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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 LYTTLE,
 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.

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

**DECLARATION OF DAVID T. MARKS
 IN SUPPORT OF PLAINTIFFS’
 MOTION FOR REASONABLE
 ATTORNEYS’ FEES, COSTS, AND
 EXPENSES**

Judge: Hon. Haywood S. Gilliam, Jr.

October 16, 2025
 2:00 p.m.
 CTRM. 2, 4TH FLOOR

1 I, David T. Marks, hereby declare,

2 1. I am an attorney duly licensed to practice before all the courts of the
3 State of Texas and am a member in good standing of the State Bar of Texas. I am
4 the founding partner of the law firm of Marks Balette Young & Moss, P.L.L.C.
5 (“MBYM”) (formerly Marks, Balette, Giessel & Young, P.L.L.C.) and am one of
6 the Class Counsel in the above captioned matter (the “Action”). I am submitting
7 this Declaration in support of Plaintiffs’ Motion for Reasonable Attorneys’ Fees,
8 Costs, and Expenses. Unless otherwise indicated, I have personal knowledge of the
9 facts set forth herein. If called upon to testify, I could and would do so
10 competently.

11 **Background and Experience:**

12 2. I have been practicing law for 46 years. I am licensed to practice
13 before the courts of the State of Texas, Arkansas, Kentucky, North Carolina,
14 Oklahoma, and Tennessee, and am a member in good standing of the Bars in these
15 states. My pro hac vice application was granted in this case on June 17, 2021 by
16 this Court.

17 3. I have extensive experience in long term care litigation having spent
18 more than 41 years prosecuting complex civil and criminal cases that involve the
19 domination and control by a corporate parent over a large chain of affiliated nursing
20 homes, assisted living facilities, and/or related subsidiary companies whereby: (a)
21 these facilities and subsidiaries were the alter ego of the corporate parent; (b) these
22 facilities and subsidiaries were undercapitalized, functioned as mere agents,
23 instrumentalities, and conduits through which the corporate parent did business, and
24 treated by the parent as a single entity; and (c) the corporate parent directly
25 participated in and dominated the day-to-day operations of these facilities and all
26 decisions that materially impacted facility expenses, revenues, or profits, including
27 the financial decision to systemically limit or reduce the number of care staff
28 thereby causing widespread failure to deliver needed and promised care services to

1 elderly and dependent facility residents. The majority of the cases I have handled
2 during my career have involved the issue of whether a corporate parent that
3 operated a chain of long term care facilities was legally responsible for injurious or
4 deadly conduct due to: (a) its direct participation, exertion of pressure, and
5 domination of the decisions, including causing a pattern and practice of critical
6 understaffing that made it impossible for caregivers to provide a significant amount
7 of the care services required by and promised to the resident population and (b) its
8 alter ego relationship with the facility in question.

9 4. During my four decades of law practice, I have served as lead trial
10 counsel in some of the largest verdicts in the United States involving budgetary
11 pressure and control exerted by a corporate parent over long-term care facilities to
12 ensure adherence to skeletal staffing levels and evidence of an alter ego
13 relationship. By way of example:

14 a. In 1997, I was lead counsel in *Waites v. Beverly Enterprises, Inc*
15 (a wrongful death case against the largest nursing home operator
16 at the time in the United States) where a jury: (1) found that the
17 corporate parent was the alter ego of the nursing home in
18 question; (2) found that the corporate parent's deliberate and
19 dangerous understaffing caused the death of the resident; and (3)
20 returned a verdict for \$83 million [reduced by the Court to a \$56
21 million judgment].¹

22 b. In 2004, I served as co-lead counsel on behalf of the Creditors
23 Committee in an understaffing case against Zurich Insurance
24 Co. and a bankrupt nursing chain, Senior Living Properties
25 (debtor), consisting of 87 facilities (located in Texas and
26 Illinois) in the United States Bankruptcy Court, Northern
27

28 ¹ See <https://www.wsj.com/articles/SB880333196846267500>.

1 District Texas.² Based on the evidence of Zurich’s control over
2 staffing and operational decisions at 87 nursing homes, the
3 Court entered judgment against Zurich finding it was the
4 equitable partner of Senior Living Properties and, therefore,
5 liable for \$528 million in debt.³

6 c. In 2006, I served as co-lead attorney in *Mendoza v. Summit Care*
7 *Corporation*, a jury trial involving the operation, direct
8 participation, and legal responsibility by a corporate parent for
9 injuries and abuse of a nursing home resident which resulted in a
10 \$160 million verdict.⁴

11 d. In 2017, I served as lead counsel in a class action case, *Lamb v.*
12 *Golden Living* (GGNSC Holdings, LLC—one of the largest
13 nursing home chains in the United States), arising out of
14 corporate parent’s alter ego relationship, domination, control,
15 and direct participation of the day-to-day operations of twelve
16 facilities owned and operated by Golden Living in Arkansas,
17 including dangerous understaffing decisions and violations of
18 the Arkansas Deceptive Trade Practices Act. Significantly,
19 Plaintiffs’ staffing experts and system engineers developed
20 scientific evidence that during the Class Period, the 12 Golden
21 Living facilities failed to deliver over 168,000 hours of basic
22 care to dependent residents. After 120 depositions and shortly
23 before trial, the case settled for \$71 million, resulting in a
24

25 ² See Memorandum and Opinion dated April 22, 2004, *In Re: Senior Living Properties, L.L.C.*,
26 Case No. 02-34243-SAF-11, United States Bankruptcy Court, N. D. Texas, Dallas Div.

27 ³ See “UPDATE 1-Zurich Fin faces claim un U.S. for over \$500 mln” Reuters, Bond Notes, July
28 15, 2004, and <https://www.swissinfo.ch/eng/banking-fintech/swiss-insurer-faces-major-claims-in-the-us/3996914>.

⁴ See <https://www.mrt.com/news/article/Jury-returns-160-million-verdict-against-nursing-7604082.php>.

1 common fund of \$48 million from which residents or their
2 estates received compensation of \$55 for each day a class
3 member resided in one of the subject facilities. Additionally,
4 Golden Living paid attorneys' fees and costs of \$23 million.⁵

5 e. Further, in 2018, I served as lead counsel in another, unrelated
6 case against Brookdale Senior Living, Inc. arising out of
7 understaffing and the death of a 99-year-old resident. The case
8 settled for \$5 million.⁶

9 5. Collectively, I have been lead counsel on more than 140 wrongful
10 death cases alleging corporate parent direct participation and control of
11 understaffing which have each resulted in settlements in excess of \$1,000,000.⁷

12 6. Additionally, for over 14 years, my firm has worked with the leading
13 system engineering and computer simulation firm in the country,
14 ProModel/MedModel (now known as BigBear.ai), to develop scientific evidence
15 and mathematically determine: (a) if enough caregivers are or were allocated to the
16 job to complete all required care tasks in a long term care facility, (b) the minimum
17 amount of labor time required to perform all care required by the resident
18 population in a facility on a per day/shift basis, during a set timeframe, (c) the

19
20 ⁵ See *Lamb et al. v. GGNSC Arkadelphia, et al.*, Circuit Court of Ouachita County, Arkansas,
21 Sixth Division, Cause No. CV-2011-121-6, and [https://medicareadvocacy.org/lawsuit-
challenging-chronic-snf-understaffing-settled-for-72-million/?utm_source=chatgpt.com](https://medicareadvocacy.org/lawsuit-challenging-chronic-snf-understaffing-settled-for-72-million/?utm_source=chatgpt.com).

22 ⁶ Pursuant to the terms of the settlement agreement, any reference to this settlement requires a
23 disclosure that the decision to settle was made solely by Brookdale's insurance carrier.

24 ⁷ As a result of my experience litigating long-term care cases, I have been invited to serve as
25 faculty in continuing legal, medical, and nursing continuing education courses across the United
26 States, including American Academy of Forensic Science, National Association of Medicaid
27 Fraud Control Units, and National District Attorneys Association, University of Arkansas School
28 of Medicine and John L. McClellan Memorial Veterans Hospital, University of Texas at Austin
School of Nursing, Texas Tech University School of Nursing, Memorial Hermann Hospital
System, St. Vincent's Medical Center, Harris County Department of Social Services, National
Coalition of Nursing Home Reform, and the Annual Scientific Assembly of the Southern Medical
Association, State Bar of Texas,. Additionally, I have authored a number of articles about the
importance of long-term care facilities employing sufficient numbers of qualified staff to meet
basic resident care needs to decrease resident harm.

1 maximum amount of the assigned work that can possibly be performed by a set
2 number of caregivers during a defined timeframe, and (d) the quantity of services, if
3 any, that cannot be performed during a set timeframe by a set number of staff due to
4 workload exceeding the maximum work capacity of staff.

5 7. My firm has employed ProModel's engineering methodology, failure
6 analysis, and resulting scientific evidence in numerous, complex assisted living
7 understaffing cases across the United States for purposes of proving corporate
8 control, liability, and damages. More specifically, I have served as co-counsel in
9 the following class actions in California involving assisted living chains in which
10 litigation or settlement classes were certified and in which class settlements were
11 approved by the Courts: (a) *Newirth, et al. v. Aegis Senior Communities, et al.*, U.S.
12 District Court, N. Dist. California; 4:16-cv-03991-JSW; (b) *Lollock et al. v.*
13 *Oakmont Senior Living, et al.*, Alameda County Superior Court, case no.
14 RG17875110; and (c) *Heredia, et al. v. Sunrise Senior Living, LLC, et al.*, U.S.
15 District Court, Cent. Dist. California; 8:18-cv-01974-JLS-JDE. My firm's role in
16 these cases was to develop evidence that: (a) the corporate parent of the respective
17 chain controlled, dominated, and directly participated in the staffing decisions at
18 each of its California facilities and (b) the corporate parent of each chain employed
19 a defective staffing formula which was implemented and enforced at each of its
20 facilities and which resulted in understaffing that made it physically impossible to
21 deliver the services that were promised to residents at each of its facilities. In each
22 of these cases, my firm's fees and rate of billing were accepted by the respective
23 Courts.

24 8. By reason of my background in proving corporate parent liability in
25 understaffing cases and my experience with the scientific methodology and
26 evidence described above, I was asked to participate as an attorney for Plaintiffs
27 and putative class members in the Brookdale California case.
28

The Reasonableness of Attorney Fees and Costs Grow Out of the Complexities of This Case and the Multiple Discovery Issues Encountered by Plaintiffs' Counsel:

9. The team of attorneys and law firms that came together to represent Plaintiffs in this case had a deep background and special expertise in key subject areas of the case and were accordingly assigned primary responsibility for certain areas of case development and discovery (and any subsequent trial) based on that expertise. MBYM attorneys and staff were assigned primary responsibility for developing discovery and evidence that: (a) Brookdale's corporate parent employed, implemented, and enforced a defective staffing formula at its California facilities that made it physically impossible for residents to routinely receive the basic care it promised to provide its residents; (b) residents of Brookdale's California facilities were disabled (as such term is defined by the ADA Amendments Act) based on their individual assessments documented by Brookdale; (c) residents of Brookdale's California facilities required assistance with common, basic care services based on their documented assessments; (d) Brookdale's corporate parent controlled and directly participated by requiring its facilities to use a common staffing formula regarding the quantity of staff allowed to work at its facilities; and (e) by using and requiring its defective staffing formula (that did not account for all resident care needs and staff care time), Brookdale was able to enjoy substantial cost savings. As described in more detail below, these case assignments required the discovery and analysis of voluminous data obtained from Brookdale by MBYM attorneys, key expert witnesses, and data specialist (with whom MBYM worked).

10. Further, with respect to developing discovery and evidence related to the defective staffing formula used at Brookdale's California facilities, MBYM attorneys and staff had primary responsibility for working with industrial engineering experts to develop and perform staffing analyses, including discrete

1 event simulation (DES) testing of Brookdale's California facilities. These staffing
2 analyses were important to and provided support for the individual claims of the
3 named Plaintiffs for financial elder abuse.⁸

4 11. The staffing analyses and DES testing showed that the six facilities
5 where the named Plaintiffs resided were routinely understaffed and unable to meet
6 the needs of their residents, including Plaintiffs, and showed that the facilities'
7 staffing was below the staffing levels that Dr. Flores indicated were required to
8 provide all necessary services to residents. Further, the staffing analyses performed
9 by our experts revealed that these six facilities were frequently staffed below
10 Brookdale's own benchmark staffing levels generated by Brookdale's staffing
11 methodology.

12 12. The underlying work performed as part of these staffing analyses
13 (particularly involving analysis of resident assessment data) was also important to
14 other aspects of the case, including (a) showing numerosity for the subclasses with
15 respect to those persons with mobility and/or vision disabilities, (b) identifying
16 class members who were disabled within the meaning of the ADA Amendments
17 Act of 2008 and who were not covered by arbitration agreements and who were,
18 accordingly, potential members of the subclasses, and (c) analyzing the nature of
19 the *medical* and *care* services performed in order to establish that the named
20 Plaintiffs' facilities were medical care facilities under the 1991 ADAAG and the
21 2010 ADAS, thus requiring that Defendants' provide more than 5% resident rooms
22 that were compliant with federal accessibility standards. In short, the factual
23 analysis performed as part of the staffing analysis supported Plaintiffs' claims under

24 ⁸ Notably, similar staffing analyses and related work performed by MBYM was
25 compensated in: (a) *Newirth, et al. v. Aegis Senior Communities, et al.*, U.S.
26 District Court, N. Dist. California; 4:16-cv-03991-JSW; (b) *Lollock et al. v.*
27 *Oakmont Senior Living, et al.*, Alameda County Superior Court, case no.
28 RG17875110; (c) *Heredia, et al. v. Sunrise Senior Living, LLC, et al.*, U.S. District
Court, Cent. Dist. California; 8:18-cv-01974-JLS-JDE.

1 the ADA and the Unruh Act, and the substantial relief achieved with respect to
2 those claims.

3 13. Furthermore, the specific DES testing and results for the six facilities
4 where the named Plaintiffs resident, as well as the other 7 facilities studied,
5 combined with the related staffing analyses of benchmark versus actual staffing
6 hours for all Brookdale California facilities, were relevant to show Brookdale's
7 corporate control over and direct participation in the operation of its facilities, a key
8 issues with respect to the certification of the subclasses, summary judgment, and
9 damages.

10 14. Moreover, the evidence developed as part of the work by MBYM (and
11 the Stebner firm) was important to obtaining injunctive relief on the staffing claims,
12 including Defendants' agreement to change the language of their form Resident
13 Agreement to provide a more robust disclosure regarding their staffing levels. In
14 addition, the settlement agreement establishes a reporting mechanism whereby
15 Brookdale will relay its staffing metrics over the next several years to Plaintiffs'
16 counsel.

17 15. During the course of this litigation, I regularly had telephonic and
18 video conferences with Guy Wallace, co-lead counsel, to discuss discovery issues,
19 project assignments, data analyses, expert declarations of experts, depositions of
20 experts, court hearings, legal briefing, and key portions of motions, responses, and
21 replies that were specifically relevant to our primary areas of responsibility.

22 16. Together with other Class Counsel, I and other MBYM attorneys and
23 staff participated in discovery and motion practice in this heavily-litigated case. As
24 discussed in more detail below, the voluminous nature of the data produced and
25 analyzed in this case, as well as the multiple discovery disputes arising from
26 Defendants' numerous discovery supplementations and responses, required
27 significant time commitments on the part of MBYM attorneys and staff. More
28 specifically, Defendants repeatedly failed to make a complete production of punch

1 detail staffing data, resident assessment data, resident move-in/out data, census
2 data, and Labor Detail Reports (LDR) data, and each time Defendants
3 supplemented this data, MBYM attorneys and staff had to analyze it to determine
4 what data had and had not been produced. Then, after Defendants made a further
5 production of punch detail staffing data, resident assessment data, resident move-
6 in/out data, census data, and Labor Detail Reports (LDR) data, staffing analyses
7 impacted by such additional data had to be redone to incorporate it. Such back-and-
8 forth discovery issues continued throughout the litigation, significantly increasing
9 MBYM's lodestar.

10 17. Similarly, MBYM was forced to expend a large amount of time
11 defending the validity of the DES analysis herein because of Defendants' multiple
12 *Daubert* challenges, all of which were denied. MBYM responded to Defendants'
13 motions to exclude the declarations and testimony of Dr. Flores and Mr. Schroyer.
14 MBYM further assisted Dr. Flores and Mr. Schroyer in preparing their opposition
15 declarations to these motions, including additional analyses directly responsive to
16 Defendants' criticisms. Similarly, MBYM assisted in responding to the
17 declarations and voluminous exhibits of Defendants' experts Drs. Jacobson and
18 Saad that were offered in opposition to Plaintiffs' motion for class certification. In
19 response to these defense experts, MBYM assisted in (a) preparing responses to the
20 various DES use and validation attacks lodged by Dr. Jacobson, (b) determining the
21 errors and misrepresentations made in data-oriented attacks lodged by Dr. Saad, and
22 (c) preparing in-depth responsive declarations for Dr. Flores, Mr. Schroyer, Dr.
23 David Belson, and Dr. Edward Jones to counter these attacks.

24 18. An example of this additional work that MBYM was required to
25 perform stems from the numerous claims by Dr. Jacobson in his declaration and
26 deposition that the inputs in the Plaintiffs' staffing analyses were wrong (favoring
27 Plaintiffs) and that the use of Dr. Jacobson's inputs would have showed that
28 Brookdale was not understaffed. These claims by Dr. Jacobson resulted in

1 Plaintiffs' experts (Dr. Flores, Mr. Schroyer, Dr. David Belson, Dr. Edward Jones,
2 and Blake Peters) and MBYM attorneys analyzing the impact of Dr. Jacobson's
3 inputs on the staffing analyses. This required replacing specific inputs of Dr. Flores
4 and Mr. Schroyer with the inputs that Dr. Jacobson claimed should have been used
5 in a valid staffing analysis. A significant amount of time was expended by these
6 experts and MBYM staff in undertaking these analyses which required running tens
7 of thousands of DES tests. The results showed there was no material differences in
8 the staffing outcomes when Dr. Jacobson's inputs were used, and, in some
9 instances, the outcomes were materially worse for Defendants. For example, Dr.
10 Jacobson argued that the staffing inputs were skewed in favor of the Plaintiffs
11 because they were based on hours per patient day data obtained from Brookdale, as
12 opposed to timecard data obtained from Brookdale. However, using Brookdale's
13 timecard data as inputs showed that Brookdale was even more understaffed. This
14 timecard versus hours per patient day analysis required a huge amount of data
15 analysis and simulation retesting.

16 19. MBYM was responsible for a substantial amount of discovery
17 (including numerous declarations, exhibits, and depositions) regarding Plaintiffs'
18 experts Dr. Cristina Flores, Mr. Dale Schroyer of ProModel, Dr. David Belson, and
19 Dr. Edward Jones, as well as Defendants' corporate representatives and experts,
20 including Dr. Sheldon Jacobson, Dr. Ali Saad, and Ms. Kelly Rubin, all with
21 respect to Brookdale's staffing policies, practices, methodology, and software.

22 20. Further, I participated in the Class Counsel team that represented the
23 interests of the Named Plaintiffs and the Class in the mediation and settlement
24 efforts. Among documents related to the settlement, I have reviewed the Settlement
25 Stipulation, Addendum to the Settlement Stipulation, and Injunction agreed to as
26 part of the settlement.

27 21. By reason of my role and my firm's work in this case, I am familiar
28 with the claims and defenses asserted and the key evidence adduced in the lawsuit

relevant to the merits of the Plaintiffs' individual and class claims, as well as the complexities and difficult challenges this case posed which resulted in the extensive expenditure of attorney and staff time by MBYM and other Plaintiffs' counsel in this case.

22. For the reasons set forth herein and in Plaintiffs' Motion for Approval of Reasonable Attorneys' Fees, Costs, and Expenses and supporting documents, I respectfully ask this Court to approve Plaintiffs' counsels' lodestar fees and cost.

MBYM's Lodestar Fees:

23. As of September 18, 2024, my firm has worked a total of 6,458.4 hours. Based on the billable rates and time of the timekeepers identified in *Table 1* below, my firm's fees in connection with the prosecution of this case total \$4,326,532.50, *prior to* the reduction discussed below in paragraph 54.

24. The primary MBYM timekeepers who have worked on the case include the following:

Name	Position	Bar Admission	Rate	Total Hours	Fees
David T. Marks	Partner	1978	\$1,050	1,656.6	\$1,739,430.00
Jacques Balette	Partner	1997	\$850	51.2	\$43,520.00
Jim Thornton	Attorney	1995	\$800	2,333.5	\$1,878,880.00
Blake Peters	Superior Analytics, Sr. Data Analyst	(non-attorney)	\$275	2,417.1	\$664,702.50
	TOTAL			6,458.4	\$4,326,532.50

Table 1: MBYM Time and Fees in Brookdale

25. The specific work performed by the MBYM timekeepers and the hourly rates charged by each timekeeper are described in time and billing records that are being submitted with Plaintiffs' Motion for Approval of Reasonable Attorneys' Fees, Costs, and Expenses, which are attached hereto as Exhibit A.

1 26. An overview of the work performed by MBYM personnel on this case
2 is provided in the following paragraphs.

3
4
5 **David Marks, Partner:**

6 27. I served as lead partner for MBYM directing the strategy and the work
7 performed in the Brookdale case by the above identified personnel /timekeepers in
8 my firm and expert witnesses who performed the projects and analyses described in
9 more detail below. These projects frequently involved the analysis of voluminous
10 documents and complex data, including:

- 11 a. Determining the common care needs of residents in Brookdale's
12 facilities (based on the care services Brookdale documented as
13 being needed in each resident's assessment) and the common
14 labor time required by facility staff to meet these needs (based on
15 scientifically determined, authoritative, and generally accepted
16 task times associated with these care services);
- 17 b. Determining the common staffing methodology implemented and
18 enforced by Brookdale corporation at each of its California
19 facilities;
- 20 c. Analyzing the pattern and practice of staffing at each of
21 Brookdale's California facilities as evidenced by voluminous
22 punch detail/timecard data, budgetary data, and staffing
23 documents produced by Brookdale;
- 24 d. Establishing that Defendants' tight corporate control over staffing
25 at each of Brookdale's California facilities resulted in daily
26 staffing that closely adhered to the benchmark staffing levels
27 Brookdale required (for example, an extensive staffing variance
28 analyses performed by Plaintiffs' expert Dr. Edward Jones

- 1 revealed that actual staffing deviated only minimally from
2 benchmarks set by Brookdale corporate for each of its facilities);
- 3 e. Examining and breaking down Brookdale's staffing formula and
4 benchmarks and identifying the defects in this formula that made
5 it impossible for Brookdale's California facilities to meet the
6 common care needs of its residents;
- 7 f. Creating a framework (a "service code key") by which all resident
8 care needs and services that were documented in every resident
9 assessment in Brookdale's California facilities could be
10 converted into the required hours of staff time in order to quantify
11 required daily services and required daily labor in each facility;
- 12 g. For each type of care service required to be performed for each
13 resident at Brookdale's facilities, scientifically determining the
14 necessary task times and frequencies based on authoritative
15 literature and Plaintiffs' ALF expert Dr. Cristina Flores' task time
16 reasonableness review;
- 17 h. Scientifically determining (using generally accepted industrial
18 engineering principles and leading discrete event simulation
19 technology) and testing whether the actual numbers of staff
20 allotted by Brookdale based on its common formula were
21 sufficient to meet the documented care service needs of residents
22 or whether such staffing made it mathematically and physically
23 impossible for the care needs of its residents to be met;
- 24 i. Quantifying the labor shortfalls and the care services that were
25 mathematically and physically impossible to provide at
26 Brookdale's California facilities, using generally accepted
27 industrial engineering principles and leading discrete event
28 simulation technology; and

- j. Determining the residents of Brookdale's California facilities who were disabled as such term is defined by the ADA Amendments Act, based on each resident's documented care assessment.

28. My primary responsibilities with respect to the above projects included the following:

- a. **Discovery of Daily Care Workload and Daily Staffing at Brookdale's California Facilities**: Formulating the discovery required by Plaintiffs' experts in order to determine: (a) the staffing hours required (workload) to meet the documented care needs of Brookdale residents on each day and shift for Brookdale facilities, (b) the actual staffing levels/hours at Brookdale facilities each day and shift, and (c) whether a pattern and practice of understaffing existed based on the staffing shortfall (measured in hours) per day and shift at Brookdale facilities;
- b. **Analysis of Care Workload and Staffing Data**: Reviewing and analyzing resident assessment data, resident census data, resident move-in/out data, and facility staffing data that was produced by Defendants in multiple supplemental productions, requiring the MBYM attorneys and staff (1) to identify missing assessment data, resident census data, resident move-in/out data, and facility staffing data, (2) to redo and revise analyses based on the additional production each time additional data was produced by Defendants, and (3) to assist in the preparation of numerous meet and confer letters and resulting motions to compel seeking the production of complete assessment data, resident census data, resident move-in/out data, and facility staffing data based on our analysis of the data produced;

- 1 c. **Discrete Event Simulation Input Discovery:** Obtaining and
2 formatting the inputs required for the discrete event simulation
3 staffing models used by Plaintiffs' systems engineer expert Dale
4 Schroyer (ProModel) to test the sufficiency of Brookdale's
5 staffing formula and actual staffing levels, including (1) the
6 necessary staffing inputs (punch detail/timecard data, budgets,
7 job descriptions, job titles, and staffing documentation at each
8 facility), (2) the necessary workload inputs based on resident
9 assessments, resident daily census, move-in/out data, and the
10 uniform service code key, (3) task time and frequency inputs
11 based on Brookdale's Acuity Minute Norms, RSW Time
12 Standard, Deep Dive Follow-Up Review, Clinical Time Studies,
13 Dr. Flores' review, and other ALF chain information, (4) non-
14 care related staff activities based on Brookdale policy and
15 practice documents, (5) facility floor plans and measurements,
16 and (6) other model inputs confirmed via key deposition
17 testimony from Brookdale management and personnel;
- 18 d. **Sufficiency of Data Produced:** Determining the Brookdale
19 California facilities for which sufficient staffing, care workload
20 data, and floor plans were produced by Brookdale for purposes of
21 discrete event simulation testing;
- 22 e. **Dr. Cristina Flores' Expert Analyses, Declarations, and**
23 **Testimony:** Interfacing with Plaintiffs' nursing expert (Cristina
24 Flores, PhD) about numerous voluminous data summaries and
25 extensive communications including:
- 26 i. Determining the number and identity of proposed class
27 members who had a disability under the ADA;
28

- 1 ii. Determining the number and identity of proposed class
- 2 members who did not have arbitration agreements;
- 3 iii. Determining and confirming the reasonable amount of time
- 4 required (task time) to deliver each of the care services
- 5 identified in Brookdale resident assessment documentation
- 6 through an extensive authoritative literature review project
- 7 that compiled all available task times and frequencies for
- 8 care tasks performed in long-term care environments;
- 9 iv. Determining and quantifying⁹ of the number and type of
- 10 care services required each calendar day for every
- 11 Brookdale resident in the six California facilities where the
- 12 named Plaintiffs resided (based on documented resident
- 13 assessments) over a significant timeframe (from 574 days
- 14 to 2,735 days depending on availability of data), as well as
- 15 this data for seven other Brookdale California facilities,
- 16 including a breakdown of the care service count per day on
- 17 the assisted living units and Alzheimer's units in each
- 18 facility (again, due to Defendants' failure to produce
- 19 complete resident assessment data, resident move-in/out
- 20 data, and facility staffing data that required numerous meet
- 21 and confers, motions to compel, and court assistance, our
- 22 ability to determine and quantify the number and type of
- 23 care services required at each facility each day was
- 24 hamstrung and necessitated redoing analyses each time
- 25 additional data that impacted the analyses was produced);
- 26

27 ⁹ The calculations of the total quantity of services required, the total hours of staff time required,
28 the total hours available, and any shortfalls were performed pursuant to Dr. Flores' directions and
 at her specific request by data analyst Blake Peters.

- 1 v. Determining the total labor hours required by direct
2 caregivers to deliver this care in each of the six California
3 facilities where the named Plaintiffs resided, as well as
4 seven other Brookdale California facilities, on a calendar
5 day basis for the timeframe, including a breakdown of the
6 total caregiver hours required per day on the assisted living
7 units and Alzheimer's units in each facility;
- 8 vi. Identifying and ensuring that every element and input used
9 by expert Dr. Flores and by ProModel to calculate the
10 number of staff hours required on a per day basis were
11 accurate, reliable, and supported by either: (a) Brookdale
12 documented resident assessments; (b) Brookdale policies,
13 procedures, or internal studies/presentations; (c) deposition
14 testimony of Brookdale staff; (d) authoritative literature
15 from peer-reviewed scientific journals or relevant
16 published governmental or assisted living industry studies;
17 and/or (e) Dr. Flores' extensive nursing and ALF
18 experience/expertise;
- 19 vii. Working with Dr. Flores regarding her summary of
20 negative outcome evidence in Brookdale's California
21 facilities, including deficiencies and citations issued by
22 California Department of Social Services' Community
23 Care Licensing (CCL) Division;
- 24 viii. Ensuring that the proper evidentiary predicate could be laid
25 for the admissibility of Dr. Flores' summaries of
26 voluminous documents, including daily service task count
27 analysis, resident diagnoses and line-item services
28 analysis, days with no staff coverage or limited staff

1 coverage analysis; percent of staffing hours by job group
2 analysis, resident census analysis, labor detail report
3 analysis, caregiver to resident ratio analysis, missing
4 assessments based on move-in/out data analysis, DSS
5 citations, and disability profile analysis;

6 ix. Interfacing with and assisting Dr. Flores in the creation of
7 numerous declarations dated August 15, 2021 (in support
8 of Motion for Class Certification), March 18, 2022 (in
9 support of Plaintiffs' Opposition to Motion to Exclude),
10 May 19, 2022 (reply declaration in support of Motion for
11 Class Certification), and October 19, 2023 (in support of
12 Motion for Certification of Subclasses), and her Rule 26
13 expert report, rebuttal expert report, and supplemental
14 rebuttal expert report, including numerous summaries of
15 voluminous records in support of the motions for class
16 certification in the Brookdale case;

17 x. Formulating arguments in support of the Brookdale RCFE
18 facilities being considered medical facilities; and

19 xi. Preparing and tendering Dr. Flores for deposition on
20 December 6, 2021 regarding her opinions about her
21 staffing analyses, the defects in the Brookdale's staffing
22 methodology, and expert witness support for the inputs
23 used in the discrete event simulations;

24 f. **Superior Analytics/Blake Peters' Data Projects—Summaries**
25 **of Voluminous Data Regarding Resident Move-In/Out Dates,**
26 **Disabilities, Care Workload, and Staffing:** Working with
27 Superior Analytics' Senior Data Analyst, Blake Peters by
28

1 reviewing, analyzing, and discussing with him his SAS database
2 project work that included:

- 3 (1) Matching class member names with resident assessment
4 identifiers to determine whether the residents had a
5 disability for purposes of numerosity;
- 6 (2) Reviewing and analyzing 100% of the resident assessments
7 at the 87 Brookdale facilities (the raw resident assessments
8 for these facilities contained over *200 million cells of data*)
9 to identify the possible kinds of unique care services (the
10 care menu) provided in these facilities—Through his use
11 of SAS, Mr. Peters determined there were 97 possible line-
12 item care services that residents of Brookdale’s California
13 facilities could receive;
- 14 (3) Mr. Peters’ computing and summarizing voluminous
15 workload data (including every possible line-item care
16 services from each resident care assessment in the 13
17 California facilities studied—including the 6 facilities
18 where the named Plaintiffs resided)—These computations
19 and summaries counted and quantified on a per day/shift
20 basis the number of care services required at each of the 13
21 California facilities on each calendar day over a significant
22 timeframe (from 574 days to 2,735 days depending on
23 availability of data), and accounted for resident’s moving
24 in and out of the facilities;
- 25 (4) Mr. Peters’ computing and summarizing voluminous raw
26 staffing data produced by Brookdale for its 87 California
27 facilities (which contained over *12 million* cells) – the
28 staffing data produced by Brookdale allowed us to

1 determine the staffing levels to-the-minute, by job title, and
2 by unit (assisted living and memory care) on each of the 3
3 work shifts on each calendar day at the 13 California
4 facilities studied;

5 (5) Analyzing and comparing budgeted (benchmark) hours to
6 actual staffing hours to measure how closely Brookdale's
7 actual staffing followed its corporate staffing formula and
8 budget and to confirm the tight corporate control exerted
9 by Brookdale over its California facilities;

10 (6) Confirming the accuracy and reliability of Mr. Peters'
11 analyses and voluminous summaries, including
12 supervising and working with quality assurance
13 consultants and expert Dr. Jones and Attorney Thornton
14 regarding (i) the source of all data upon which Mr. Peters'
15 computations/formulae were based, (ii) the identification
16 of any assumption included by Mr. Peters in his
17 computations/formulae at the direction of Plaintiffs'
18 experts, and (iii) the factual and/or scientific basis for any
19 such assumption; and

20 (7) Ensuring that the proper evidentiary predicate could be laid
21 for the admissibility of both Mr. Peters' summaries of
22 voluminous documents and his various analyses;

23 g. **ProModel/Dale Schroyer's DES Testing, Staffing Analysis,**
24 **Declarations, and Testimony:** Working with Plaintiffs'
25 engineering expert Dale Schroyer of ProModel, other ProModel
26 engineers, and independent consulting expert engineers
27 regarding:
28

- (1) Discrete event simulation testing (DES) of Brookdale staffing and care service assessment data to (a) determine if it was mathematically and physically possible for the number of staff (Brookdale allocated on each day and shift) at the six California facilities where the named Plaintiffs resided and seven other California facilities to perform the care required (care workload) by Brookdale residents on a per day/shift basis, (b) determine if the Brookdale staffing formula/methodology was defective and resulted in unmet resident care needs, (c) quantify the shortfall between required and actual hours (omitted care time), and (d) determine the extent of the understaffing and whether Brookdale engaged in a pattern and practice of understaffing;
- (2) Every input and data variable required by the discrete event simulation, including (a) caregiver staffing hours (by job title) calculated on a per patient day and per shift basis for each distinct unit within the six California facilities where the named Plaintiffs resided and seven other California facilities undergoing discrete event simulation testing, (b) resident daily census derived from Brookdale resident assessment data, (c) daily counts of each care service required for each resident (workload), (d) identification of care services performed by specific job titles, (e) facility floor plans, (f) the distances facility staff were required to travel to deliver care in the Brookdale facilities based on floor plans, and the travel speed, (g) task times and task frequencies, (h) care service priorities, (i) care service

1 windows, (j) care schedules, and (k) staff meal breaks,
2 mandatory breaks, and routine administrative tasks that do
3 not involve direct resident care;

4 (3) Over 2.6 million discrete event simulation tests (based on
5 the known staffing and workload at Brookdale facilities)
6 that were performed to determine if known numbers of
7 Brookdale staff had the capacity (time) to provide all care
8 to residents on a per day basis under every practical and
9 conceivable work condition--for example the impact on
10 care delivery was tested when resident care schedules were
11 modified, staff work schedules were modified, care
12 services were bundled and modified, staff travel speed was
13 increased, unimportant care services were eliminated, care
14 services windows were increased, and task times were
15 varied and reduced;

16 (4) Scientifically testing, determining and analyzing the
17 systemic nature and degree of staffing shortfalls caused by
18 Brookdale's flawed staffing formula to: (i) determine if it
19 was physically, scientifically and mathematically possible
20 to deliver all the daily care promised to residents (as
21 documented in assessments) at each of the 13 Brookdale
22 facilities studied; (ii) conduct over 2.6 million discrete
23 event simulation tests to determine if there was any
24 realistic scenario under which Brookdale's staffing
25 formula hours or its "actual hours" were sufficient to
26 deliver the daily care promised in resident assessments at
27 the 13 facilities studied, including simulations that used
28

- 1 Brookdale's own punch detail staffing data as inputs, as
2 well as full time equivalents (FTEs) derived from that data;
- 3 (5) Scientifically determining the distances that staff were
4 required to travel to deliver the care services (documented
5 in assessments) each day in the 13 Brookdale facilities
6 studied, the time needed by staff to travel from one resident
7 to the other to deliver these care services and whether
8 Brookdale's staffing formula was flawed because it did not
9 take into account the substantial time spent by staff
10 traveling to resident to deliver care;
- 11 (6) The proper evidentiary predicate for the admissibility for
12 the simulation and ensuring that every input to
13 ProModel/Dale Schroyer's discrete event simulation was
14 based on admissible evidence, including: (a) Brookdale
15 documented resident assessments; (b) Brookdale policies,
16 procedures, operations manuals, marketing materials,
17 training documents, and internal studies/presentations; (c)
18 deposition testimony of Brookdale staff; (d) authoritative
19 literature from peer-reviewed journals or relevant
20 published governmental or assisted living industry studies;
21 and/or (e) generally-accepted industrial engineering
22 principles;
- 23 (7) The creation of Mr. Schroyer's numerous declarations
24 dated August 14, 2021 (in support of Motion for Class
25 Certification), March 18, 2022 (in support of Plaintiffs'
26 Opposition to Motion to Exclude), May 19, 2022 (reply
27 declaration in support of Motion for Class Certification),
28 and October 19, 2023 (in support of Motion for

1 Certification of Subclasses), and his Rule 26 expert report,
2 rebuttal expert report, and supplemental rebuttal expert
3 report including numerous summaries of voluminous
4 records in support of the motions for class certification in
5 the Brookdale case and the production of the simulations
6 he created; and

7 (8) Preparing and tendering Mr. Schroyer for his deposition on
8 December 9, 2021 regarding his analyses and results of
9 extensive DES testing.

10 29. Further, my primary responsibilities included the following:

- 11 a. **Deposition of Defense Experts:** Preparing for and conducting
12 the deposition of Brookdale expert witness Dr. Sheldon Jacobson
13 on April 14, 2022 regarding his attacks on Plaintiffs' experts' Dr.
14 Flores and Mr. Schroyer, as well as preparing responses to his
15 attacks and performing responsive analyses to show the reliability
16 of the simulation and the steps taken to ensure its results were
17 valid and reliable;
- 18 b. Assisting with the preparation and formulating questions for the
19 deposition of Ali Saad on April 15, 2022 regarding his attacks on
20 Plaintiffs' experts' Dr. Flores and Mr. Schroyer, as well as
21 preparing responses to his attacks and performing responsive
22 analyses to show misleading graphical representations, data
23 errors, and unfair comparisons;
- 24 c. **Additional Analyses to Rebut Arguments Made by**
25 **Defendants:** Identifying and determining which additional
26 expert analyses needed to be performed by Mr. Peters, Dr. Flores,
27 and Mr. Schroyer, as well as Plaintiffs' experts Dr. Edward Jones
28 and Dr. David Belson in support thereof (including their

1 declarations and numerous exhibits thereto) in response to
2 defense arguments raised by Brookdale's experts and counsel and
3 to particularly address each of the numerous flawed analyses
4 offered by Brookdale experts Drs. Jacobson and Saad (including
5 their misleading graphical representations, data errors, and unfair
6 comparisons);

7 d. **Analyses and Declaration by Dr. David Belson:** Preparing
8 declarations for Plaintiffs' simulation expert Dr. David Belson
9 dated May 18, 2022 (rebuttal in support of Motion for Class
10 Certification) and October 18, 2023 (in support of Motion for
11 Certification of Subclasses), and his Rule 26 expert reports
12 confirming (1) the scientific validity of the ProModel DES testing
13 performed in this case, (2) the adherence of ProModel DES
14 testing (including the model's program logic, inputs, outputs,
15 testing, and operation) to generally accepted industrial
16 engineering and discrete event simulation standards and practices,
17 and (3) the ProModel DES testing was properly validated, and to
18 respond to specific criticisms by Defendants' expert Dr.
19 Jacobson;

20 e. **Analyses and Declaration by Dr. Edward Jones:** Preparing
21 declarations for Plaintiffs' data expert Dr. Edward Jones dated
22 May 18, 2022 (rebuttal in support of Motion for Class
23 Certification) and October 18, 2023 (in support of Motion for
24 Certification of Subclasses), and his Rule 26 expert reports
25 confirming that (1) Superior Analytics' processing of the raw
26 Brookdale data produced in this case (including resident
27 assessments, resident move-in/move-out data, staffing punch
28 detail records clocking the specific times when staff worked, and

1 labor detail report data) were accurate and (2) the summaries of
2 this voluminous data created by Superior Analytics were accurate,
3 to respond to specific criticisms by Defendants' expert Dr.
4 Jacobson, and to respond to Dr. Saad's specific criticisms and to
5 explain how his graphic representations of data within his
6 Declaration were not accurate and fair;

- 7 f. **Daubert Challenges:** Ensuring that the analyses of Dr. Flores
8 and Mr. Schroyer complied with all *Daubert* tests and that any
9 assumptions included in any of the computations were identified,
10 reliable, and supported by peer-reviewed literature and/or
11 admissible evidence;
- 12 g. Preparing detailed responses (supported by the declaration of Drs.
13 Belson and Jones, above) to Brookdale's motions to strike and
14 exclude Plaintiffs' experts;
- 15 h. Preparing motions to exclude the testimony of Defendants'
16 experts, Drs. Jacobson and Saad based on a lack of factual support
17 for their opinions and improper statistical representations;
- 18 i. **Presentation of Expert Analyses:** Distilling the methodologies
19 and key findings/analyses of Dr. Flores and Mr. Schroyer
20 described above and preparing presentations of the same for
21 mediations, Plaintiffs' mediation briefs, Plaintiffs' class
22 certification briefs, and as a part of the trial strategy in this case
23 (extensive graphics, charts, and summaries were prepared with
24 the assistance of Sterling Meachen, described in more detail
25 below);
- 26 j. **Owner/Operator and Corporate Control Discovery:** Assisting
27 in formulating discovery to establish that Brookdale controlled,
28

1 directly participated in, and dominated the operations of its
2 California facilities;

3 k. **Drafting and Support for Motions, Responses, and Issue**

4 **Briefing**: Assisting in drafting numerous pleadings, responses to
5 motions, discovery responses, subpoena responses, discovery
6 requests, and briefs in support of class certification; and

7 l. **Mediations and Settlement Strategy**: Participating in
8 mediations, settlement strategies, and negotiations.

9 30. As set forth in *Table 1* above, I have spent a combined total of 1,656.6
10 hours working on this matter. Based on my background and experience, my
11 customary rate is \$1,050/hour resulting in my lodestar in this case being
12 \$1,739,430.00. The amount of time I spent and my fees for this time are both
13 reasonable and were necessary for the prosecution of the case. My rate used to
14 calculate the lodestar in this case is squarely in line with the prevailing rates in the
15 Northern District of California.

16 31. My fees set forth in *Exhibit A* are supported by detailed,
17 contemporaneous time records and electronic source documents and other file
18 information describing every hour or fraction thereof of time worked for which
19 compensation is sought herein. If there was ever any question about the amount of
20 time that I worked, I defaulted to the smallest amount of time (so long as there was
21 written evidence supporting such time entry). However, if there was nothing in
22 writing evidencing time spent (even though I had a specific recollection of such
23 work), no time was captured or recorded in my respective time records in this case.

24 **Jacques Balette, Partner:**

25 32. Mr. Balette is a partner in the firm of MBYM. He received his J.D. from
26 South Texas College of Law in 1996 and his B.A. from Southern Methodist
27 University in 1993. He is licensed to practice law in Texas, Arkansas, Georgia,
28 Kentucky, New Mexico, North Carolina, Oklahoma, and Tennessee. Mr. Balette's

1 practice focuses on catastrophic injuries, nursing home malpractice, medical
2 malpractice, tractor-trailer collisions, product liability, and breach of partnership.

3 33. Mr. Balette assisted in various discovery, deposition, and evidentiary
4 matters, as described in *Exhibit A*. The amount of time Mr. Balette spent and his fees
5 for this time (set forth in *Table 1*) were both reasonable and necessary for the
6 prosecution of the case. The rates used to calculate Mr. Balette's lodestar (also set
7 forth in *Table 1*) are squarely in line with the prevailing rates in the Northern District
8 of California.

9 **Jim Thornton, Attorney:**

10 34. Mr. Thornton received his J.D. from University of Mississippi School
11 of Law in 1995 and his B.A. in English from Delta State University in 1992. He is
12 licensed to practice law in Mississippi, Louisiana, Tennessee, Georgia, Arizona,
13 Colorado, and Texas. Mr. Thornton's practice focuses on systemic failures in long
14 term care settings through class actions, False Claims Act cases, and individual
15 wrongful death and survival claims.

16 35. Expert Preparation Projects and Other Attorney Responsibilities: In the
17 Brookdale case, Attorney Thornton served and assisted MBYM in working with
18 Plaintiffs' experts and independent third-party quality assurance consultants to
19 identify the critical factors that determine whether Brookdale staff had enough time
20 to meet the care needs of its residents (as defined in their documented assessments).
21 Attorney Thornton had responsibilities related to Plaintiffs' experts' analyses, the
22 projects described above, and the development of key proof of numerosity.

23 36. More specifically, Attorney Thornton worked with Plaintiffs' experts
24 (Dr. Flores, Mr. Schroyer, Dr. Belson, and Dr. Jones) (a) to ensure that their
25 individual declarations and numerous supporting exhibits were accurate, (b) to assist
26 in preparing Dr. Flores and Mr. Schroyer for deposition, (c) to assist in preparing for
27 the depositions of Brookdale's experts Drs. Jacobson and Saad, (d) to assist
28 Plaintiffs' damage expert and attorneys in projecting class damages.

1 37. Further, Attorney Thornton's responsibilities included ensuring that: (a)
2 the data and information forming the basis of the analyses performed by Plaintiffs'
3 experts (Dr. Flores, Mr. Schroyer, Dr. Belson, and Dr. Jones) was founded on
4 properly identified, properly labeled, and properly sourced documents produced by
5 Brookdale, routine Brookdale practices verified by deposition testimony of
6 Brookdale witnesses, authoritative clinical literature and/or the relevant general
7 practices of other assisted living facilities and experts in this field and (b) the
8 immense number of computations required to support the DES models were based
9 on accurate formula driven calculations that were properly identified, labeled, and
10 sourced within the various spreadsheets.

11 38. Deposition Responsibilities: Mr. Thornton also prepared and presented
12 Dr. Flores for her second deposition in this case on July 18, 2024 in order to respond
13 to claims by Brookdale's nurse expert Josh Allen regarding the disability profile of
14 the residents within the proposed class, the medical nature of services offered at
15 Brookdale, and the applicability of the ADA to Brookdale's California facilities.

16 39. Additionally, Mr. Thornton prepared for and took the deposition of
17 Kelly Rubin on July 31, 2024 regarding Brookdale's common staffing system and
18 methodology and its common application and use throughout its California facilities
19 and at the 6 facilities where the named Plaintiffs resided.

20 40. Assistance with Drafting Relevant Pleadings, Briefs, and Other
21 Responsive Documents: Mr. Thornton also participated in drafting numerous
22 pleadings, expert declarations and expert reports (including exhibits), responses to
23 *Daubert* motions, responses to motions, briefs, discovery responses, subpoena
24 responses, discovery requests, and class certification briefing, and in preparing other
25 Plaintiffs' attorneys in the case for depositions regarding key points having relevance
26 to the projects described above.

27 41. DES Analysis Project: As to the DES project, Mr. Thornton worked
28 with Plaintiffs' expert Dale Schroyer and other quality assurance systems

1 engineers/simulation consultants in (a) ensuring that all required simulation inputs
2 provided by Mr. Peters were complete and properly formatted to meet ProModel's
3 technical specifications, (b) ensuring that floorplans obtained from Brookdale for its
4 facilities were properly formatted to meet ProModel's technical specifications, (c)
5 reviewing and discussing numerous quality assurance checks that were performed to
6 ensure that the model's behavior was internally consistent and accurate, (d)
7 reviewing and discussing numerous sensitivity analyses performed by Plaintiffs'
8 experts, including what happens to the delivery of care when specific variables are
9 changed within the DES model, and (e) summarizing in tables the over 2.6 million
10 DES tests for the Brookdale model that were performed, describing the specific
11 inputs for each test used to calculate whether staff had enough time to provide all the
12 care its residents required.

13 42. Disability Profile Project: Mr. Thornton's responsibilities included
14 working with Blake Peters and other counsel for the Plaintiffs to create a listing of
15 all residents known to be potential class members who opted out of arbitration who
16 had disabilities. This resulting disability profile was the product of a labor-intensive
17 matching of resident and family name information from resident admission
18 agreements to resident identifiers within the resident assessment data that Brookdale
19 produced.

20 43. The amount of time Mr. Thornton spent and his fees for this time (set
21 forth in *Table 1*) were both reasonable and necessary for the prosecution of the case.
22 The rates used to calculate Mr. Thornton's lodestar (also set forth in *Table 1*) are in
23 line with the prevailing rates in the Northern District of California.

24 **Blake Peters, Senior Data Analyst (Superior Analytics):**

25 44. In order to preform the complex and voluminous data analysis required
26 for expert witness projects in this case, my firm contracted with Superior Analytics.
27 Blake Peters, Senior Data Analyst was responsible for the significant database
28

1 projects that were required to support Plaintiffs' expert analyses and projects
2 described above, including:

- 3 a. Disability Profile Project: Mr. Peters worked to create a listing of
4 all residents known to be potential class members who opted out
5 of arbitration who had disabilities. This resulting disability
6 profile was the product of a labor-intensive matching of resident
7 and family name information from resident admission
8 agreements to resident identifiers within the resident assessment
9 data that Brookdale produced.
- 10 b. Review of 100% of every resident assessment at 87 California
11 Brookdale facilities to identify the possible kinds of unique care
12 services (the care menu) provided—Through his use of SAS, Mr.
13 Peters determined there were over 97 possible line-item care
14 services that residents of Brookdale in California could receive;
- 15 c. Mr. Peters' computations and summaries of voluminous
16 workload data (including every possible line-item care service
17 from each resident care assessment in the 6 California facilities
18 studied), these computations and summaries counted and
19 quantified on a per day/shift basis the number of care services
20 required at each of the 6 California facilities on each calendar day
21 over a significant timeframe (from 574 days to 2,735 days
22 depending on availability of data);
- 23 d. Mr. Peters' computations and summaries of voluminous raw
24 staffing data produced by Brookdale for the same facilities over
25 the same corresponding timeframe – the staffing data produced
26 by Brookdale allowed us to determine the staffing levels to-the-
27 minute, by job title, and by unit (assisted living and memory care)
28 on each of the 3 work shifts on each calendar day; and

1 e. Ensuring the accuracy and reliability of staffing analyses and
2 voluminous summaries, including working with Attorney
3 Thornton regarding (i) the source of all data upon which these
4 computations/formulae were based, (ii) the identification of any
5 assumption included in these computations/formulae at the
6 direction of Plaintiffs' experts, and (iii) the factual and/or
7 scientific basis for any such assumption.

8 45. The amount of time Mr. Peters spent and his fees for this time (set forth
9 in *Table 1*) were both reasonable and necessary for the prosecution of the case. The
10 rates used to calculate Mr. Peters' lodestar (also set forth in *Table 1*) are in line with
11 the prevailing rates in the Northern District of California.

12 **Method of Recording Time**

13 46. My practice and that of the attorneys and staff at my firm is to record
14 time in tenth-of-an-hour increments, and to do so as contemporaneously as possible
15 with the expenditure of the time by the attorney/staff.

16 **Lodestar Hourly Rates Charged:**

17 47. During the course of this litigation, with respect to those person who
18 worked on the Brookdale matter, my firm charged the hourly rates listed in *Table 1*.
19 Based on my experience and knowledge of the market (including serving as Co-
20 Counsel in the California class actions identified above), the rates sought by myself
21 and the other MBYM timekeepers are reasonable and fall within the market range
22 of attorneys and staff with comparable experience, expertise, and reputation who
23 provide similar services in the Northern District of California.

24 48. For the reasons stated herein and in Plaintiffs' Motion for Approval of
25 Reasonable Attorneys' Fees, Costs, and Expenses, I believe the hourly rates
26 charged by timekeepers in my firm are reasonable and consistent with rates paid to
27 other lawyers and staff with similar experience, expertise, and reputation in the
28 relevant market.

1 **Review of Lodestar Fees to Eliminate Inefficiencies, Duplications, and**
2 **Billing Errors:**

3 49. MBYM made reasonable efforts to litigate this case in an efficient
4 manner. With respect to the subject areas assigned to my firm, I acted as the
5 primary decision maker. Generally, within the subject areas assigned, I initially
6 developed the strategies for gathering and analyzing the evidence (working with
7 Plaintiffs' experts) and then assigned specific evidentiary gathering tasks to
8 Attorney Thornton and data analyst Blake Peters. This method of allocating work
9 ensured that litigation tasks were appropriately delegated and billed at a reasonable
10 rate.

11 50. I have personally reviewed and revised the MBYM billing records for
12 all timekeepers on an entry-by-entry basis. Based on my review of these records
13 (set forth in *Exhibit A*), it is clear that 100% of the time that my firm spent on the
14 case is not reflected in the lodestar time entries.

15 51. For example, these entries do not include the substantial time spent by
16 MBYM in defining issues and working with ProModel in its development of the
17 DES testing and modeling programming specific to this case. Additionally, as
18 descibed in *Table 2* below, none of the time spent by the following timekeepers was
19 included in the MBYM lodestar: (a) the legal graphics firm (specifically consultant
20 Sterling Meachen) with whom my firm contracted to create graphical
21 representations, summary charts, data mapping, slides, and/or exhibit boards to
22 explain key issues in the staffing, workload, the amount of staffing shortfall found
23 to exist at the six Brookdale California facilities where the named Plaintiffs resided,
24 and other key graphics, (b) MBYM's long-time paralegal Diane Asher who
25 provided considerable legal assistance, independent document review, and proof
26 reading before her retirement on June 28, 2022, (c) MBYM partner Jason Young
27 who was responsible for overseeing the witness locate project, and (d) my firm's
28 investigators Harry Fleming and Randy Long (as well as five research associates)

who were tasked with reviewing publicly available data for witnesses, locating, and interviewing witnesses.

52. More specifically, I removed the following time and fees from the MBYM lodestar:

Name	Position	Bar Admission	Rate	Total Hours Removed	Fees Eliminated from MBYM Lodestar
David T. Marks	Partner	1978	\$1,050	61.1	\$64,155.00
Jacques Balette	Partner	1997	\$850	4.6	\$3,9100.00
Jim Thornton	Attorney	1995	\$800	99.4	\$79,520.00
Blake Peters	Superior Analytics, Sr. Data Analyst	(non-attorney)	\$275	423.5	\$116,462.50
Sterling Meachen	Legal Graphics Consultant: Exhibits/ Demonstratives	(non-attorney)	\$225	591.2	\$133,020.00
Diane Asher	Paralegal	(non-attorney)	\$180	334.3	\$60,174.00
Jason Young	Partner	2002	\$775	19.2	\$14,880.00
Harry Fleming	Investigator	(non-attorney)	\$175	101.5	\$17,762.50
Randy Long	Investigator	(non-attorney)	\$175	49.8	\$8,715.00
Kera Champion	Researcher	(non-attorney)	\$45	122.0	\$5,490.00
Kristina Merrill	Researcher	(non-attorney)	\$45	85.4	\$3,843.00
Caleb Jones	Researcher	(non-attorney)	\$45	82.1	\$3,694.50
Jay Ramsey	Researcher	(non-attorney)	\$45	90.3	\$4,063.50
Marisa Duewel	Researcher	(non-attorney)	\$45	47.2	\$2,124.00
	TOTAL			2,111.6	\$553,004.00

Table 2: Eliminated MBYM Time and Fees in Brookdale

53. The specific reductions in *Table 2* reduced MBYM's fees (set forth in *Exhibit A*) by a total of \$553,004 —representing a 11.3% reduction *before* total fees in *Exhibit A* were calculated ($\$4,879,536.50 - \$553,004 = \$4,326,532.50$).

54. In addition to the billing judgment reduction of \$553,004, my firm has also applied a 10% across-the-board reduction to the total fee calculated in *Exhibit A* (\$4,326,532.50) to further account for any time that might possibly be considered duplicative or excessive, and to account for any argument that Plaintiffs' overall success in this matter was "limited" notwithstanding the comprehensive injunctive relief achieved by the Settlement Agreement herein.

55. Accordingly, based on the foregoing billing judgement reduction and 10% across the board reduction, MBYM's lodestar in this case is **\$3,893,879.25**.

56. With these reductions, I believe the lodestar entries reflect a conservative, reasonable, and proper amount billed to this case by my firm in support of successful prosecution of this lawsuit on behalf of Plaintiffs.

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

Executed on August 06, 2025, in Houston, Texas.



David T. Marks,
Marks Balette Young & Moss,
P.L.L.C.