

The Court is not required to rule on the anticipated requests for attorneys' fees, costs, expenses, and incentive awards now. Nevertheless, the amounts proposed in the Settlement Agreement fall within the range of potential approval, given the length and complexity of this case.

III. CLASS CERTIFICATION REMAINS APPROPRIATE

The Court has previously found that certification pursuant to Rule 23(b)(2) is appropriate for all four subclasses. *Stiner III*, 665 F. Supp. 3d at 1195; *Stiner IV*, 2024 WL 3498492, at *13. The parties have maintained the same class definitions for the purpose of the Proposed Settlement. *See* Agreement §§ 2.1, 2.2. All four subclasses continue to meet the requirements of Rule 23(a) and Rule 23(b)(2).

IV. THE PARTIES DO NOT REQUEST THE COURT PROVIDE NOTICE TO THE CERTIFIED SUBCLASSES, BUT WILL MEET AND CONFER AS TO AN EFFICIENT NOTICE PROCEDURE IF THE COURT ORDERS NOTICE

The Parties have agreed not to request notice to the Certified Subclasses. Agreement § 9.6. The Parties note, however, that there is inconsistent authority regarding whether class notice is required in these circumstances, including from this Court. *Compare Ang v. Bimbo Bakeries USA, Inc.*, No. 13-cv-01196-HSG, 2020 WL 2091801, at *3 (N.D. Cal. Mar. 31, 2020); *Guttman v. Ole Mexican Foods, Inc.*, No. 14-cv-04845-HSG, 2016 WL 9107426, at *2 (N.D. Cal. Aug. 1, 2016); *with Moore v. GlaxoSmithKline Consumer Healthcare Holdings (US) LLC*, No. 4:20-CV-09077-JSW, 2024 WL 4868182, at *4 (N.D. Cal. Oct. 3, 2024); *Moreno v. San Francisco Bay Area Rapid Transit Dist.*, No. 17-CV-02911-JSC, 2019 WL 343472, at *3 (N.D. Cal. Jan. 28, 2019). Accordingly, in the event the Court requires that notice be provided to the Certified Subclasses to approve of this Agreement, the Parties agree to cooperate in good faith to identify the least burdensome and most efficient means of providing effective notice.

The Parties will submit a proposed scheduling order, including a date for the required fairness hearing, upon resolution of the question of the notice procedure, if any. *See* Fed. R. Civ. P. 23(e); *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982); *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016). Regardless of whether the Court orders notice, Plaintiffs request that the fairness hearing be scheduled with sufficient time for members of the certified classes to object to the settlement, but otherwise as early as practicable so that the relief set forth in the Agreement may be effectuated as soon as possible.

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CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement.

DATED: March 17, 2025

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: */s/ Jenny S. Yelin*
Jenny S. Yelin

Attorneys for Plaintiffs and the Certified Subclasses