

Kathryn A. Stebner, State Bar No. 121088
 Sarah Colby, State Bar No. 194475
 George Kawamoto, State Bar No. 280358
STEBNER AND ASSOCIATES
 870 Market Street, Suite 1212
 San Francisco, CA 94102
 Tel: (415) 362-9800
 Fax: (415) 362-9801

Guy B. Wallace, State Bar No. 176151
 Mark T. Johnson, State Bar No. 76904
 Jennifer A. Uhrowczik, State Bar No. 302212
SCHNEIDER WALLACE
COTTRELL KONECKY
WOTKYN, LLP
 180 Montgomery Street, Suite 2000
 San Francisco, CA 94102
 Tel: (415) 421-7100
 Fax: (415) 421-7105

Michael D. Thamer, State Bar No. 101440
LAW OFFICES OF MICHAEL D. THAMER
 Old Callahan School House
 12444 South Highway 3
 Post Office Box 1568
 Callahan, CA 96014-1568
 Tel: (530) 467-5307
 Fax: (530) 467-5437

W. Timothy Needham, State Bar No. 96542
JANSSEN MALLOY LLP
 730 Fifth Street
 Eureka, CA 95501
 Tel: (707) 445-2071
 Fax: (707) 445-8305

Robert S. Arns, State Bar No. 65071
THE ARNS LAW FIRM
 515 Folsom Street, 3rd Floor
 San Francisco, CA 94105
 Tel: (415) 495-7800
 Fax: (415) 495-7888

Christopher J. Healey, State Bar. No. 105798
 Aaron Winn, State Bar No. 229763
McKENNA LONG & ALDRIDGE LLP
 600 West Broadway, Suite 2600
 San Diego, CA 92101-3372
 Tel: (619) 235-3491
 Fax: (619) 645-5328

Attorneys for Plaintiff and the proposed class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ARVILLE WINANS, by and through his
 guardian ad litem Renee Moulton, on his own
 behalf and on behalf of all others similarly
 situated,

Plaintiff,

v.

EMERITUS CORPORATION and DOES 1 to
 100, inclusive,

Defendants.

Case No. 3:13-cv-03962-SC

**NOTICE OF MOTION AND MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 SETTLEMENT**

Date: May 15, 2015
 Time: 10:00 a.m.
 Dept.: Courtroom 1
 Judge: Samuel Conti

**All court appearances shall be in person. This
 Court does not permit appearances by telephone.**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Please take notice that, on May 15, 2015 at 10:00 a.m., or as soon thereafter as the matter
3 may be heard in Courtroom 1 in the United States District Court for the Northern District of
4 California, the Honorable Judge Samuel Conti presiding, Plaintiffs on behalf of themselves and the
5 Settlement Class will and hereby do move for an order granting preliminary approval of the
6 parties' Stipulation of Settlement ("Stipulation") and certification of the Settlement Class defined
7 in the Stipulation.

8 This motion is based on the attached Memorandum of Points and Authorities, the
9 Declaration of Christopher J. Healey in support of the motion, exhibits, and all other records,
10 pleadings and papers on file in this action and such other evidence or argument as may be
11 presented to the Court at the hearing on the motion.

12
13 DATED: May 8, 2015

s/ Christopher J. Healey

14 Christopher J. Healey, State Bar. No. 105798

15 Aaron T. Winn, State Bar No. 229763

McKENNA LONG & ALDRIDGE LLP

16 600 West Broadway, Suite 2600

San Diego, CA 92101-3372

17 Tel: (619) 235-3491

18 Fax: (619) 645-5328

19 Attorneys for Plaintiffs and the Proposed Class

[*Additional Counsel for Plaintiffs on Service List*]

20 USW 805067263.1

Kathryn A. Stebner, State Bar No. 121088
Sarah Colby, State Bar No. 194475
George Kawamoto, State Bar No. 280358
STEBNER AND ASSOCIATES
870 Market Street, Suite 1212
San Francisco, CA 94102
Tel: (415) 362-9800
Fax: (415) 362-9801

Guy B. Wallace, State Bar No. 176151
Mark T. Johnson, State Bar No. 76904
Jennifer Uhrowczik, State Bar No. 302212
**SCHNEIDER WALLACE COTTRELL
KONECKYWOTKYNS, LLP**
180 Montgomery Street, Suite 2000
San Francisco, CA 94102
Tel: (415) 421-7100
Fax: (415) 421-7105

Michael D. Thamer, State Bar No. 101440
LAW OFFICES OF MICHAEL D. THAMER
Old Callahan School House
12444 South Highway 3
Post Office Box 1568
Callahan, California 96014-1568
Tel: (530) 467-5307
Fax: (530) 467-5437

W. Timothy Needham, State Bar No. 96542
JANSSEN MALLOY LLP
730 Fifth Street
Eureka, CA 95501
Tel: (707) 445-2071
Fax: (707) 445-8305

Robert S. Arns, State Bar No. 65071
THE ARNS LAW FIRM
515 Folsom Street, 3rd Floor
San Francisco, CA 94105
Tel: (415) 495-7800
Fax: (415) 495-7888

Christopher J. Healey, State Bar. No. 105798
Aaron Winn, State Bar No. 229763
McKENNA LONG & ALDRIDGE LLP
600 West Broadway, Suite 2600
San Diego, CA 92101-3372
Tel: (619) 235-3491
Fax: (619) 645-5328

Attorneys for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

Arville Winans, by and through his Guardian
ad litem, Renee Moulton, on his own behalf
and on behalf of others similarly situated,

Plaintiff,

vs.

Emeritus Corp. and Does 1 Through 100,

Defendants.

Case No. 3:13-cv-03962-SC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Date: May 15, 2015
Time:
Dept.:

The Hon. Samuel Conti

1 **I. INTRODUCTION**

2 Plaintiffs respectfully request that the Court enter an order preliminarily approving the
3 parties' settlement in this class action, reached after arms-length settlement negotiations
4 supervised by a neutral mediator. The settlement provides substantial monetary payments to a
5 settlement class of approximately 19,000 current and former residents of assisted living facilities
6 owned and/or operated by Emeritus Corporation and its successor, Brookdale Senior Living, Inc.
7 (collectively "Defendants"). The proposed Settlement Class is readily ascertainable and
8 Defendants have agreed to provide a list of all Class Members from existing records.

9 This case is based on allegations that Defendants misrepresented that resident assessments
10 performed under the wE Care (previously Vigilant) computer program would be used to set facility
11 staffing, but failed to disclose that staffing is determined by labor budgets only. Defendants deny
12 any legal liability and have vigorously litigated the case since the initial complaint was filed in
13 July 2013. After months of negotiations and mediation proceedings before the Hon. William J.
14 Cahill (Ret) of JAMS, the parties reached a settlement to resolve the disputed claims.

15 Specifically, Defendants have agreed to pay \$13 million (the "Settlement Fund") in full
16 settlement of all claims. Subject to Court approval of Plaintiffs' application for attorneys' fees,
17 litigation costs, service awards to the Named Plaintiffs, and factoring in estimated notice and
18 administration expenses, it is anticipated that approximately \$8.5 million will be available to fund
19 payments to settlement class members. In addition, Defendants have agreed to discontinue the
20 challenged wE Care program as of December 31, 2015.

21 As detailed below, the Settlement falls well within the "range of reasonableness." The \$13
22 million common fund represents 33% of Plaintiffs' estimate of the maximum amount of hard
23 damages realistically recoverable at trial. Specifically, based on documentation provided by
24 Defendants, the estimated total of move-in fees and initial monthly rent and care payments (less
25 concessions) is roughly \$39 million. (Declaration of Christopher J. Healey ("Healey Decl"), ¶33.)
26 These are the fees and charges most directly linked to the key charging allegation that Defendants
27 misled residents to believe facility staffing would be determined based on the wE Care
28 (previously, Vigilant) resident care evaluations. But for Defendants' misrepresentations and non-

disclosures, Plaintiffs contend, Class Members would not have parted with these sums before entering Defendants' facilities. And because these payments were almost always made at or before move-in, Defendants' offset and other arguments based on services rendered to the residents arguably do not apply.

This is one of the first putative class actions challenging misrepresentations and misleading statements made by a provider of assistive living services. As reflected in motion practice before the Court, the case raises novel issues. Defendants are represented by skilled counsel and will challenge litigation class certification and present a vigorous merits defense. Weighed against the litigation risks, the anticipated length of trial and likely appellate proceedings, and other factors, Plaintiffs' Counsel (who have class action substantial experience) have concluded that the proposed settlement is in the best interests of the Settlement Class. (Healey Decl, ¶¶3-9.)

For these and other reasons, this motion for preliminary approval of the parties' Stipulation of Settlement ("SS" or "Agreement") should be granted.

II. BACKGROUND

A. Case Overview

Arville Winans, by and through his guardian ad litem, Renee Moulton and Ruby A. Richardson in her capacity as trustee to the Wilma F. Fritz Trust (collectively "Named Plaintiffs") brought this action on behalf of themselves and a putative class of current and former residents of 72 assisted living facilities owned or operated by Emeritus Corporation, also known as Emeritus Senior Living ("Emeritus"). After the lawsuit was filed, on July 31, 2014, Emeritus was acquired through merger by Brookdale Senior Living, Inc. ("Brookdale"). Plaintiffs' Second Amended Complaint, Docket No. 93 ("SAC"), filed on April 15, 2105, names both Emeritus and Brookdale as Defendants.¹

¹ Plaintiff Winans initially filed this lawsuit in the Alameda County Superior Court. The case was removed under CAFA and assigned to this Court. In accordance with 28 U.S.C. § 1715, Defendants will provide the required CAFA notice. As the settlement does not involve coupon consideration, the provisions of 28 U.S.C. § 1712 do not apply.

1 The crux of the case is Plaintiffs' allegation that Defendants' misled residents, family
 2 members and the general public to believe that resident assessments, conducted at move-in and
 3 thereafter during each resident's stay, would be used to determine staffing at Emeritus' facilities.
 4 The assessments were undertaken by facility personnel using the Company's "state of the art"
 5 resident assessment program (wE Care, previously known as Vigilant). According to Defendants,
 6 the wE Care assessments would allow Emeritus to "accurately evaluate and monitor" the care
 7 needs of each resident. (SAC, ¶3.)

8 Defendants used the assessments to assign each resident a "Level of Care," which in turn
 9 impacted the price charged to residents for their promised care. In standardized form admission
 10 agreements (which each resident must sign and represent that they have read), Emeritus promised
 11 to provide the assistance specified by the resident evaluation and billed under the Level of Care
 12 assignment. In actuality, Defendants did not use resident assessments to determine facility
 13 staffing. Rather, Emeritus sets staffing based on labor budgets and pre-determined profit
 14 objectives. (SAC, ¶5.)

15 Plaintiffs assert claims for damages and other relief under California's Consumers Legal
 16 Remedies Act, Cal. Civ. Code § 1750, *et seq.* ("CLRA"), and Financial Elder Abuse statute, Cal.
 17 W&I Code § 15610.30.

18 **A. Case Proceedings – Plaintiffs Survive Multiple Pleading Challenges**

19 After removal to Federal Court, Emeritus moved to dismiss the complaint on abstention and
 20 other grounds. By separate motion, Emeritus also moved to strike the class allegations. By order
 21 dated March 4, 2015, the Court denied the motion to dismiss as to the CLRA and elder abuse claims,
 22 but granted the motion as to Plaintiffs' UCL claims and equitable relief under the CLRA on
 23 abstention grounds. The Court denied the motion to strike Plaintiff's class action allegations.
 24 (Healey Decl, ¶10, Docket No. 53.)

25 Thereafter, the Court declined to clarify its ruling to permit limit injunctive relief under the CLRA
 26 allegations, but directed Plaintiff to seek leave to amend if he wished to pursue the new theory of CLRA
 27 liability. After further motion practice, the Court granted Plaintiffs' request to assert a Second Amended
 28 Complaint, which was filed on April 15, 2015. (Healey Decl, ¶11, Docket No. 93.)

1 **B. Summary of Investigation and Discovery Efforts**

2 Prior to reaching a settlement, Plaintiffs engaged in substantial investigation and discovery.
 3 Before filing the initial complaint, Plaintiffs' Counsel reviewed thousands of pages of trial and
 4 deposition testimony and exhibits from an individual case filed against Emeritus in Sacramento
 5 Superior Court; court filings in other lawsuits against Emeritus; Emeritus' filings with the
 6 Securities and Exchange Commission; Department of Social Services' files for Emeritus' facilities
 7 in California; and Emeritus' website and other marketing materials. Plaintiffs' Counsel also
 8 interviewed former Emeritus employees, residents, family members of residents, and consulted
 9 with multiple experts on assisted living facilities. (Healey Decl, ¶12.)

10 After the lawsuit was filed, Plaintiff propounded several sets of discovery requests, including
 11 interrogatories and multiple sets of document requests. In response, Defendants produced
 12 approximately 14,539 pages of documents. Defendants also propounded their own discovery requests,
 13 which triggered lengthy and substantive responses by Plaintiffs. In addition, Defendants deposed Renee
 14 Moulton, guardian ad litem for named plaintiff Winans. (Healey Decl, ¶¶13-14.)

15 The substantial exchange of discovery requests and material between the parties prompted
 16 numerous meet and confer discussions and the filing of discovery-related motions. In connection
 17 with the March 2015 mediation, Defendants produced additional information, including a
 18 summary of the move-in and initial monthly rent payments made by all facility residents from
 19 roughly 2009 through mid-2014. (Healey Decl, ¶14.)

20 **C. Parties' Settlement Negotiations Result In Agreement**

21 Commencing in approximately February 2015, the parties engaged in preliminary
 22 settlement discussions through counsel and eventually agreed to participate in mediation before
 23 the Honorable William Cahill (Ret.). On March 5, 2015, the parties participated in a day-long
 24 mediation session before Judge Cahill at the JAMS office in San Francisco. Prior to the mediation,
 25 the parties exchanged briefs. Although some progress was made in the March 5 session, no
 26 agreement was reached. (Healey Decl, ¶15.)

27 After further discussions with counsel for the respective parties, Judge Cahill provided
 28 both sides with a mediator's proposal. On March 11, 2015, the parties (independently) accepted

the mediator's proposal to settle the case. The parties' Agreement formalizes the settlement that Judge Cahill recommended in his proposal. (Healey Decl, ¶16.)

III. THE PROPOSED SETTLEMENT WILL BENEFIT THE CLASS

A copy of the parties' Stipulation of Settlement is attached as Exhibit "A" to the Healey Declaration.² The key settlement terms are as follows:

A. The Settlement Fund

Under the Agreement, Defendants have agreed to pay \$13 million to resolve all monetary obligations owed under the settlement. The Settlement Fund will be used to pay the Settlement Awards paid to class members, to pay notice/administration costs (estimated \$110,000), pay service awards to the two named plaintiffs (totaling \$11,000), and attorneys' fees and reimbursement of litigation costs (as awarded by the Court but not to exceed 33% of the Settlement Fund, or \$4,290,000.00). Factoring in an agreed-upon reserve of \$45,000 to cover late claims, the estimated amount available to fund payments to class members is roughly \$8.5 million. (Healey Decl, ¶17.)

Significantly, there will be no reversion of any portion of the Settlement Fund to Defendants. Rather, unused reserve funds as well as uncashed or returned checks will be distributed to *cy pres* recipient(s), nominated by Plaintiffs' Counsel and approved by the Court. (SS, ¶ II.26, p. 9; Healey Decl, ¶18.)

B. Settlement Payments to Class Members

The Agreement provides for cash payments to class members (or if deceased, their legal successors) on a direct distribution basis, with no claims requirement to obtain payment. The parties estimate that the Settlement Class includes roughly 19,000 current and former residents. (Healey Decl, ¶19.) The Settlement Administrator agreed to by the parties (Gilardi & Co., LLC) will mail settlement checks to each Settlement Class Member for whom a valid address has been provided by Defendants (or located through the address update procedures), For Settlement Class Members for whom current addresses cannot be located, the Administrator is authorized to make

² All parties have signed the Agreement, except for one of the two Named Plaintiffs. Counsel will provide the additional signature in advance of the May 15 hearing.

1 payment based on a “distribution request” by the class member (or their legal successor). (SS,
2 ¶ X.4(c), p. 24).

3 The amount of the “Settlement Award” check will vary by class member, based on a
4 ‘Settlement Payment Percentage (“SPP”) calculated by the Administrator for each resident.
5 Specifically, the SPP is derived by adding the move-in fee (if any) and the initial monthly rent for
6 the Settlement Class Member in question, and then dividing that amount by the total move-in fees
7 and initial rent payments made by all Settlement Class Members. The resulting fraction is that
8 Settlement Class Member’s SPP. Initial Settlement Payments for each Settlement Class Member
9 will be calculated by multiplying that Settlement Class Member’s SPP against the total assets in
10 the Settlement Fund. (SS, ¶ X.4, p. 24; Healey Decl, ¶20.)

11 Under the Agreement, the Administrator is authorized to increase the Initial Settlement
12 Amount if sufficient monies are available after calculating the amounts owed to all Settlement
13 Class Members for whom current addresses have been provided or located, along with the
14 amounts owed to class members (or their successors) who made timely distribution requests. (SS,
15 ¶ X.4, p. 24; Healey Decl, ¶21.)

16 By way of example, if a Settlement Class Member paid \$2,000 in move-in fees and first
17 month’s rent, and the total move-in fees and initial rent payments for the entire Class are \$40
18 million, the SPP for the Class Member would be .00005. Multiplying that percentage by the
19 anticipated Net Settlement Fund (roughly \$8.5 million), the Initial Settlement Payment for that
20 class members would be approximately \$425. (Healey Decl, ¶22.) It is anticipated that monies
21 will be available in the Settlement Fund after the initial calculation of amounts owed to
22 Settlement Class Members for whom current addresses are known or provided through
23 distribution requests. Assuming so, the Settlement Administrator will increase the settlement
24 payments by multiplying the SSP for each class member by the amount of “excess” funds, and
25 adding that “extra” amount to the Initial Settlement Payment. (SS, ¶ X.4, p.24; Healey Decl, ¶22.)

26 The Settlement Award checks will be mailed to class members within 45 days after the
27 Distribution Request Deadline, which is thirty days after the Effective Date as defined in the
28

1 Agreement. The Settlement Payment checks shall allow for a check cashing period of 180 days.
 2 (SS, ¶ X.5, p. 25; Healey Decl, ¶23.)

3 The Agreement authorizes the Administrator to hold a reserve of \$45,000 to address pay late-
 4 submitted distribution requests or address other valid requests from Settlement Class Members. Also,
 5 Settlement Award checks not cashed within the check cashing deadline (after reasonable reminders
 6 issued by the Settlement Administrator) shall be added to the reserve fund. Any moneys left in the
 7 reserve not paid to Settlement Class Members shall be paid to *cy pres* recipient(s) nominated by Class
 8 Counsel and approved the Court. (SS, ¶ A.26, p. 9; Healey Decl, ¶24.)

9 **C. Non-Monetary Relief**

10 The Agreement also provides that the wE Care resident evaluation system will be phased
 11 out completely, and no longer used, as of December 31, 2015. (SS, ¶ D.4, p. 29.) Further,
 12 Defendants will issue a written directive to each assisted living community owned or operated by
 13 Defendants in California not to make any affirmative representation to prospective residents (and
 14 if applicable, family members or representatives of prospective residents) that the wE Care
 15 assessments are used to determine facility staffing. *Id.* Defendants' agreement to discontinue the
 16 challenged wE Care practices will benefit the Settlement Class, and other prospective residents of
 17 Defendants' facilities.

18 **D. Release Provisions**

19 Under the Agreement, the claims of the Named Plaintiffs and Settlement Class Members
 20 (excluding opt-outs) that were asserted or could have been asserted in the action are released, to
 21 the extent they arise from statements, representations or failures to disclose prior to May 15, 2015
 22 regarding Defendants' advertising, marketing, promotion, or use of wE Care and Vigilant. The
 23 releases are effective only after the settlement has been granted final approval. Expressly
 24 excluded are any claims for personal injuries, emotional distress or bodily harm. (SS, ¶ VIII.A.1,
 25 p. 19; Healey Decl, ¶26.)

26 **E. Class Notice and Settlement Administration Costs**

27 The Agreement provides for dissemination of class notice to every Class member by U.S.
 28 mail and through the announcement of the Settlement in a statewide publication. All costs of

1 class notice, as well as administration costs, shall be paid from the Settlement Fund. . Gilardi
 2 estimates the notice and administration costs will not exceed \$110,000. (Healey Decl, ¶39.)

3 **F. Payment of Service Awards, Attorneys' Fees and Litigation Costs**

4 Subject to Court approval, the Agreement provides for service awards of \$7,500 to Renee
 5 Moulton as Trustee for the Arville Winans Revocable Trust, and \$3,500 to Ruby Richardson,
 6 Trustee, for the Wilma F. Fritz Trust. The differing amounts reflect Ms. Moulton's additional
 7 time devoted to the case assisting with discovery, sitting for deposition, active involvement in the
 8 settlement negotiations and her overall efforts as the initial Named Plaintiff in the lawsuit.
 9 (Healey Decl, ¶27.)

10 In addition, the Agreement allows Plaintiffs' Counsel to file an application for attorneys'
 11 fees and litigation costs not to exceed 33% of the Settlement Fund (i.e., \$4.29 million). (SS,
 12 ¶ X.B, p. 21.) To date, Plaintiffs' Counsel have incurred over \$2.5 million in lodestar attorneys'
 13 fees and advanced \$85,691 in litigation expenses. (Healey Decl, ¶28.)

14 **IV. THE SETTLEMENT SATISFIES THE LEGAL STANDARDS FOR OBTAINING**
 15 **PRELIMINARY APPROVAL**

16 Judicial proceedings under Federal Rule of Civil Procedure 23 have led to a defined three-
 17 step procedure for approval of class action settlements:

18 (1) Certification of a settlement class and preliminary approval of the proposed
 19 settlement after submission to the Court of a written motion for preliminary approval.

20 (2) Dissemination of notice of the proposed settlement to the affected class members.

21 (3) A formal fairness hearing, or final settlement approval hearing, at which class
 22 members may be heard regarding the settlement, and at which evidence and argument concerning
 23 the fairness, adequacy, and reasonableness of the settlement are presented.

24 Federal Judicial Center, Manual for Complex Litigation (4th ed. 2004), §§ 21.63, et seq.
 25 ("*Manual 4th*"). This procedure safeguards class members' procedural due process rights and
 26 enables the Court to fulfill its role as the guardian of class interests. See 4 Newberg on Class
 27 Actions, § 11.22, et seq. (4th ed. 2002) ("*Newberg*").

1 The law favors the compromise and settlement of class-action suits. *See, e.g., Churchill*
 2 *Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs v. City of*
 3 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d
 4 615, 625 (9th Cir. 1982). The Ninth Circuit recognizes the “overriding public interest in settling
 5 and quieting litigation . . . particularly . . . in class action suits . . .” *Van Bronkhorst v. Safeco*
 6 *Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

7 “[T]he decision to approve or reject a settlement is committed to the sound discretion of
 8 the trial judge because he is exposed to the litigants and their strategies, positions, and proof.”
 9 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (internal citations and quotations
 10 omitted). In exercising such discretion, the Court should give “proper deference to the private
 11 consensual decision of the parties [T]he court’s intrusion upon what is otherwise a private
 12 consensual agreement negotiated between the parties to a lawsuit must be limited to the extent
 13 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
 14 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
 15 whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1027 (internal citations and
 16 quotations omitted); *see also* Fed. R. Civ. P. 23(e).

17 At the preliminary approval stage, the Court need only find that the proposed settlement is
 18 within the “range of reasonableness” such that dissemination of notice to the class, and the
 19 scheduling of a fairness hearing, are worthwhile and appropriate. 4 *Newberg* § 11.25; *see also In*
 20 *re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007); *Young v. Polo*
 21 *Retail, LLC*, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006). Preliminary approval of a
 22 proposed class action settlement is appropriate where:

23 [T]he proposed settlement appears to be the product of serious,
 24 informed, non-collusive negotiations, has no obvious deficiencies,
 25 does not improperly grant preferential treatment to class
 representatives or segments of the class, and falls within the range of
 possible approval[.]

26 *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079; *see also, Manual 4th* § 21.62
 27 (preliminary approval involves an “initial evaluation” of the reasonableness and adequacy of
 28 settlement; reasonableness turns on “analysis of the class allegations and claims and the

1 responsiveness of the settlement to those claims” while adequacy involves a “comparison of the
2 relief granted to what class members might have obtained without using the class action process.”)

3 For several reasons, the instant settlement clearly meets the requirements for preliminary
4 approval.

5 **A. The Settlement Is Entitled to A Presumption of Fairness**

6 Where a settlement is the product of arms-length negotiations conducted by capable and
7 experienced counsel, the Court begins its analysis with a presumption that the settlement is fair
8 and reasonable. *See 4 Newberg* § 11.41; *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18
9 (N.D. Cal. 1980). The facts support such a presumption here.

10 First, the settlement was reached after settlement negotiations supervised by an experienced
11 JAMS neutral, Judge William Cahill (Ret.). Those negotiations included a full day of mediation on
12 March 5, 2015. No agreement was reached at the mediation, but the parties ultimately agreed to the
13 settlement outlined in Judge Cahill’s mediator’s proposal. (Healey Decl, ¶¶15-16.)

14 Second, Plaintiffs’ Counsel here have extensive experience litigating and settling
15 consumer class actions and other complex matters. (Healey Decl, ¶¶ 3-9.) They have
16 investigated the factual and legal issues raised in this action, and that investigation informed the
17 settlement negotiations. Before reaching settlement, the parties engaged in substantial discovery
18 that included a review of roughly 14,000 documents, propounding several sets of discovery
19 requests, and defending the deposition Renee Moulton, guardian ad litem of Named Plaintiff
20 Arville Winans. (Healey Decl, ¶27.) Likewise, the pleadings were heavily contested in motions
21 to dismiss and strike the First Amended Complaint. (Healey Decl, ¶¶10-11.) These and other
22 proceedings in the case produced a thorough vetting (pre-settlement) of the factual and legal
23 bases for Plaintiffs’ claims and the key defenses to those claims. The fact that qualified and
24 well-informed counsel endorse the Settlement as being fair, reasonable, and adequate weighs
25 heavily in favor of approval. \See *Linney v. Cellular Alaska Partnership*, 1997 WL 450064, at *5
26 (N.D. Cal. July 18 1997); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980);
27 *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979) (“The recommendations of
28 plaintiffs’ counsel should be given a presumption of reasonableness.”).

B. The Settlement Is Fair Given the Settlement Benefits And The Risks Associated With Continued Litigation.

Even without a presumption of fairness, the benefits of the proposed settlement clearly warrant preliminary approval, particularly given the risks of continued litigation for the class.

1. The Settlement Will Result in Substantial Benefits to the Class

Under the Agreement, Defendants have agreed to pay \$13 million, of which at roughly \$8.5 million will be available for distribution to class members. Assuming that every settlement class member is located for distribution of the payments, the anticipated Settlement Award will be over \$450. If current addresses cannot be located for all potential class members (or their successors), such that additional funds are available for distribution, the Settlement Administrator will increase the per-class member payment. (Healey Decl, ¶22; SS, ¶ X.4, p. 29.)

Even at the \$450 range, the projected average settlement award compares favorably with the likely recovery if the case was tried. Under the CLRA claims alleged in the SAC, the primary focus of Plaintiffs' damages theory is the recovery of the initial payments made by residents, specifically, the move-in fee (if charged) and the initial month's rent.³ (SAC, ¶¶7,9.) Resident payment information provided by Defendants shows that, exclusive of "concessions" provided to residents, the average move-in fee was approximately \$1039, and the average initial month rent and care charge was \$1,102. (Healey Decl, ¶31.)

The projected *minimum* settlement award of \$450 represents roughly 40 % of the average move-in fee and over 43 % of the average initial monthly rent charge. (Healey Decl, ¶32.) Not all Settlement Class Members paid both move-in and initial monthly rent, but for those who did, the minimum \$450 settlement amount represents at least 22% of the average aggregate payment of \$2,057. The actual percentage is likely higher, as the above-stated estimates do not reflect roughly

³ If the case were tried, Plaintiffs would assert claims for statutory damages under the CLRA as well. However, CLRA statutory damages are not mandatory, but instead may be awarded at the discretion of the trier of fact if the required showing is made. Civ. Code § 1780(b)(1) (listing factors required for CLRA statutory damage award, including whether the trier of fact finds "an additional award is appropriate.")

1 \$1.4 million in “concessions” that arguably reduce the amount of actual resident payments made.
 2 (Healey Decl, ¶32.)⁴

3 Viewed from a global perspective, the \$13 million settlement amount represents roughly
 4 33.2% of the maximum projected “hard damages” at trial. Again, that is a conservative estimate, as
 5 it excludes the above-referenced concession amounts and assumes that Plaintiffs would recover the
 6 full amount of move-in fees and initial rent payments. Defendants have argued that, at trial, the
 7 amount of any recovery must be reduced by the value of care services actually provided. (Healey
 8 Decl, ¶33.)⁵

9 The fact that the projected settlement awards are less than the potential trial recovery does
 10 not preclude settlement approval. Quite the contrary, it is “well-settled law that a cash settlement
 11 amounting to only a fraction of the potential recovery does not per se render the settlement
 12 inadequate or unfair.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)
 13 (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982)). A
 14 proposed settlement is not to be measured against a hypothetical ideal result that might have been
 15 achieved. *See, e.g., Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998).
 16 That is because the “very uncertainty of outcome in litigation” and avoidance of expensive
 17 litigation “induce consensual settlements.” *Id.*

18 Here, the projected minimum settlement payments (which range from 20% to 40% of the
 19 estimated hard damages, depending on the particular Class Member) are well within the range of
 20 reasonableness for Court approval. *See, e.g., In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1042
 21 (N.D. Cal. 2007)(approving settlement where class received payments totaling 6% of potential
 22 _____

23 ⁴ The Stipulation of Settlement fairly addresses the fact that Class Members paid different
 24 amounts. Specifically, the Agreement provides a formula for calculating each class member’s
 25 recovery based on the total amount paid by resident for move-in fees (if any) and the initial
 monthly rent. (SS, ¶ X.4, p. 24; Healey Decl, ¶20.)

26 ⁵ The SAC seeks recovery of full compensatory damages, which in theory could include
 27 reimbursement of additional payments made over and above the move-in fee and initial rental
 28 payments. However, defendants have argued that any such damage claims are speculative and
 not suitable for class recovery, given the offset, estoppel and other arguments raised by Class
 Members’ receipt of care services after move-in. (Healey Decl, ¶36.)

1 damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. 1979) (collecting
 2 cases in which settlements with a value of 1% to 8% of the estimate total damages were approved);
 3 *Trombley v. Nat'l City Bank*, 759 F. Supp .2d 20, 25-26 (D.D.C, 2011) (settlement in range of 17-
 4 24% of potential recovery at trial was within range of possible approval).

5 Preliminary approval here is further supported by the strong likelihood that the actual
 6 settlement awards will exceed the projected minimum average of \$450. To be sure, the Settlement
 7 Administrator is tasked with making all reasonable efforts to locate and pay all Settlement Class
 8 Members (or their legal successors). Still, the practical reality is that some Class Members will not
 9 be located or not have successors. As such, some funds will go undistributed. If so, under the
 10 Agreement, the Administrator will use those funds to increase the payment amounts for the Class
 11 Members who have been located. (See SS ¶ X.4, p. 24; Healey Decl, ¶22.)

12 Also, in addition to cash payments, the Agreement provides for non-monetary relief.
 13 Specifically, Defendants have agreed to discontinue the challenged wE Care program effective
 14 December 31, 2015, and in the interim, instruct facilities not to represent that the wE Care
 15 assessments will be used to set staffing. (SS, ¶ X.5, p.25.) The non-monetary term further supports
 16 the reasonableness of the anticipated fee request given the overall settlement value. See *Linney v.*
 17 *Cellular Alaska Partnership* (N.D. Cal. July 18, 1997) 1997 WL 450064, at **6-7 (court considers
 18 injunctive relief in evaluating fairness of overall settlement fairness fee request).

19 **2. The Litigation Risks Support Preliminary Approval**

20 The potential risks attending further litigation support preliminary approval. Plaintiffs face
 21 significant challenges with respect to class certification. Among other arguments, Defendants
 22 contend that Plaintiffs' claims necessarily require consideration of the care services provided (or
 23 not) to each resident. According to Defendants, that will trigger individual issues and thus negate
 24 class certification, under recent cases such as *Walmart* and *Comcast*. While Plaintiffs believe the
 25 claims asserted are proper for class treatment, Defendants' anticipated challenge to class
 26 certification is a litigation risk that bears on the overall settlement evaluation.

27 Even if class certification was granted, Defendants are expected to raise vigorous trial
 28 defenses as to both liability and damages. For example Defendants have asserted that residents

1 received value (in the form of care services and other benefits) that negate (or at least mitigate)
 2 any recovery. Defendants also argue that the Emeritus admissions contract does not promise that
 3 facility staffing levels will be based on resident assessments, and that prospective residents based
 4 their decision to enter Emeritus' facilities on non-staffing factors.

5 Again, Plaintiffs believe they are likely to prevail at trial with respect to these and other
 6 anticipated defense arguments. But Defendants' contentions, asserted by extremely skilled and
 7 experienced counsel, raise real trial risks. Further, proceeding to trial (and the inevitable appeal)
 8 could add five years or more to the resolution of this case. Given the elderly status of most class
 9 members, the potential for years of delayed recovery is a significant concern. Considered against
 10 the risks of continued litigation, and the advanced age of many of the plaintiff class members, the
 11 totality of relief provided under the proposed Settlement is more than adequate and well within the
 12 range of reasonableness. (See Healey Decl, ¶¶29-38.)

13 **3. The Proposed Attorneys' Fees, Litigation Expenses and Service Awards Are** 14 **Within The Range of Reasonableness**

15 At this stage, the Court is not asked to rule on the anticipated requests for attorneys' fees,
 16 reimbursement of litigation costs and service awards to the named plaintiffs. However, the record
 17 shows the amounts proposed in the Agreement on these items fall within an acceptable range.

18 Under the Agreement, the request for attorneys' fees and litigation costs will not exceed
 19 33% of the Settlement Fund (\$4.29 million). To date, Plaintiffs' Counsel have incurred over \$2.5
 20 million in attorneys' fees and advanced \$85,691 in litigation expenses. As such, the anticipated
 21 fee request will represent a multiplier of approximately 1.67 on lodestar fees. If the additional
 22 attorney time required for settlement approval and implementation phases, the projected multiplier
 23 will be even lower. (Healey Decl, ¶28.)

24 Viewed from a "percentage of fund" perspective, the anticipated fee request represents
 25 approximately 32.3% of the Settlement Fund. (Healey Decl, ¶28.) California federal trial courts
 26 have approved fee requests within that range in comparable consumer class actions. *See, e.g.,*
 27 *Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 WL 248367, at *5 (N.D. Cal. Feb. 2,
 28 2009) (approving attorneys' fees award equal to 30% of the settlement fund); *Singer v. Becton*

1 *Dickinson and Company*, 2010 WL 2196104 at *8 (S.D. Cal. June 1, 2010) (awarding 33 1/3% fee
 2 in class action); *Ingalls v. Hallmark Mktg. Corp.*, Case No. 08cv4342, Doc. No. 77 (C.D. Cal. Oct.
 3 16, 2009) (awarding 33.33% fee). *Cicero v. DirectTV, Inc.*, 2010 WL 2991486, at *7 (C.D. Cal.
 4 July 27, 2010) (case survey of class action settlements “50% [of settlement fund] is the upper
 5 limit, with 30-50% commonly awarded in cases in which the common fund is relatively small.”);

6 In addition, the Agreement provides for service awards of \$7,500 and \$3,500 to Named
 7 Plaintiffs (for a total of \$11,000), subject to Court approval. (SS, ¶ X.B.3, p. 22.) The awards are
 8 appropriate in light of the efforts and risks taken by both plaintiffs, including the substantial time
 9 incurred by Renee Moulton in preparing and sitting for deposition, responding to written
 10 discovery and participating in settlement discussions. (Healey Decl, ¶29.) The amounts requested
 11 are within the range approved by trial courts in this Circuit. *See, e.g., Garner v. State Farm Mut.*
 12 *Auto. Ins. Co.*, 2010 WL 1687832, at *17 (N.D. Cal. Apr. 22, 2010) (approving \$20,000 service
 13 award); *Singer v. Becton Dickinson & Co.*, 2009 WL 4809646, at *6 (S.D. Cal. Dec. 9, 2009)
 14 (approving \$25,000 service award); *Razilov v. Nationwide Mut. Ins. Co.*, 2006 WL 3312024 (D.
 15 Or. Nov. 13, 2006) (approving \$10,000 service awards).

16 **V. PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS IS**
 17 **WARRANTED**

18 It is well-settled that, under FRCP 23(c)(1), trial courts are authorized to certify a
 19 settlement class for purposes of resolving a putative class action. Certification of a settlement
 20 class is appropriate where the plaintiff demonstrates numerosity, commonality, typicality and
 21 adequacy of representation, and one of the three requirements of FRCP 23(b) is met. *See, e.g.,*
 22 *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). The Court need not
 23 consider the manageability of a litigation class because the settlement, if approved, would obviate
 24 the need for a trial. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Hanlon*,
 25 150 F.3d at 1021-23. The Settlement Class proposed here meets the requirements for provisional
 26 certification.

27 **Numerosity/Ascertainability.** In compliance with Rule 23(a)(1), the members of the
 28 Settlement Class are so numerous that joinder of all members is impractical. *Fry*, 198 F.R.D. at

1 467. The Settlement Class consists of approximately 19,000 current and former residents of
 2 Emeritus' facilities, all of whom are readily ascertainable through Defendants' records. (Healey
 3 Decl, ¶41.)

4 **Common Issues.** The requirements of Rule 23(a)(2) are met, as the lawsuit involves
 5 several common class-wide issues that, absent the settlement, would drive the resolution of the
 6 claims. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Disputed issues
 7 common to the named plaintiffs and the Class include (a) whether Defendants violated the CLRA
 8 by misrepresenting and/or failing to disclose the manner in which resident assessments under the
 9 wE Care and Viglan programs would be used to determine facility staffing; (b) whether a
 10 "reasonable consumer" would have been misled by Defendants' statements and conduct; and (c)
 11 whether the Named Plaintiffs and class members were "damaged" within the meaning of the
 12 CLRA and are entitled to monetary recovery. (SAC, ¶79.)

13 **Typicality.** The claims of the Named Plaintiffs are typical of the claims of the Settlement
 14 Class, as required under Rule 23(a)(3). During the class period, plaintiff Fritz resided at Emeritus'
 15 Villa del Rey facility in Napa; plaintiff Winans was a resident of the Heritage Place facility in
 16 Tracy. Both Plaintiffs underwent resident assessments and signed contracts that obligated
 17 Defendants to provide care services sufficient to meet their assessed needs. But as alleged in the
 18 Second Amended Complaint, Defendants did not use resident assessments to determine staffing in
 19 the facilities in which Named Plaintiffs or other Class Members resided. (SAC, ¶¶5,89.) Both
 20 Plaintiffs paid move-in fees and initial rental payments as a result of Defendants' misleading
 21 statements and conduct. (SAC, ¶99.) Based on these and other allegations, the typicality
 22 requirement is clearly met. *Hanlon*, 150 F.3d at 1020 (typicality established if claims of
 23 representative plaintiff are "reasonably coextensive with those of absent class members; they need
 24 not be substantially identical.")

25 **Adequate Representation.** To meet this requirement, plaintiffs must show (1) that they
 26 have the "ability and the incentive" to represent the class vigorously; (2) that they have "obtained
 27 adequate counsel", and (3) that there is "no conflict between the individual's claims and those
 28 asserted on behalf of the class." *Fry*, 198 F.R.D. at 469 (internal citations omitted); *see also*

1 *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). Because their claims
 2 are typical of those asserted on behalf of the Class, the Named Plaintiffs have the same interests in
 3 the outcome of this case. As evidenced by the discovery and other efforts to date, both plaintiffs
 4 have shown the incentive and ability to carry out their responsibilities as class representatives.
 5 Further, they are represented by counsel well-versed in class actions generally and elder abuse
 6 matters in particular. (Healey Decl, ¶¶3-9.)

7 **Predominance/Superiority.** Under Rule 23(b)(3), class certification is appropriate if “the
 8 court finds that the questions of law or fact common to the members of the class predominate over
 9 any questions affecting only individual members, and that a class action is superior to other
 10 available methods for the fair and efficient adjudication of the controversy.” As explained above,
 11 the common issues triggered by the Named Plaintiffs’ claims predominate over any individual
 12 questions, as resolution of issues such as whether a reasonable person would construe the Emeritus
 13 contract as a promise to staff to meet assessed resident needs, and whether Emeritus in fact
 14 disregarded its own resident assessments in setting facility staffing, will necessarily resolve the
 15 liability determination. Litigating these common issues on a class basis is clearly superior to
 16 multiple individual and duplicative proceedings on these same questions, particularly given the
 17 frail and elderly status of most Class members..

18 **VI. THE PROPOSED FORM AND MANNER OF CLASS NOTICE SHOULD BE**
 19 **APPROVED**

20 The form and manner of the Class Notice proposed here complies with Rule 23 and the
 21 overall requirements of due process.

22 The form of a class action settlement notice “is satisfactory if it ‘generally describes the
 23 terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and
 24 to come forward and be heard.’” *Churchill Village LLC v. General Electric*, 361 F.3d 566, 575
 25 (9th Cir. 2004) (quoting *Mendoza v. U.S.*, 623 F.2d 1338, 1352 (9th Cir. 1980)). The proposed
 26 Notice here provides sufficient detail in plain language to allow Settlement Class Members to
 27 make an intelligent decision with respect to their legal rights under the settlement. In clear and
 28 straightforward language, the Notice describes the claims asserted, the settlement terms, the

monetary and other relief provided, and the amounts proposed for settlement administration, attorneys' fees and litigation costs, and service awards for the Named Plaintiffs. It explains the procedures for opting out of, or objecting to, the settlement, along with the consequences of pursuing these options or remaining in the settlement. (SS, Ex. A1.)

Further, the manner of class notice proposed here satisfies the "best notice practicable" requirement under Rule 23(c)(2)(B). Under the Agreement, Defendants will provide the Administrator with a list of all Settlement Class Members that have been identified from Defendants' records, along with last known addresses. Before mailing, the Settlement Administrator will conduct appropriate searches to update the provided addresses. In addition, to supplement mailed notice, the Administrator will also post the Class Notice on the Internet and provide publication notice through the USA Today. (SS, ¶ V.C.3, p. 15.)

VII. PROPOSED SCHEDULE FOR SETTLEMENT IMPLEMENTATION AND FINAL FAIRNESS HEARING

As reflected in the parties' Agreement and the proposed Preliminary Approval order submitted with this motion, Plaintiffs respectfully suggest the following schedule for settlement approval:

1. Defendants' to provide Settlement Class List to Settlement Administrator within five business days after Preliminary Approval order signed. Expected date is May 22, 2015.

2. Class Notice completed ("Class Notice Date") within 10 business days of the Settlement Administrator's receipt of the Class List. Expected date is June 5, 2015 .

3. Deadline for Settlement Class Members to opt-out or object to settlement ("Opt-Out/Objection Dates"), must be post-marked 35 days from Class Notice Date. Expected date is July 10, 2015.

4.. Plaintiffs to file motion for final settlement approval, application for attorneys' fees costs and service award, on or before 15 days prior to Objection Date. Expected date is June 26, 2015.

5. Opposition briefs (if any) to final approval and fee motions, due 14 days prior to the hearing date set by the Court.

1 6. Reply briefs (if any) to final approval and fee motions, due 7 days prior to the
2 hearing date set by the Court.

3 With respect to the hearing for final approval, Plaintiffs respectfully request that the Court
4 set a hearing for August 21, 2015, or the earliest date thereafter that is convenient to the Court.
5 That will ensure that the hearing date complies with the 90-day CAFA notice requirement, as
6 Defendants will be providing notice on or before May 18. Plaintiffs ask that the application for
7 attorneys' fees, litigation costs and service awards be set for the same date.

8 **VIII. CONCLUSION**

9 For the reasons set forth herein, plaintiffs respectfully request that the Court grant
10 preliminary approval for the Stipulation of Settlement in this case, grant provisional certification
11 of the Settlement Class and appoint Plaintiffs' Counsel to act as Class Counsel. A proposed form
12 of order is submitted with this motion.

13
14 DATED: May 8, 2015

15 s/ Christopher J. Healey
Christopher J. Healey, State Bar. No. 105798

16 **McKENNA LONG & ALDRIDGE LLP**
17 600 West Broadway, Suite 2600
18 San Diego, CA 92101-3372
19 Tel: (619) 235-3491
Fax: (619) 645-5328

20 Attorneys for Plaintiffs and the Proposed Class
[*Additional Counsel for Plaintiffs on Service List*]

21 USW 805052554.2
22
23
24
25
26
27
28

Kathryn A. Stebner, State Bar No. 121088
 Sarah Colby, State Bar No. 194475
 George Kawamoto, State Bar No. 280358
STEBNER AND ASSOCIATES
 870 Market Street, Suite 1212
 San Francisco, CA 94102
 Tel: (415) 362-9800
 Fax: (415) 362-9801

Guy B. Wallace, State Bar No. 176151
 Mark T. Johnson, State Bar No. 76904
 Jennifer A. Uhrowczik, State Bar No. 302212
SCHNEIDER WALLACE
COTTRELL KONECKY
WOTKYNS, LLP
 180 Montgomery Street, Suite 2000
 San Francisco, CA 94102
 Tel: (415) 421-7100
 Fax: (415) 421-7105

Michael D. Thamer, State Bar No. 101440
LAW OFFICES OF MICHAEL D. THAMER
 Old Callahan School House
 12444 South Highway 3
 Post Office Box 1568
 Callahan, CA 96014-1568
 Tel: (530) 467-5307
 Fax: (530) 467-5437

W. Timothy Needham, State Bar No. 96542
JANSSEN MALLOY LLP
 730 Fifth Street
 Eureka, CA 95501
 Tel: (707) 445-2071
 Fax: (707) 445-8305

Robert S. Arns, State Bar No. 65071
THE ARNS LAW FIRM
 515 Folsom Street, 3rd Floor
 San Francisco, CA 94105
 Tel: (415) 495-7800
 Fax: (415) 495-7888

Christopher J. Healey, State Bar. No. 105798
 Aaron Winn, State Bar No. 229763
McKENNA LONG & ALDRIDGE LLP
 600 West Broadway, Suite 2600
 San Diego, CA 92101-3372
 Tel: (619) 235-3491
 Fax: (619) 645-5328

Attorneys for Plaintiff and the proposed class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ARVILLE WINANS, by and through his
 guardian ad litem Renee Moulton, on his own
 behalf and on behalf of all others similarly
 situated,

Plaintiff,

v.

EMERITUS CORPORATION and DOES 1 to
 100, inclusive,

Defendants.

Case No. 3:13-cv-03962-SC

**DECLARATION OF CHRISTOPHER J.
 HEALEY IN SUPPORT OF MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 SETTLEMENT**

Date: May 15, 2015
 Time: 10:00 a.m.
 Dept.: Courtroom 1
 Judge: Samuel Conti

1 I, Christopher J. Healey, hereby declare,

2 1. I am a partner at the law firm of McKenna Long & Aldridge LLP, one of the
3 counsel of record for Plaintiffs in the above captioned matter (the "Lawsuit"). Unless otherwise
4 indicated, I have personal knowledge of the facts set forth herein. If called upon to testify, I would
5 do so competently.

6 2. Attached as Exhibit A hereto is a true and correct copy of the Stipulation of
7 Settlement agreed to by the parties in this case. Attached as exhibits to the Settlement Agreement
8 are the proposed Class Notice, a proposed Preliminary Approval Order, and a proposed Final
9 Approval Order.

10 **Plaintiffs' Counsel Experience and Background**

11 3. Plaintiffs' Counsel have substantial experience in class action litigation and, in
12 particular, class action cases involving nurse staffing in nursing homes.

13 4. I was admitted to the State Bar of California in 1982. From 1982 through 1984, I
14 served as a law clerk to the Honorable William B. Enright, United States District Court Judge for
15 the Southern District of California (now retired). I have tried more than ten cases to verdict before
16 a jury or judge. My primary area of expertise is class action litigation and for most of my 30 years
17 of law practice, I have defended clients sued in consumer and business class actions.
18 Commencing in approximately 2006 with the Skilled Healthcare litigation (described below),
19 however, I joined with other Plaintiffs' Counsel to prosecute class actions filed to address
20 understaffing and related issues in nursing homes. Along with others in the Plaintiffs' Counsel
21 group, I have been approved by California state and federal courts to serve as Class Counsel in
22 eight other consumer class actions involving nurse staffing allegations in nursing homes.

23 5. Guy B. Wallace, a named partner with Schneider Wallace Cottrell Konecky LLP,
24 has practiced law for 20 years. He has extensive experience in class actions and specializes in
25 disability civil rights and in employment class actions. He has served as lead counsel, co-lead
26 counsel, or class counsel in more than twenty litigated class actions, including cases through trial
27 and on appeal. Mr. Wallace serves as a board member for the San Francisco Trial Lawyers
28

1 Association, the San Francisco Bar Association, Disability Rights California, and the ACLU-
 2 Northern California. He is a recognized expert in the area of civil rights litigation.

3 6. Kathryn A. Stebner is the principal of Stebner and Associates. She has practiced
 4 law for more than 30 years, prosecuted elder abuse cases since 1987, and practiced solely in the
 5 elder abuse area for the last 15 fifteen years. She has been actively involved with California's
 6 leading nursing home advocacy group, California Advocates for Nursing Home Reform
 7 ("CANHR") since 1987, and served as a CANHR board member. She has tried more than 20
 8 trials and arbitrations. Among other publications, she is the author of two chapters in the CEB
 9 treatise on elder abuse, including financial elder abuse. She is a past President of the
 10 San Francisco Bar Association.

11 7. Robert S. Arns is the principal of The Arns Law Firm and has practiced law for
 12 more than 38 years. He has tried more than 50 cases to a jury or judge verdict. He teaches trial
 13 practice at the University of San Francisco Law School, is the author of two Rutter Group trial
 14 publications, *The Evidence Wheel* and *The Trial Wheel*, and has presented at the ABOTA Masters
 15 in Trial on multiple occasions. He has been named Trial Lawyer of the Year in San Francisco and
 16 nominated three times for the Consumer Attorneys of California (CAOC) Trial Lawyer of the
 17 Year.

18 8. Additional Plaintiffs' Counsel include Michael Thamer of the Law Offices of
 19 Michael Thamer and Tim Needham of Janssen Malloy LLP. Mr. Thamer has practiced law for 33
 20 years, has tried more than 50 jury trials to verdict and has prosecuted hundreds of elder and
 21 dependent abuse cases in California. Mr. Needham has practiced law for 34 years, is an ABOTA
 22 member and has tried more than 50 jury trials to verdict in addition to numerous court trials and
 23 arbitrations. Mr. Thamer, Mr. Needham and I jointly received a California Lawyer of the Year
 24 (CLAY) award in 2010 for work on the *Skilled Healthcare* case, a class action that was tried to
 25 verdict after a six-month jury trial. We were also named Consumer Attorneys of the Year (2010)
 26 by Public Justice and CAOC for work on the *Skilled Healthcare* trial.

27 9. On the appellate level, Plaintiffs' Counsel have been at the forefront on nurse
 28 understaffing and related issues in nursing homes. including several reported decisions in nurse

1 staffing class actions. *See e.g., Conservatorship of Gregory* (2000) 80 Cal. App. 4th 514;
 2 *Fitzhugh v. Granada Healthcare LLC* (2007) 150 Cal. App. 4th 469; *Shuts v. Covenant Holdco*
 3 *LLC* (2012) 208 Cal.App.4th 609; *Walsh v. Kindred Healthcare* (N.D. Cal 2011) 798 F. Supp. 2d
 4 1073; *Wehlage v. EmPres Healthcare, Inc.* (N.D. Cal 2011) 791 F. Supp. 2d 774.

5 **Case Proceedings**

6 10. After removal to Federal Court, the named Defendant Emeritus Corporation
 7 (“Emeritus”) moved to dismiss the complaint on abstention and other grounds. By separate
 8 motion, Emeritus also moved to strike the class allegations. By order dated March 4, 2015, the
 9 Court denied the motion to dismiss as to the CLRA and elder abuse claims, but granted the motion
 10 as to Plaintiffs’ UCL claims and equitable relief under the CLRA on abstention grounds. The
 11 Court denied the motion to strike Plaintiffs’ class action allegations.

12 11. Thereafter, the Court declined to clarify its ruling to permit limited injunctive relief
 13 under the CLRA allegations, but directed Plaintiffs to seek leave to amend if they wished to
 14 pursue the new theory of CLRA liability. After further motion practice, the Court granted
 15 Plaintiffs’ request to assert a Second Amended Complaint (“SAC”), which was filed on April 15,
 16 2015. The SAC names as Defendants, Emeritus and Brookdale Senior Living, Inc. (“Brookdale”),
 17 the company that acquired Emeritus by merger in mid-2014.

18 **Investigation and Discovery**

19 12. Prior to reaching a settlement, Plaintiffs engaged in substantial investigation and
 20 discovery. Before filing the initial complaint, Plaintiffs’ Counsel reviewed thousands of pages of
 21 trial and deposition testimony and exhibits from an individual case filed against Emeritus in
 22 Sacramento Superior Court; court filings in other lawsuits against Emeritus; Emeritus’ filings with
 23 the Securities and Exchange Commission; Department of Social Services’ files for Emeritus’
 24 facilities in California; and Emeritus’ website and other marketing materials. Plaintiffs’ Counsel
 25 also interviewed former Emeritus’ employees, residents, family members of residents, and
 26 consulted with multiple experts on assisted living facilities.

27 13. After the lawsuit was filed, Plaintiffs propounded several sets of discovery
 28 requests, including interrogatories and multiple sets of document requests. In response,

1 Defendants produced approximately 14,539 pages of documents. Defendants also propounded
 2 their own discovery requests, which triggered lengthy and substantive responses by Plaintiffs. In
 3 addition, Defendants deposed Renee Moulton, guardian ad litem for named Plaintiff Arville
 4 Winans.

5 14. The substantial exchange of discovery requests and material between the parties
 6 prompted multiple meet and confer discussions and the filing of discovery-related motions. In
 7 connection with the March 2015 mediation described below, Defendants produced additional
 8 information, including a summary of the move-in and initial monthly rent payments made by all
 9 facility residents from roughly 2009 through mid-2014.

10 **Settlement Negotiations**

11 15. Commencing in approximately February 2015, the parties engaged in preliminary
 12 settlement discussions through counsel and eventually agreed to participate in mediation before
 13 the Honorable William Cahill (Ret.). On March 5, 2015, the parties participated in a day-long
 14 mediation session before Judge Cahill at the JAMS office in San Francisco. Prior to the
 15 mediation, the parties exchanged briefs. Although some progress was made in the March 5
 16 session, no agreement was reached.

17 16. After further discussions with counsel for the respective parties, Judge Cahill
 18 provided both sides with a mediator's proposal. On March 11, 2015, the parties (independently)
 19 accepted the mediator's proposal to settle the case. The parties' Stipulation of Settlement ("SS" or
 20 "Agreement") formalizes the settlement that Judge Cahill recommended in his proposal.

21 **Settlement Terms**

22 17. Under the Agreement, Defendants have agreed to pay \$13 million to resolve all
 23 monetary obligations owed under the settlement. The Settlement Fund will be used to pay the
 24 Settlement Awards paid to Class Members, to pay notice/administration costs (estimated at
 25 approximately \$150,000), pay Service Awards to the two named Plaintiffs (totaling \$11,000), and
 26 attorneys' fees and reimbursement of litigation costs (as awarded by the Court but not to exceed
 27 33% of the Settlement Fund, or \$4,290,000.00). Factoring in an agreed-upon reserve of \$45,000
 28

1 to cover late claims, I estimate the amount available to fund payments to class members is roughly
2 \$8.55 million.

3 18. There will be no reversion of any portion of the Settlement Fund to Defendants.
4 Rather, unused reserve funds as well as uncashed or returned checks will be distributed to cy pres
5 recipient(s), nominated by Plaintiffs' Counsel and approved by the Court.

6 19. The Agreement provides for cash payments to class members (or if deceased, their
7 legal successors) on a direct distribution basis, with no claims requirement to obtain payment.
8 Based on information provided by Defendants, I estimate that the Settlement Class includes
9 roughly 19,000 current and former residents. The Settlement Administrator agreed to by the
10 parties (Gilardi & Co., LLC) will mail settlement checks to each Settlement Class Member for
11 whom a valid address has been provided by Defendants (or located through the address update
12 procedures). For Settlement Class Members for whom current addresses cannot be located, the
13 Administrator is authorized to make payment based on a "distribution request" by the Class
14 Member (or their legal successor).

15 20. The amount of the Settlement Award check will vary by Class Member, based on a
16 Settlement Payment Percentage ("SPP") calculated by the Administrator for each resident.
17 Specifically, the SPP is derived by adding the move-in fee (if any) and the initial monthly rent for
18 the Settlement Class Member in question, and then dividing that amount by the total move-in fees
19 and initial rent payments made by all Settlement Class Members. The resulting fraction is that
20 Settlement Class Member's SPP. Initial Settlement Payments for each Settlement Class Member
21 will be calculated by multiplying that Settlement Class Member's SPP against the total assets in
22 the Settlement Fund.

23 21. Under the Agreement, the Administrator is authorized to increase the Initial
24 Settlement Amount if sufficient monies are available after calculating the amounts owed to all
25 Settlement Class Members for whom current addresses have been provided or located, along with
26 the amounts owed to Class Members (or their successors) who made timely distribution requests.

27 22. By way of example, if a Settlement Class Member paid \$2,000 in move-in fees and
28 first month's rent, and the total move-in fees and initial rent payments for the entire class are \$40

1 million, the SPP for the Class Member would be .00005. Multiplying that percentage by the
 2 anticipated Net Settlement Fund (roughly \$8.5 million), the Initial Settlement Payment for that
 3 Class Member would be approximately \$425. It is anticipated that monies will be available in the
 4 Settlement Fund after the initial calculation of amounts owed to Settlement Class Members for
 5 whom current addresses are known or provided through distribution requests. Assuming so, the
 6 Settlement Administrator will increase the settlement payments by multiplying the SSP for each
 7 Class Member by the amount of "excess" funds, and adding that "extra" amount to the Initial
 8 Settlement Payment.

9 23. The Settlement Award checks will be mailed to class members within 45 days after
 10 the Distribution Request Deadline, which is thirty days after the Effective Date as defined in the
 11 Agreement. The Settlement Payment checks shall allow for a check cashing period of 180 days.

12 24. The Agreement authorizes the Administrator to hold a reserve of \$45,000 to pay
 13 late-submitted distribution requests or address other valid requests from Settlement Class
 14 Members. Also, Settlement Award checks not cashed within the check cashing deadline (after
 15 reasonable reminders issued by the Settlement Administrator) shall be added to the reserve fund.
 16 Any monies left in the reserve not paid to Settlement Class Members shall be paid to cy pres
 17 recipient(s) nominated by Class Counsel and approved the Court.

18 25. The Agreement also provides that the wECare resident evaluation system will be
 19 phased out completely, and no longer used, as of December 31, 2015. Further, Defendants will
 20 issue a written directive to each assisted living community owned or operated by Defendants in
 21 California not to make any affirmative representation to prospective residents (and if applicable,
 22 family members or representatives of prospective residents) that the wECare assessments are used
 23 to determine facility staffing.

24 26. The Agreement provides for the release of the claims of the Named Plaintiffs and
 25 Settlement Class Members (excluding opt-outs) that were asserted or could have been asserted in
 26 the Lawsuit to the extent they arise out of or relate to statements, or representations, or failures to
 27 disclose made prior to May 15, 2015 regarding Defendants' advertising, marketing, promotion, or
 28 use of wECare and Vigilant. The releases are effective only after the settlement has been granted

1 final approval. Expressly excluded are any claims for personal injuries, emotional distress or
2 bodily harm.

3 27. Subject to Court approval, the Agreement provides for service awards of \$7,500 to
4 Renee Moulton as Trustee for the Arville Winans Revocable Trust, and \$3,500 to Ruby
5 Richardson, Trustee, for the Wilma F. Fritz Trust. The differing amounts reflect Ms. Moulton's
6 additional time devoted to the case assisting with discovery, sitting for deposition, active
7 involvement in the settlement negotiations and her overall efforts as the initial Named Plaintiff in
8 the lawsuit.

9 28. In addition, the Agreement allows Plaintiffs' Counsel to file an application for
10 attorneys' fees and litigation costs not to exceed 33% of the Settlement Fund (i.e., \$4.29 million).
11 To date, Plaintiffs' Counsel have incurred over \$2.5 million in lodestar attorneys' fees and
12 advanced \$85,691 in litigation expenses. I estimated the fee request will represent a multiplier of
13 approximately 1.67 on lodestar fees, or less. Viewed from a "percentage of fund" perspective, I
14 estimated the anticipated fee request will represent approximately 32.3% of the Settlement Fund.
15 If awarded fees by the Court, Plaintiffs' Counsel will pay a referral fee to the CANHR, which in
16 addition to its advocacy work, serves as a California State Bar-approved legal referral service.

17 **Fairness Assessment**

18 29. For several reasons, the collective Plaintiffs' Counsel have concluded that the
19 settlement is fair, appropriate, reasonable and in the best interests of the Settlement Class. For
20 purposes of this motion, Class Counsel believe it clearly falls within the "range of reasonableness"
21 required for preliminary settlement approval.

22 30. Under the Agreement, Defendants have agreed to pay \$13 million, of which
23 roughly \$8.54 million will be available for distribution to class members. Assuming that every
24 settlement class member is located for distribution of the payments, the estimated minimum
25 settlement payment is approximately \$450 (\$8.54 million divided by 19,000 class members). If
26 current addresses cannot be located for all potential class members (or their successors), such that
27 additional funds are available for distribution, the Settlement Administrator will increase the per-
28 class member payment.

31. Even at the \$450 range, the projected average Settlement Award compares favorably with the likely recovery if the case was tried. Under the CLRA claims alleged in the SAC, the primary focus of Plaintiffs' damages theory is the recovery of the initial payments made by residents, specifically, the move-in fee (if charged) and the initial month's rent. Based on the resident payment information provided by Defendants, I estimate that, exclusive of "concessions" provided to residents, the average move-in fee was approximately \$1,039, and the average initial month rent and care charge was \$1,102. Thus, the projected minimum settlement award of \$450 represents roughly 40 % of the average move-in fee and over 43% of the average initial monthly rent charge. According to Defendants' produced information, not all Settlement Class Members paid both move-in and initial monthly rent, but for those who did, the minimum \$450 settlement amount represents at least 22% of the average aggregate payment of \$2,057.

32. These percentage estimates of the average per-class member recovery are likely conservative, at least for some Class Members. For purposes of calculating the above-stated estimated percentages, I did not include roughly \$1.4 million in "concessions" that Defendants apparently applied to some residents' accounts. If a Settlement Class Member had concessions applied, his or her total resident payment amount (and potential trial recovery) would be reduced.

33. Viewed from an overall perspective, I estimate that the \$13 million settlement amount represents roughly 33.28% of the maximum projected "hard damages" for recovery of move-in fees and initial monthly rent. In making that estimate, I reviewed Defendants' resident payment information, which showed that approximately \$34.6 million was paid by residents in the form of move-in fees, pre move-in fees, initial month's rent, pre initial month's rent and care charges, less concessions, for the period from July 2009 through October 2014. Defendants are in the process of obtaining data for the balance of the Settlement Class Period, but I understand the number and amounts of resident payments during the period from October 2014 through May 2015 has generally tracked the levels from prior years. Extrapolating from the data provided, I estimate that the total move-in rents and initial rent payments (less concessions) during the full Settlement Class Period is approximately \$39 million. Dividing the \$13 million settlement amount into the \$39 million estimate for "hard damages" yields the above referenced 33.28%

1 estimate. That estimate assumes, however, that there is no offset (as Defendants contend should
2 be applied) for services rendered to residents.

3 34. The Agreement addresses the fact that Class Members paid different amounts.
4 Specifically, the Agreement provides a formula for calculating each Class Member's recovery
5 based on the total amount paid by the resident for move-in fees (if any) and the initial monthly
6 rent.

7 35. I believe it likely the actual Settlement Awards will exceed the projected minimum
8 average of \$450. The Agreement requires Defendants to provide the Settlement Administrator
9 with names and last known addresses for all Settlement Class Members, and the Administrator is
10 required to update the addresses as necessary. Nevertheless, experience in other class litigation
11 has shown that, despite reasonable efforts, some Settlement Class Members will not be located or
12 will not have legal successors. As such, some funds will go undistributed. Assuming so, under
13 the Agreement, the Administrator will use those funds to increase the payment amounts for the
14 Settlement Class Members who have been located.

15 36. The potential risks attending further litigation support preliminary approval.
16 Plaintiffs face significant challenges with respect to class certification. Among other arguments,
17 Defendants have argued and expect to assert at trial that Plaintiffs' claims necessarily require
18 consideration of the care services provided (or not) to each resident. According to Defendants,
19 that will trigger individual issues and thus negate class certification, citing recent cases such as
20 Walmart and Comcast. While Plaintiffs believe the claims asserted are proper for class treatment,
21 Defendants' anticipated challenge to class certification is a litigation risk that bears on the overall
22 settlement evaluation.

23 37. Even if class certification was granted, Defendants are expected to raise vigorous
24 trial defenses as to both liability and damages. For example Defendants have asserted that
25 residents received value (in the form of care services and other benefits) that negate (or at least
26 mitigate) any recovery. Defendants also argue that the Emeritus' admissions contract does not
27 promise that facility staffing levels will be based on resident assessments, and that prospective
28 residents based their decision to enter Emeritus' facilities on non-staffing factors.

38. Again, Plaintiffs believe they are likely to prevail at trial with respect to these and other anticipated defense arguments. But Defendants' contentions, asserted by skilled trial counsel, raise real trial risks. Further, proceeding to trial (and potential appeals) could add years to the resolution of this case. Given the elderly status of many class members, delay in case resolution and providing recovery to the class is a significant concern.

Settlement Administration

39. The Agreement provides for dissemination of class notice to every Class Member by U.S. mail and through the announcement of the Settlement in a statewide publication. All costs of class notice, as well as administration costs, shall be paid from the Settlement Fund.

40. As indicated, the parties have agreed that Gilardi & Company LLC shall serve as the Settlement Administrator. A true and correct copy of Gilardi's proposal to handle class notice and settlement administration on this case is attached as Exhibit B hereto. Gilardi estimates the Class Notice, settlement administration and related costs will not exceed \$110,000.

41. Based on information provided by Defendants, I estimate that the Settlement Class includes approximately 19,000 current or former residents of Emeritus' California assisted living facilities. I am advised that Defendants maintain records that contain the names, last known addresses, payment information (including move-in fee and initial monthly payment, if applicable) for all Settlement Class Members. Under the Agreement, Defendants have agreed to provide (or make available) all such information to the Settlement Administrator for purposes of issuing Class Notice and processing the settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 8th day of May, 2015 at San Diego California.

s/ Christopher J. Healey
Christopher J. Healey

USW 805065206.2

Exhibit “A”

(Healey Declaration)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ARVILLE WINANS, by and through his
guardian ad litem, RENEE MOULTON, on
his own behalf and on behalf of others
similarly situated,

Plaintiff,

V.

EMERITUS CORPORATION and DOES 1 through 100, inclusive

Defendants.

CASE NO.: 3:13-cv-03962-SC

STIPULATION OF SETTLEMENT

TABLE OF CONTENTS

I.	RECITALS	3
II.	DEFINITIONS.....	5
III.	PRELIMINARY APPROVAL, CERTIFICATION OF THE SETTLEMENT CLASS, AND DISMISSAL OF THE ACTION	10
IV.	SETTLEMENT ADMINISTRATOR.....	12
V.	NOTICE TO THE SETTLEMENT CLASS.....	13
VI.	OBJECTIONS AND REQUESTS FOR EXCLUSION	16
VII.	MEDIA COMMUNICATIONS	17
VIII.	RELEASES.....	19
IX.	FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT	21
X.	SETTLEMENT RELIEF	21
XI.	REPRESENTATIONS AND WARRANTIES.....	26
XII.	NO ADMISSIONS, NO USE	26
XIII.	TERMINATION OF THIS AGREEMENT	28
XIV.	MISCELLANEOUS PROVISIONS.....	29

TABLE OF EXHIBITS

<u>Document</u>	<u>Exhibit Number</u>
Class Notice	1
Preliminary Approval Order	2
Final Judgment and Order Approving Settlement	3

I. RECITALS

A. This Stipulation of Settlement is entered into by and among Plaintiffs Arville Winans and Wilma F. Fritz (together, “Plaintiffs”), on behalf of themselves and all others similarly situated (“Settlement Class Members,” as defined below), and Defendants Emeritus Corporation and Brookdale Senior Living Inc. (together, “Defendants”), and resolves in full this Action. Capitalized terms used herein are defined in Section II of this Agreement or indicated in parentheses elsewhere in this Agreement. Subject to Court approval as required by the Federal Rules of Civil Procedure, and as provided herein, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Agreement and upon the entry by the Court of a Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, this Action shall be settled and compromised upon the terms and conditions contained herein.

B. WHEREAS, on July 29, 2013, Plaintiffs filed a putative class action complaint against Emeritus Corporation in California state court, which Defendants removed to the United States District Court for the Northern District of California on August 27, 2013, captioned *Arville Winans v. Emeritus Corp. and DOES 1 through 100*, case no. 3:13-cv-03962-SC, for claims arising under the Consumer Legal Remedies Act (“CLRA”), California’s Unfair Competition Law (“UCL”), and section 15610.30 of the Welfare and Institutions Code (the “Elder Fraud Act”) (collectively, the “Claims”). Plaintiff filed his First Amended Complaint on October 25, 2013. Plaintiff filed his Second Amended Complaint on April 15, 2015, which added Wilma F. Fritz as a Named Plaintiff and Brookdale Senior Living Inc. as a defendant; and

C. WHEREAS, the Parties engaged in substantial discovery and law-and-motion efforts while attempting to negotiate a settlement of this action, including *inter alia*, Defendants’

production of 14,539 pages of documents, plus 314 excel and native files, and the deposition of Mr. Winans' guardian *ad litem*; and

D. WHEREAS, counsel for the Parties engaged in a full-day mediation, which resulted in this settlement, on March 5, 2015 before the Honorable William Cahill (ret.) of JAMS in San Francisco; and

E. WHEREAS, counsel for the Parties have reached the resolution set forth in this Agreement, providing for, among other things, the settlement of the Action between and among Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants, on the terms and subject to the conditions set forth below; and

F. WHEREAS, Class Counsel have determined that a settlement of the Action on the terms reflected in this Agreement is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class; and

G. WHEREAS, Defendants, to avoid the costs, disruption and distraction of further litigation, and without admitting the truth of any allegations made in the Action, or any liability with respect thereto, have concluded that it is desirable that the claims against them be settled and dismissed on the terms reflected in this Agreement.

H. NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the undersigned, on behalf of Plaintiffs, the Settlement Class, and Defendants, that the Second Amended Complaint shall be dismissed on the merits and with prejudice as to all Defendants upon entry of the Final Judgment and Order Approving Settlement, and this Action in its entirety, and the Claims shall be finally and fully compromised, settled, and released, subject to the approval of the Court as required by Rule 23 of the Federal Rules of Civil Procedure, on the following terms and conditions:

II. DEFINITIONS

A. For purposes of this Settlement Agreement only, the words and terms used in this Settlement Agreement that are expressly defined in this Section II.A or elsewhere in this Settlement Agreement shall have the meaning ascribed to them in those definitions.

1. “Action” means this action, *Arville Winans v. Emeritus Corp. and DOES 1 through 100*, case no. 3:13-cv-03962-SC, which is currently pending in the United States District Court for the Northern District of California, including, without limitation, any appeals or requests for leave to appeal any ruling or judgment entered in that case.

2. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement (including all Exhibits attached hereto).

3. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court based on the stipulation described herein to compensate Class Counsel as determined by the Court, but not to exceed 33% of the total Settlement Award, as described more particularly in Section X of this Agreement.

4. “Award” or “Settlement Award” means the relief obtained by Settlement Class Members pursuant to Section X.C of this Agreement.

5. “Class” means Plaintiffs and all similarly situated persons who resided at one of the California assisted living facilities owned and/or operated by Defendants under the Emeritus name from July 29, 2009 through and including May 15, 2015 (the “Class Period”), and who contracted with Emeritus for services for which Emeritus was paid money.

6. “Class Notice” or “Notice” means the forms of notice to be disseminated to Settlement Class Members informing them about the Settlement Agreement. A copy of the proposed Notice is attached as Exhibit 1.

7. “Class Representatives” means plaintiffs Arville Winans and Wilma F. Fritz.

8. “Class Counsel” means:

ARNS LAW FIRM
515 Folsom Street
3rd Floor
San Francisco, CA 94105
Telephone: (415) 495-7800
Facsimile: (415) 495-7888

Robert S. Arns
rsa@arnslaw.com

STEBNER & ASSOCIATES
870 Market Street
Suite 1212
San Francisco, CA 94102
Telephone: (415) 362-9800
Facsimile: (415) 362-9801

Kathryn A. Stebner
kathryn@stebnerassociates.com
Sarah Colby
sarah@stebnerassociates.com

MCKENNA LONG & ALDRIDGE LLP
4435 Eastgate Mall
Suite 400
San Diego, CA 92121
Telephone: (619) 595-5400
Facsimile: (619) 595-5450

Christopher J. Healey
chealey@mckennalong.com

SCHNEIDER WALLACE COTTRELL
KONECKY LLP
180 Montgomery Street
Suite 2000
San Francisco, CA 94104
Telephone: (415) 421-7100
Facsimile: (415) 421-7105

Guy B. Wallace
gwallace@schneiderwallace.com
Mark T. Johnson
mjohnson@schneiderwallace.com

JANSSEN, MALLOY, NEEDHAM, ET AL.
730 Fifth Street
Eureka, CA 95501
Telephone: (707) 445-2071
Facsimile: (707) 445-8305

W. Timothy Needham
tneedham@janssenlaw.com

LAW OFFICE OF MICHAEL D. THAMER
Old Callahan School House
12444 South Highway 3
Callahan, CA 96014
Telephone: (530) 467-5307
Facsimile: (530) 467-5437

Michael D. Thamer
michael@trinityinstitute.com

9. “Court” means the United States District Court for the Northern District of California, the Honorable Samuel Conti presiding.

10. “Defendants” means Emeritus Corporation (“Emeritus”) and Brookdale Senior Living Inc. (“Brookdale”).

11. “Distribution Request” means a request for payment of a Settlement Award made by a Settlement Class Member, or made by the legal representative of a deceased Settlement Class Member. Any Distribution Request must be submitted to the Settlement Administrator and post-marked not later than thirty (30) after the Effective Date (herein the “Distribution Deadline”).

12. “Effective Date” means the later in time of: (a) the date of entry of the Final Judgment and Order Approving Settlement, if no timely motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or (b) in the event that an appeal or other effort to obtain review has been initiated, the date after such appeal or other review has been finally concluded and is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise.

13. “Final Approval Hearing” means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Agreement.

14. “Final Judgment and Order Approving Settlement” means the Final Judgment and Order Approving Settlement to be entered by the Court, substantially in the form of Exhibit 3 approving the settlement, as fair, adequate, and reasonable, confirming the certification of the Settlement Class, and issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Settlement Agreement.

15. “Defendants’ Counsel” means the following counsel of record for

Defendants:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 687-5000
Facsimile: (213) 621-5000

Thomas J. Nolan
thomas.nolan@skadden.com
Jason D. Russell
jason.russell@skadden.com
Lisa Gilford
lisa.gilford@skadden.com

16. “Motion for Preliminary Approval of Settlement” means the motion, to be filed by Class Counsel on behalf of Plaintiffs, and not to be opposed by Defendants, for Preliminary Approval of this Agreement.

17. “Notice and Payment Distribution Administration Expenses” means all costs and expenses incurred by the Settlement Administrator, including all notice expenses, the cost of administering the Notice Program and the costs of processing all payments to Settlement Class Members.

18. “Notice Date” means the date by which the Settlement Administrator substantially completes dissemination of the Class Notice as provided in the Agreement and shall be no later than 10 business days after Settlement Administrator receives the Settlement Class Member Information List.

19. “Objection Date” means the date by which Settlement Class Members must file and serve objections to the settlement, and shall be 35 days after the Notice Date.

20. “Opt Out Date” means the postmark date by which a Request for Exclusion must be submitted to the Settlement Administrator in order for a Settlement Class Member to be excluded from the Settlement Class, and shall be 35 days after the Notice Date.

21. “Parties” means Plaintiffs and Defendants.

22. “Plaintiffs” means Arville Winans and Wilma F. Fritz.

23. “Preliminary Approval Order” means the order to be entered by the Court, substantially in the form of Exhibit 2, preliminarily approving the Settlement, certifying the Settlement Class, setting the date of the Final Approval Hearing, approving the Notice Program and Class Notice, and setting the Opt Out Date, Objection Date, and Notice Date.

24. “Released Claims” and “Released Parties” mean those claims and parties released of liability under Section VIII.

25. “Request for Exclusion” means the written communication that must be submitted to the Settlement Administrator and postmarked on or before the Opt Out Date by a Settlement Class Member who wishes to be excluded from the Settlement Class.

26. “Reserve Fund” means the \$45,000 that the Settlement Administrator shall hold in the Settlement Fund to pay late-submitted Distribution Requests. Any Settlement Award checks not cashed within the check cashing deadline (after reasonable reminders issued by the Settlement Administrator) shall be added to the Reserve Fund. Any moneys left in the Reserve Fund not paid to Settlement Class Members shall be paid to cy pres recipient(s) nominated by Class Counsel and approved the Court.

27. “Settlement Administrator” or “Administrator” means Gilardi & Co., LLC, the entity that subject to Court approval, shall design and implement the program for

disseminating Notice to the Class, administer the payment portion of this settlement, and perform overall administrative functions.

28. “Settlement Class” means the class as defined for the purpose of this Settlement Agreement only.

29. “Settlement Class Member” means any person fitting the description of the Settlement Class who does not opt out of the Settlement Class.

30. “Settlement Class Member Information List” means and includes all the following information within Defendants’ possession, custody or control: (a) a list of any individual meeting the definition of the Settlement Class; (b) names of any family member or representative of any such person; (c) last-known addresses, phone numbers or other contact information for any Settlement Class Member and their family members or representatives; and (d) the move-in fee (if any) and initial monthly rent charged for each Settlement Class Member.

31. “Settlement Fund” means the \$13 million that Defendants have agreed to pay in full settlement and resolution of the Action.

32. “Settlement Website” means the Internet website to be established for this settlement by the Settlement Administrator to provide information to the public and the Settlement Class about this Agreement.

B. Other capitalized terms in this Agreement not defined in Section II.A shall have the meanings ascribed to them elsewhere in this Agreement.

III. PRELIMINARY APPROVAL, CERTIFICATION OF THE SETTLEMENT CLASS, AND DISMISSAL OF THE ACTION

A. Preliminary Approval

1. As soon as practicable after the signing of this Agreement, Plaintiffs at their expense shall move the Court for an order: (a) preliminarily approving this Agreement as

fair, reasonable and adequate; (b) certifying the Class for settlement purposes as provided in Section III.B.2; (c) approving the form, manner, and content of the Class Notice as described in Section V.B; (d) setting the date and time of the Final Approval Hearing; (e) appointing Plaintiffs as representatives of the Settlement Class for settlement purposes only; and (f) appointing Class Counsel for settlement purposes only. Defendants shall co-operate with Plaintiff to obtain the Preliminary Approval Order consistent with the terms herein.

B. Certification of the Settlement Class

1. This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute or be construed as an admission of: (a) the validity of any claim or allegation by Plaintiffs, or of any defense asserted by Defendants, in the Action; (b) any wrongdoing, fault, violation of law, or liability on the part of any Party, Released Party, Settlement Class Member, or their respective counsel; or (c) the propriety of class treatment of Plaintiffs' claims for any purpose other than this Settlement Agreement.

2. As part of the Motion for Preliminary Approval of Settlement, Plaintiff will seek certification of the Settlement Class. Defendants hereby consent, solely for purposes of the Agreement, to the certification of the Settlement Class, to the appointment of Class Counsel, and to the approval of Plaintiffs as suitable representatives of the Settlement Class; provided, however, that if the Court fails to approve this Agreement or the Agreement otherwise fails to be consummated, then Defendants shall retain all rights they had immediately preceding the execution of this Agreement to object to the maintenance of the Action as a class action.

C. Dismissal of Action

Upon final approval of the Settlement by the Court, the Final Judgment and Order Approving Settlement, substantially in the form attached hereto as Exhibit 3, will be entered by the Court, providing for the dismissal of this Action with prejudice subject to the Court retaining jurisdiction to implement and enforce the terms of the Stipulation of Settlement.

IV. SETTLEMENT ADMINISTRATOR

In addition to any tasks and responsibilities ordered by the Court, the Settlement Administrator shall be authorized to and shall in fact undertake the following tasks to help implement the terms of the proposed Agreement.

A. The Settlement Administrator shall undertake various administrative tasks, including, without limitation, (1) mailing or arranging for the mailing, emailing or other distribution of the Notice to Settlement Class Members, (2) handling returned mail and email not delivered to Settlement Class Members, (3) attempting to obtain updated address information for Settlement Class Members by all reasonable means, including running change of address, skip traces or other procedures on the Settlement Class Member Information List provided by Defendants, and any notices returned without a forwarding address or an expired forwarding address, (4) making any additional mailings required under the terms of this Agreement, (5) answering written inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel or their designee, (6) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion to the settlement, (7) establishing the Settlement Website that posts notices, distribution request forms and other related documents, (8) establishing a toll-telephone number that will provide settlement-related information to Settlement Class Members, (9) receiving and processing

payment requests and distributing payments to Settlement Class Members, and (10) otherwise assisting with administration of the Agreement.

B. The contract(s) with the Settlement Administrator(s) shall obligate the Administrator to abide by the following performance standards:

1. The Administrator shall accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of this Agreement in communications with Settlement Class Members;
2. The Administrator shall provide prompt, accurate and objective responses to inquiries from Class Counsel or their designee, Defendants and/or Defendants' Counsel.
3. The Administrator shall execute all necessary Business Associate Agreements, as required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or any similar state or federal law.
4. The Administrator shall maintain the confidentiality of the Settlement Class Member Information List, and all information contained therein; provided that, such information may be disclosed to Class Counsel, Defense Counsel or the Court but only as reasonably necessary to implement this Agreement.

V. NOTICE TO THE SETTLEMENT CLASS

A. Notice

1. No later than five (5) business days after the entry by the Court of the Preliminary Approval Order, Defendants shall furnish the Settlement Administrator with the Settlement Class Member Information List.
2. No later than 10 business days after the Settlement Administrator receives the Settlement Class Member Information List, the Settlement Administrator shall substantially

complete the dissemination of Class Notice to potential Settlement Class Members. The Parties agree that notice by United States mail is the best means under the circumstances of this case to effect notice to the Settlement Class and that the notice program described in this Section V comports with the requirements of due process. Notice shall be disseminated pursuant to Section V.C of this Agreement. A copy of the proposed form of Class Notice is attached as Exhibit 1.

3. At or prior to the Final Approval Hearing, the Settlement Administrator shall provide the Court with an affidavit attesting that Notice was disseminated pursuant to the Notice Program set forth below.

4. Defendants agree to respond to requests from the Settlement Administrator to review any relevant information held by Defendants if necessary to confirm updated addresses for Settlement Class Members, within 5 calendar days of Defendants' receipt of the Settlement Administrator's request.

B. Notice Program

The Class Notice delivered to Settlement Class Members shall be substantially similar to Exhibit 1, attached hereto. At a minimum, the Notice shall include: (1) contact information for Class Counsel; (2) the address for the Settlement Website; (3) instructions on how to access the case docket via PACER or in person at any of the Court's locations; (4) the date of the Final Approval Hearing and a clear statement that the date may change without further notice to the class; (5) an advisory that Settlement Class Members should check the Settlement Website or the Court's PACER site to confirm that the date has not been changed; (6) an explanation of the procedures for opting out of the Settlement Class including the applicable deadline for opting out; (7) instructions to Settlement Class Members who wish to submit objections to the settlement; (8) a short, plain statement of the background of the Action and the proposed

Agreement; (9) a statement that any Award to Settlement Class Members under the Agreement is contingent on the Court's final approval of the Agreement; (10) an explanation that any judgment or orders entered in the Action or the Other Actions, whether favorable or unfavorable to the Settlement Class shall include and be binding on all Settlement Class Members who have not been excluded, even if they have objected to the proposed Agreement and even if they have another claim, lawsuit, or proceeding pending against Defendants.

C. Dissemination of the Class Notice

1. Notice by Mail: No later than 10 business days after the Settlement Administrator receives the Settlement Class Member Information List, the Settlement Administrator shall substantially complete the dissemination of the Notice by U.S. Mail to the last known addresses of the Settlement Class Member, and their family members or representatives, as provided by Defendants in the Settlement Class Member Information List.

2. Notice by Publication: No later than 10 business days after the Settlement Administrator receives the Settlement Class Member Information List, the Settlement Administrator shall substantially complete the publication of the Notice, or a summary version of the Notice as approved by the Court, through a single publication in the USA Today (California weekday edition), or equivalent media publication approved by the Court.

3. Posting of the Notice: No later than 10 days from entry of the Preliminary Approval Order, the Settlement Administrator will post the Notice on the Settlement Website. The Notice shall remain available by these means until the Effective Date. The Notice may also be posted on the websites of Class Counsel at their option.

VI. OBJECTIONS AND REQUESTS FOR EXCLUSION

A. Objections

1. Any Settlement Class Member who intends to object to the fairness of the Settlement must do so in writing no later than the Objection Date. The written objection must be filed with the Court and served on the Class Counsel identified in the Notice and Defendants' Counsel no later than the Objection Date. The written objection must include: (a) a heading which refers to the Action; (b) the objector's name, address, telephone number and, if represented by counsel, of his/her counsel; (c) a statement that the objector resided at or signed a contract with Emeritus during the class period, or that the objector is the legal successor to such a person; (d) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel; (e) a statement of the objection and the grounds supporting the objection; (f) copies of any papers, briefs, or other documents upon which the objection is based; and (g) the objector's signature.

2. Any Settlement Class Member may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement, including attorneys' fees.

B. Requests for Exclusion

1. Any member of the Settlement Class may request to be excluded from the Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class must do so no later than Opt Out Date. In order to opt out, a Settlement Class Member must send to the Settlement Administrator a written Request for Exclusion that is post-marked no later than the Opt Out Date. The Request for Exclusion must be personally signed by the Settlement

Class Member requesting exclusion and contain a statement that indicates a desire to be excluded from the Settlement Class.

2. Any Settlement Class Member who does not file a timely written Request for Exclusion shall be bound by all subsequent proceedings, orders and the Final Judgment and Order Approving Settlement in this Action, even if he or she has pending, or subsequently initiates, litigation, arbitration or any other proceeding against Defendants relating to the Released Claims.

3. Any Settlement Class Member who properly requests to be excluded from the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Action relating to the Agreement; (b) be entitled to an Award from the Settlement Fund, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Agreement.

4. The Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a final list of all timely Requests for Exclusion within five (5) business days after the Opt Out Date. Plaintiff shall file the final list of all timely Requests for Exclusion prior to or at the Final Approval Hearing.

5. Notwithstanding anything else in this Agreement, Defendants may, in their sole discretion, unilaterally withdraw from and terminate this Agreement no later than ten (10) days prior to the Final Approval Hearing if those Persons who elect to exclude themselves from the Class number more than 5,000.

VII. MEDIA COMMUNICATIONS

A. Following the issuance of the Preliminary Approval Order approving this Agreement and providing for dissemination of the Class Notice, the Parties agree that they may

issue a joint press release, the content of which must first be agreed to by Defendants and Class Counsel. Defendants and Class Counsel may post the joint press release on Defendants' website and Class Counsel's websites, if they so choose.

B. Nothing herein will prohibit Class Counsel or Defendants' Counsel from responding to routine media questions about the Settlement or the Action so as to permit timely responses to media inquiries consistent with the language of the joint press release or any other agreements or agreed announcements. Nothing herein will prohibit Class Counsel from responding to inquiries from Settlement Class Members or their representatives, or in any way limit communications by Class Counsel with Settlement Class Members or their representatives.

C. Defendants and Plaintiffs' Counsel agree that Class Counsel, on behalf of Plaintiffs, on the one hand, and Defendants or Defendants' Counsel, on the other hand, may issue public statements or announcements concerning the pending Action and the Agreement, including but not limited to statements regarding positions taken by the Parties in the Action and Agreement, to the extent they deem necessary and appropriate, provided those statements or comments are consistent with the joint press release or any agreements or agreed announcements, the Agreement, or any documents filed with the Court with respect to approval of this Agreement.

D. It is the intent of the Parties to provide useful information about the settlement and to provide reasonably neutral descriptions about the Action, while not making inflammatory statements. Except as expressly permitted by this Section VII of this Agreement, the Parties will not make any public statements about the Agreement or any of the allegations or claims made in the Action.

VIII. RELEASES

A. The Agreement shall be the sole and exclusive remedy for any and all Released Claims of all Releasing Parties against all Released Parties. No Released Party shall be subject to liability of any kind to any Releasing Party with respect to any Released Claim. Upon the Effective Date, and subject to fulfillment of all of the terms of this Agreement, each and every Releasing Party shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim against any Released Party in any court or any forum.

The following terms have the meanings set forth herein:

1. “Released Claims” means any and all actions, claims, demands, rights, suits, and causes of action of whatever kind or nature against the Released Parties, including damages, costs, expenses, penalties, and attorneys’ fees, known or unknown, suspected or unsuspected, in law or equity arising out of or relating to statements, representations, or failures to disclose made prior to May 15, 2015 by the Released Parties regarding the Released Parties’ advertising, marketing, promotion, or use of wE Care and Vigilant in connection with evaluating residents and setting facility staffing, which have been asserted or which could reasonably have been asserted by the Releasing Parties in the Action, including but not limited to claims alleging any type of fraud, misrepresentation, or unfair trade practice under any state or federal law; provided that: (a) Released Claims shall not include any claims for personal injuries, emotional distress or bodily harm; and (b) nothing stated herein shall preclude the Releasing Parties or Class Counsel from enforcing the terms and conditions contained in this Agreement.

2. “Released Parties” means Emeritus and Brookdale, including all of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, stock-

holders, partners, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, subrogees and assigns. It is expressly understood that, to the extent a Released Party is not a Party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

3. “Releasing Parties” means Plaintiffs and each and every Settlement Class Member.

B. On the Effective Date, each Releasing Party shall be deemed to have released and forever discharged each Released Party of and from any and all liability for any and all Released Claims.

C. With respect to any and all Released Claims, and upon the Effective Date without further action, for good and valuable consideration, Plaintiffs, on behalf of themselves and the Settlement Class and as the representative of the Settlement Class, shall expressly, and Releasing Party shall be deemed to, and by operation of the Final Judgment and Order Approving Settlement shall, to the fullest extent permitted by law, fully, finally, and forever expressly waive and relinquish with respect to the Released Claims, any and all provisions, rights, and benefits of Section 1542 of the California Civil Code and any and all similar provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

D. On the Effective Date, the Released Parties shall be deemed to have released and forever discharged each of the Releasing Parties and their respective counsel, including Class Counsel, for all claims arising out of or relating to the institution, prosecution and resolution of the Action, except to enforce terms and conditions contained in this Agreement.

E. The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Parties and the Settlement Class Members to interpret and enforce the terms, conditions, and obligations under the Agreement.

F. Nothing in this Section shall be construed as releasing any claim between any Released Party and its insurer.

IX. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT

This Agreement is subject to and conditioned upon the issuance by the Court of the Final Judgment and Order Approving Settlement that finally certifies the Settlement Class for the purposes of this settlement, grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder. Such Final Judgment and Order Approving Settlement shall be in substantially the form attached hereto as Exhibit 3.

X. SETTLEMENT RELIEF

A. Creation of the Settlement Fund

1. Within 10 calendar days of the date the Court signs the Final Judgment and Order Approving Settlement, Defendants shall make a payment of \$13 million into the Settlement Fund to be administered and distributed by the Settlement Administrator consistent with the terms of this Section X.

B. Attorneys' Fees and Expenses and Plaintiff Service Awards

1. On or before fifteen (15) days prior to the Objection Date, Class Counsel shall make, and Defendants agree not to oppose, an application for an award of attorneys' fees and for an award of out-of-pocket expenses reasonably incurred in the prosecution of the Action not to exceed 33% of the Settlement Fund. The application for an award of Attorneys' Fees and Expenses will be made by Class Counsel on behalf of themselves. Class Counsel shall be responsible for allocating and distributing the Attorneys' Fees and Expenses award among themselves.

2. The Attorneys' Fees and Expenses awarded by the Court shall be paid from the Settlement Fund to Class Counsel within three (3) calendar days after the creation of the Settlement Fund. If the Final Judgment and Order Approving Settlement setting forth the amount awarded in Attorneys' Fees and Expenses is reversed, vacated, modified, and/or remanded for further proceedings or otherwise disposed of in any manner other than one resulting in an affirmance of the Final Judgment and Order Approving Settlement, then Class Counsel and the Other Plaintiffs' Counsel shall, within 30 days of such event, repay to the Settlement Fund as applicable the full amount of the Attorneys' Fees and Expenses or repay the amount by which the award has been reduced.

3. On or before fifteen (15) days prior to the Objection Date, Plaintiffs shall make, and Defendants agree not to oppose, an application for plaintiff service awards in an amount not to exceed \$7,500 to Renee Moulton, Trustee, The Arville Winans Revocable Trust, and \$3,500 to Ruby Richardson, Trustee, The Wilma F. Fritz Trust. The Service Awards to these plaintiffs will be in addition to the other consideration to the Settlement Class Members as

set forth in Section X.C above. The Service Payment shall be paid in the full amount awarded by the Court within three (3) calendar days of the creation of the Settlement Fund.

C. Disbursement from the Settlement Fund

1. In accordance with the payment schedule set forth in this Agreement, money from the Settlement Fund shall be applied as follows:

- (a) First, to pay Attorneys' Fees and Expenses;
- (b) Next, to pay any necessary taxes and tax expenses;
- (c) Next, to pay the plaintiff Service Awards as provided in Section

X.B.3.

(d) Next, to pay Notice and Payment Distribution Administration Expenses;

(e) Next, to fund the Reserve Fund; and

(f) Then, to pay Settlement Class Members as set forth below.

2. The Settlement Fund less the money used from the Settlement Fund to pay Notice and Payment Distribution Administration Expenses, taxes and tax expenses, Attorneys' Fees and Expenses, Service Awards and the Reserve Fund is the "Net Settlement Fund."

3. Net Settlement Fund will be distributed through Settlement Award checks made payable to each Settlement Class Member for whom a valid address has been provided to, or located by, the Settlement Administrator. In addition, any Settlement Class Member (or any legal successor to any deceased Settlement Class Member) that submits a timely Distribution Request to the Settlement Administrator shall likewise be mailed a Settlement Award check.

4. The Settlement Administrator shall calculate the Settlement Awards and distribute the Net Settlement Fund to Settlement Class Members as follows:

a. The Settlement Administrator shall first calculate a Settlement Payment Percentage ("SPP") for each Settlement Class Member. The SPP shall be calculated by adding the move-in fee (if any) and the initial monthly rent for the Settlement Class Member in question, and dividing that amount by the total move-in fees and initial rent payments made by all Settlement Class Members.

b. Next, the Settlement Administrator shall calculate an Initial Settlement Amount for each Settlement Class Member, by multiplying the SPP for that Settlement Class Member resident by the Net Settlement Fund.

c. Next, within 30 days after the Distribution Request Deadline, the Settlement Administrator shall determine if there are sufficient funds available in the Net Settlement Fund to increase the Initial Settlement Amount as follows. First, the total amount of Initial Settlement Payments for all Settlement Class Members for whom addresses have been provided or located shall be added to the total amount of Initial Settlement Amounts owed to those Settlement Class Members (or their successors) who made submitted timely Distribution Requests to the Settlement Administrator. Second, the difference (if any) between the Net Settlement Fund and the total Initial Settlement Amounts shall be calculated, which shall be referred to as the "Delta Net Settlement Fund." Third, an Additional Settlement Amount shall be calculated by multiplying the SPP by the Delta Net Settlement Amount for each Settlement Class Member.

d. The total Settlement Award payable to each Settlement Class Member (for whom a valid address has been found/located or on whose behalf a Distribution Request has been timely submitted) shall be the total of the Initial and Additional Settlement Amounts calculated for that Settlement Class Member.

e. The Settlement Administrator is authorized and shall pay settlement checks in response to Distribution Requests submitted after the Distribution Deadline, provided that the amount of such payments shall be the Initial Settlement Payments calculated for such persons, or such other amount as the Settlement Administrator in its discretion can be paid from the Reserve Fund.

5. The Settlement Administrator shall mail the Settlement Award checks to the above-described Settlement Class Members within 45 days after the Distribution Request Deadline. The Settlement Payment checks shall allow for a check cashing period of 180 days.

6. There shall be no reversion of the Settlement Fund or any portion thereof to Defendants.

D. Non-Monetary Relief

1. Defendants hereby agree that wE Care will be phased out completely, and no longer used in any California community owned or operated by Defendants, by December 31, 2015.

2. Within five (5) days of the date the Final Judgment and Order Approving Settlement is signed by the Court, Defendants shall issue a written directive to the Executive Directors of each assisted living community owned or operated by Defendants in California. The written directive shall instruct each community not to make any affirmative representation to prospective residents (and if applicable, family members or representatives of prospective residents) that the wECare assessments are used to determine facility staffing.

3. Defendants hereby agree to comply with the terms of the Settlement Agreement, and the Final Judgment and Order Approving Settlement shall require Defendants to comply with the terms of this Settlement Agreement.

XI. REPRESENTATIONS AND WARRANTIES

A. Defendants represent and warrant: (1) that they have the requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transactions contemplated hereby; (2) that the execution, delivery and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Defendants; and (3) that the Agreement has been duly and validly executed and delivered by Defendants and constitutes their legal, valid and binding obligation.

B. Plaintiffs represent and warrant that they are entering into the Agreement on behalf of themselves individually and as proposed representatives of the Settlement Class Members, of their own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Plaintiffs represent and warrant that they have reviewed the terms of the Agreement in consultation with Class Counsel. Class Counsel represent and warrant that they are fully authorized to execute the Agreement on behalf of Plaintiffs.

C. The Parties represent and warrant that no promise, inducement or consideration for the Agreement has been made, except those set forth herein.

XII. NO ADMISSIONS, NO USE

The Agreement and every stipulation and term contained in it is conditioned upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement shall not be: (A) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by Plaintiffs, Defendants, any Settlement Class Member or Releasing or Released Party, of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the

future might be asserted in any litigation or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of such Party; or (B) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by Plaintiffs, Defendants, any Releasing Party or Released Party in the Action or in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of the Agreement.

Without limiting the generality of the foregoing, the non-monetary relief defined in Section X.D shall not be: (A) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by Plaintiffs, Defendants, any Settlement Class Member or Releasing or Released Party, of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of such Party; or (B) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by Plaintiffs, Defendants, any Releasing Party or Released Party in the Action or in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of the Agreement.

XIII. TERMINATION OF THIS AGREEMENT

A. Any Party may terminate this Agreement by providing written notice to the other Parties hereto within ten (10) days of any of the following events:

1. The Court does not enter a Preliminary Approval Order that conforms in material respects to Exhibit 2 hereof; or
2. The Court does not enter a Final Judgment and Order Approving Settlement conforming in material respects to Exhibit 3, or if entered, such Final Judgment and Order Approving Settlement is reversed, vacated, or modified in any material respect by another court.

B. In the event that this Agreement terminates for any reason, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of this Agreement. Upon termination, Sections XII and XIV.E herein shall survive and be binding on the Parties, but this Agreement shall otherwise be null and void. In that event, within 5 business days after written notification of such event is sent by Defendants' Counsel or Class Counsel to the Settlement Administrator, the Settlement Fund (including accrued interest), less expenses and any costs which have been disbursed or are determined to be chargeable as Notice and Payment Distribution Administration Expenses, shall be refunded by the Settlement Administrator to Defendants. In such event, Defendants shall be entitled to any tax refund owing to the Settlement Fund. At the request of Defendants, the Settlement Administrator or its designee shall apply for any such refund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for a refund, to Defendants. In no event will Defendants be entitled to recover any funds spent for Notice and Payment Distribution Administration Expenses prior to termination of this Agreement.

XIV. MISCELLANEOUS PROVISIONS

A. Integration: The Agreement, including all Exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the Agreement and shall supersede any previous agreements, representations, communications, and understandings among the Parties with respect to the subject matter of the Agreement. The Agreement may not be changed, modified, or amended except in a writing signed by one of Class Counsel and one of Defendants' Counsel and, if required, approved by the Court. The Parties contemplate that the Exhibits to the Agreement may be modified by subsequent agreement of Defendants or Defendants' Counsel and Class Counsel, or by the Court.

B. Governing Law: The Agreement shall be construed under and governed by the laws of the State of California, applied without regard to laws applicable to choice of law.

C. Execution in Counterparts: The Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures scanned to PDF and sent by e-mail shall be treated as original signatures and shall be binding.

D. Notices: Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by first class US Mail and email to:

1. If to Plaintiff or Class Counsel:

Kathryn A. Stebner
STEBNER & ASSOCIATES
870 Market Street
Suite 1212
San Francisco, CA 94102
Telephone: (415) 362-9800
Facsimile: (415) 362-9801
kathryn@stebnerassociates.com

Guy B. Wallace
SCHNEIDER WALLACE COTTRELL KONECKY, LLP
180 Montgomery Street
Suite 2000
San Francisco, CA 94104
Telephone: (415) 421-7100
Facsimile: (415) 421-7105

2. If to Defendants or Defendants' Counsel:

Lisa Gilford
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 687-5000
Facsimile: (213) 621-5000
lisa.gilford@skadden.com

E. Stay of Proceedings: Upon the execution of this Agreement, all discovery and other proceedings in the Action shall be stayed until further order of the Court, except for proceedings that may be necessary to implement the Agreement or comply with or effectuate the terms of this Settlement Agreement.

F. Good Faith: The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

G. Protective Orders: All orders, agreements and designations regarding the confidentiality of documents and information (“Protective Orders”) remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provisions to certify the destruction of documents deemed Confidential under the Protective Orders. Notwithstanding such provision in the Protective Order, Defendants’ Counsel and Class Counsel may retain copies of all deposition transcripts and exhibits and all documents submitted to the Court, but those documents must be kept confidential to the extent they were designated as “Confidential,” and will continue to be subject to the Protective Order.

H. Binding on Successors: This Agreement shall inure to the benefit of and be binding upon the respective agents, assigns, administrators, employees, trustees, executors, heirs, and successors in interest of each of the Parties.

I. Arms-Length Negotiations: The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel. This Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of this Agreement and the Parties agree that the drafting of this Agreement has been a mutual undertaking.

J. Waiver: The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

K. Variance: In the event of any variance between the terms of this Agreement and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibit(s).

L. Exhibits: All Exhibits to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

M. Taxes: No opinion concerning the tax consequences of the Agreement to any Settlement Class Member is given or will be given by Defendants, Defendants' Counsel, or Class Counsel; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Agreement, if any.

N. Implementation Before Effective Date: The Parties may agree in writing to implement the Agreement or any portion thereof after the entry of the Final Judgment and Order Approving Settlement, but prior to the Effective Date.

O. Retained Jurisdiction: The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Agreement embodied in this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

DATED: May 7, 2015

EMERITUS CORPORATION

By: 

Timothy Cesar

DATED: May 7, 2015

BROOKDALE SENIOR LIVING INC.

By: 

Timothy Cesar

DATED: May 7, 2015

Approved as to form by

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: 

THOMAS J. NOLAN

Attorneys for Defendant Emeritus Corporation

May 08 15 11:31a ruby richardson
May. 8. 2015 11:21AM

7072588123

p.2

No. 0818 P. 2/2

DATED: May __, 2015

By: _____
RENEE MOULTON
Guardian ad litem for Plaintiff Arville Winans

DATED: May 8, 2015

By: Ruby G. Richardson
RUBY RICHARDSON
Representative for Plaintiff Wilma Fritz

DATED: May 8, 2015

Approved as to form by

STEBNER & ASSOCIATES

By: _____
KATHRYN A. STEBNER
Attorney for Plaintiffs

SCHNEIDER WALLACE COTTRELL KONECKY
WOTKYNs, LLP

By: Guy B. Wallace
GUY B. WALLACE
Attorney for Plaintiffs

Exhibit 1 – Stipulation of Settlement

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO ALL PERSONS WHO RESIDED AT ONE OF THE CALIFORNIA ASSISTED LIVING FACILITIES OWNED AND/OR OPERATED BY EMERITUS FROM JULY 29, 2009 THROUGH MAY 15, 2015 (THE "CLASS PERIOD"), AND WHO CONTRACTED WITH EMERITUS FOR SERVICES FOR WHICH EMERITUS WAS PAID MONEY.

THIS LEGAL NOTICE MAY AFFECT YOUR RIGHTS, PLEASE READ IT CAREFULLY.

IMPORTANT: If you are the person to whom this notice is addressed, you are a member of the class described above according to Emeritus' records. You or your legal successor are entitled to receive money as a share of a class action settlement. It is expected that you will be mailed a check if the settlement is approved by the Court. The Settlement Administrator will calculate the amount of your settlement check in accordance with the plan of distribution (described below) after the case has been finally approved by the Court and becomes effective.

BASIC INFORMATION

WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs bring this putative class action on behalf of residents of assisted living communities operated by Emeritus in California, alleging that Emeritus made purportedly misleading statements about its computerized resident evaluation system and its role in providing sufficient staffing and care for residents, which resulted in Plaintiffs paying for additional services they did not receive under their contractual arrangements with Emeritus. Defendants deny all allegations and are entering into this settlement to avoid burdensome and costly litigation. This settlement is not an admission of wrongdoing. The Parties have agreed to settle the lawsuit on the terms explained in this notice.

WHY IS THIS A CLASS ACTION?

In a class action, one or more people, called Class Representatives (in this case, Arville Winans and Wilma Fritz), sue on behalf of people who have alleged similar claims. All of these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who choose to exclude themselves from the Class. United States District Court Judge Samuel Conti is in charge of this putative class action.

WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial and settlement benefits go to the Settlement Class members. The Class Representatives and the attorneys think the settlement is in the best interest of the Settlement Class Members taking in to account the benefits of the proposed settlement, the risks of continued litigation and the delay in obtaining relief for the Class if the lawsuit continues.

WHO IS IN THE SETTLEMENT

To see if you are eligible for benefits, you first have to determine whether you are a Class Member, or are a legal successor to a deceased Class Member. You are receiving this notice because Defendants' records indicate that you are a person, or representative of a person, who resided at one of Emeritus' California assisted living facilities between July 29, 2009 and May 15, 2015, and contracted with Emeritus for services for which Emeritus was paid money.

WHO IS IN THE SETTLEMENT CLASS?

You are a member of the Settlement Class if you resided at one of Emeritus' California assisted living facilities between July 29, 2009 and May 15, 2015, and contracted with Emeritus for services for which Emeritus was paid money.

THE SETTLEMENT BENEFITS – WHAT YOU GET?

A CASH PAYMENT

Defendants have agreed to provide a total settlement fund of \$13 million (the "Fund") in full settlement of the claims of the Settlement Class. The Fund will be used to pay class notice and payment distribution administration expenses, as well as Class Counsel's attorneys' fees, litigation expenses and service awards to the Class Representatives. The remaining amount (the "Net Settlement Fund") will be used to make cash payments to Class Members (or if the Class Member is deceased, to their legal successor). It is estimated the Net Settlement Fund will be approximately \$8.5 million. The settlement distribution process will be administered by an independent settlement administrator (the "Settlement Administrator") approved by the Court. **The settlement amount and Net Settlement Fund are contingent on final approval by the Court.**

AMOUNT OF CASH PAYMENT

The cash payment amount for each Class Member will be based on this formula: The sum of the move-in fee and initial month's rent for the Class Member divided by the total amount of move-in fees and initial monthly rent payments for all Class Members (which yields a Settlement Payment Percentage ("SPP")), which is then multiplied by the Net Settlement Fund to calculate the cash payment amount. By way of example, if a Class Member paid \$2,000 in move-in fees and first month's rent, and the total move-in fees and initial rent payments for the entire Class are \$40 million, the SPP for the Class Member would be .00005 and the cash payment would be approximately \$420. The actual cash payment amounts will be determined by the Settlement Administrator based on the above formula, and may be increased if funds are available.

HOW CAN I GET A CASH PAYMENT?

If you are a Class Member and the address above is correct, **you do not need to take any action.** Your cash payment will be mailed to you if the settlement is approved. If your address

has changed, you must provide your new address to the Settlement Administrator. If the Class Member is deceased, his or her legal successor must submit a payment request and supporting documentation to the Settlement Administrator. To contact the Settlement Administrator, visit [insert website] or call 1-800- xxx-xxxx.

WHEN WILL I RECEIVED MY SETTLEMENT AWARD?

The Court will hold a final approval hearing on [date] at [time], to decide whether to approve the settlement. **The hearing date may be changed by the Court without notice to the Settlement Class, and you should check the Settlement Website at [web address] or the public court records on file in this action for any updates.** If Judge Conti approves the settlement, there may be appeals. The appeal process can take time, perhaps more than a year.

IN RETURN FOR THESE SETTLEMENT BENEFITS, WHAT AM I GIVING UP?

If the Court approves the proposed settlement and you do not request to be excluded from the Class, you must release (give up) all legal claims concerning Defendants' alleged misrepresentations and nondisclosures about Defendants' computerized resident evaluation system (known as "wE Care or 'Vigilan") and its role in providing sufficient staffing and care for residents and any alleged overpayment as a result of such purported misrepresentations. **If you remain in the Class, you may not assert any of those claims in any other lawsuit or proceeding. This includes any other lawsuit or proceeding already in progress.** The Release does not include claims for personal injury, emotional distress or bodily harm. The judgment and orders entered in this case, whether favorable or unfavorable, will bind all Settlement Class Members who do not request to be excluded. The full terms of the Release are contained in the Stipulation of Settlement that is available on the Settlement Website at [web address], or at the public court records on file in this action.

THE LAWYERS REPRESENTING YOU

DO I HAVE A LAWYER IN THIS CASE?

All Settlement Class Members are represented by Plaintiffs' Counsel. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense and enter an appearance through your own counsel.

HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court to award attorneys' fees and out-of-pocket expenses incurred not to exceed 33% of the Fund (\$4.29 million). Defendants have agreed not to oppose this request. Any award of fees and litigation expenses must be approved by the Court as fair, reasonable and consistent with prevailing marketplace standards. The Court-awarded amount will be paid from the Fund.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, but you want to keep the right to sue or continue to sue defendants, on your own, about the legal issue in this case, then you must take steps to opt out. This is called excluding your self – or is sometimes referred to as opting out of the Settlement Class.

HOW DO I GET OUT OF THE SETTLEMENT?

If you do not wish to be included in the Class and receive a cash payment, you must send a letter stating that you want to be excluded from *Arville Winans v. Emeritus Corp. and DOES 1 through 100*, case no. 3:13-cv-03962-SC (N.D. Cal.). Be sure to include your name, address, telephone number, signature, and a statement that you are covered by this settlement. You must mail your exclusion postmarked no later than **[date]** to:

Settlement Administrator
[address]

You cannot exclude yourself via telephone, fax, or email. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. However, you will not be legally bound by anything that happens in this lawsuit and you will keep your right to separately pursue claims against defendants relating to the subject matter of this lawsuit.

IF I DON'T EXCLUDE MYSELF, CAN I SUE DEFENDANTS FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up the right to sue Defendants for the claims that this settlement resolves. You must exclude yourself from *this* Class to pursue your own lawsuit. Remember, your exclusion must be postmarked on or before **[date]**.

IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THIS SETTLEMENT?

No. If you exclude yourself, you will not receive any money. But, you will not lose any right you may have to sue (or continue to sue) in a different lawsuit against Defendants about the legal issues in this case. If you choose to initiate a new lawsuit, your claim will be subject to time limitations, so you must act promptly.

OBJECTING TO THE SETTLEMENT

You can tell the court that you do not agree with the settlement or some part of it.

HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?

If you are a Settlement Class Member, you can object to the settlement if you do not like any part of it and the Court will consider your views. To object, you must send a letter to the Court and the parties saying that you object to the settlement in *Arville Winans v. Emeritus Corp. and*

DOES 1 through 100, case no. 3:13-cv-03962-SC (N.D. Cal.). Be sure to include your name, address, telephone number, your signature, and the reasons you object to the settlement. You must also affirm under penalty of perjury that you are a Settlement Class Member (or a legal successor to a Class Member) or provide other proof of Settlement Class membership. If you are represented by counsel, be sure to include the name, address, and telephone number of that lawyer.

Please note that the Court can only approve or deny the settlement, not change the terms of the settlement.

Your objection ***must be mailed to*** the Court no later than **[date]**:

Clerk of the Court
United States District Court,
Northern District of California
450 Golden Gate Avenue
Courtroom 1 – 17th Floor
San Francisco, CA 94102

WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

Objecting is telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class or the lawsuit. You cannot request exclusion **and** object to the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. Settlement Class members who do exclude themselves may, if they wish, enter an appearance through their own counsel.

THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend, and you may ask to speak, but you are not required to do either.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a Final Approval Hearing at **[time]** and **[date]** at the Courtroom of the Honorable Samuel Conti: 450 Golden Gate Avenue, Courtroom 1 – 17th Floor, San Francisco, CA 94102. **The hearing date may be changed by the Court without notice to the Settlement Class, and you should check the Settlement Website at [web address] or the public court records on file in this action at <https://www.pacer.gov/> for any updates.** At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. Judge Conti will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the

settlement. The Court will also consider how much to award Class Counsel as reasonable attorneys' fees and litigation expenses. We do not know how long this decision will take.

DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer any questions Judge Conti may have. But you are welcome to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. You may also pay your own lawyer to attend, but it is not necessary.

MAY I SPEAK AT THE HEARING?

If you are a Settlement Class Member, you may speak at the fairness hearing, subject to any limitations made by Judge Conti. You cannot speak at the hearing if you exclude yourself from the Settlement Class.

IF YOU DO NOTHING

WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing, you will be part of the Settlement Class. You will receive a cash payment from the settlement and you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants about the legal issues in this case.

GETTING MORE INFORMATION

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www._____.com, by contacting class counsel at the below addresses, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Ave., San Francisco, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

CONTACT CLASS COUNSEL WITH ANY QUESTIONS

Should you have any questions about the Settlement or this Notice, please contact Class Counsel at:

Kathryn A. Stebner
Sarah Colby
STEBNER & ASSOCIATES
870 Market Street
Suite 1212
San Francisco, CA 94102
Telephone: (415) 362-9800

Facsimile: (415) 362-9801
kathryn@stebnerassociates.com
sarah@stebnerassociates.com

Guy B. Wallace
Mark T. Johnson
SCHNEIDER WALLACE COTTRELL KONECKY LLP
180 Montgomery Street
Suite 2000
San Francisco, CA 94104
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
gwallace@schneiderwallace.com
mjohnson@schneiderwallace.com

DATED: _____

[/s/ The Honorable Samuel Conti]

UNITED STATES DISTRICT JUDGE

Exhibit 2 – Stipulation of Settlement

1 THOMAS J. NOLAN (SBN 66992)
thomas.nolan@skadden.com
2 JASON D. RUSSELL (SBN 169219)
jason.russell@skadden.com
3 LISA M. GILFORD (SBN 171641)
lisa.gilford@skadden.com
4 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Avenue, Suite 3400
5 Los Angeles, California 90071-3144
Telephone: (213) 687-5000
6 Facsimile: (213) 687-5600

7 Attorneys for Defendants
EMERITUS CORPORATION AND
8 BROOKDALE SENIOR LIVING INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 ARVILLE WINANS, by and through his
guardian ad litem, RENEE MOULTON, on his
13 own behalf and on behalf of others similarly
situated,

14 Plaintiff,

15 v.

16 EMERITUS CORPORATION and DOES 1
17 through 100, inclusive

18 Defendants.

Case No.: 3:13-cv-03962-SC

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Date: May 15, 2015

Time: 10:00 a.m.

Judge: Hon. Samuel Conti

Courtroom: 1

1 WHEREAS, Plaintiffs Arville Winans and Wilma Fritz in this action entitled *Arville*
 2 *Winans v. Emeritus Corp. and DOES 1 through 100*, case no. 3:13-cv-03962-SC and Defendants
 3 Emeritus Corporation and Brookdale Senior Living, Inc. have entered into a Stipulation of
 4 Settlement ("Stipulation"), filed May 8, 2015, after substantial discovery and lengthy arms-length
 5 settlement discussions;

6 AND, WHEREAS, the Court has received and considered the Stipulation, including the
 7 accompanying exhibits, and the record in this Action;

8 AND, WHEREAS, the Parties have made an application, pursuant to Federal Rules of Civil
 9 Procedure, Rule 23(e), for an order preliminarily approving the settlement of this Action, and for
 10 its dismissal with prejudice upon the terms and conditions set forth in the Stipulation;

11 AND, WHEREAS, the Court has reviewed the Parties' application and the supporting
 12 memorandum for such order, and has found good cause for same.

13 NOW, THEREFORE, IT IS HEREBY ORDERED:

14 **The Settlement Class Is Preliminarily Certified**

15 1. If not otherwise defined herein, all capitalized terms have the same meanings as set
 16 forth in the Stipulation of Settlement.

17 2. Pursuant to Federal Rules of Civil Procedure, Rule 23(c), the Court certifies the
 18 following Settlement Class:

19 Plaintiffs and all similarly situated persons who resided at one of the California assisted
 20 living facilities owned and/or operated by Defendants under the Emeritus name from July 29, 2009
 21 through May 15, 2015 (the "Class Period"), and who contracted with Emeritus for services for
 22 which Emeritus was paid money.

23 3. Excluded from the Settlement Class are: (i) those for whom the Settlement
 24 Administrator does not have a valid address; (ii) Defendants and their officers, directors and
 25 employees; (iii) any person who files a valid and timely Request for Exclusion; and (iv) the Judges
 26 to whom this Action and the Other Actions are assigned and any members of their immediate
 27 families.

1 4. The Settlement Class meets all requirements of Federal Rules of Civil Procedure,
 2 Rule 23(a) and (b)(3) for certification of the class claims alleged in the operative complaint,
 3 including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the Class
 4 Representative and Class Counsel; (e) predominance of common questions of fact and law Class;
 5 and (f) superiority.

6 5. Class Counsel and the Class Representative are found to be adequate representatives
 7 of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Court
 8 appoints Arville Winans and Ruby Richardson, Trustee of the Wilma F. Fritz Trust, as the Class
 9 Representatives of the Class. The Court also designates the following attorneys as Class Counsel:
 10 Kathryn Stebner of Stebner & Associates, Guy Wallace of Schneider Wallace Cottrell Konecky
 11 Wotkyns LLP, Robert Arns of The Arns Law Firm, Michael D. Thamer of the Law Offices of
 12 Michael D. Thamer, Tim Needham of Janssen Malloy LLP and Chris Healey of McKenna Long
 13 Aldridge LLP. The Court finds Class Counsel are experienced and adequate counsel having
 14 considered the factors set forth in Rule 23(g)(1).

15 **The Stipulation Is Preliminarily Approved and Final Approval Schedule Set**

16 6. The Court hereby preliminarily approves the Stipulation and the terms and
 17 conditions of settlement set forth therein, subject to further consideration at the Final Approval
 18 Hearing.

19 7. The Court has conducted a preliminary assessment of the fairness, reasonableness,
 20 and adequacy of the Stipulation, and hereby finds that the settlement falls within the range of
 21 reasonableness meriting possible final approval. The Court therefore preliminarily approves the
 22 proposed settlement as set forth in the Stipulation.

23 8. Pursuant to the Federal Rules of Civil Procedure, Rule 23(e) the Court will hold a
 24 final approval hearing on _____, 2015, at ____ a.m./p.m., in the Courtroom of the Honorable
 25 Samuel Conti, United States District Court for the Northern District of California, 450 Golden Gate
 26 Avenue, Courtroom 1 – 17th Floor, San Francisco, CA 94102, for the following purposes:

1 1. determining whether the proposed settlement of the Action on the terms and
2 conditions provided for in the Stipulation is fair, reasonable and adequate and should be
3 approved by the Court;

4 2. considering the application of Class Counsel for an award of attorneys' fees
5 and litigation expenses as provided for under the Stipulation;

6 3. considering the application for service awards to the Plaintiffs as provided
7 for under the Stipulation;

8 4. considering whether the Court should enter the [Proposed] Final Judgment
9 and Order Approving Settlement;

10 5. considering whether the release by the Settlement Class Members of the
11 Released Claims as set forth in the Stipulation should be provided; and

12 6. ruling upon such other matters as the Court may deem just and appropriate.

13 9. The Court may adjourn the Final Approval Hearing and later reconvene such
14 hearing without further notice to the Settlement Class Members.

15 10. Any Settlement Class Member may enter an appearance in the Action, at his or her
16 own expense, individually or through counsel. All Settlement Class Members who do not enter an
17 appearance will be represented by Class Counsel.

18 11. The Parties may further modify the Stipulation prior to the Final Approval Hearing
19 so long as such modifications do not materially change the terms of the settlement provided
20 therein. The Court may approve the Stipulation with such modifications as may be agreed to by the
21 Parties, if appropriate, without further notice to Settlement Class Members.

22 12. Opening papers in support of final approval of the Stipulation, and opening papers
23 in support of plaintiffs' application for attorneys' fees, litigation expenses and service awards, shall
24 be filed and served fifteen days prior to the deadline for any objections to the Stipulation. Reply
25 papers, if any, must be filed and served at least seven days prior to the Final Approval Hearing.

26 **The Court Approves the Form and Method of Class Notice**

27 13. The Court approves, as to form and content, the proposed Notice, which is Exhibit 1
28 to the Stipulation of Settlement on file with this Court.

1 14. The Court finds that the distribution of Class Notice substantially in the manner and
2 form set forth in this Order and the Stipulation of Settlement meet the requirements of Federal
3 Rules of Civil Procedure, Rule 23 and due process, is the best notice practicable under the
4 circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

5 15. The Court approves the designation of Gilardi & Co., LLC to serve as the
6 Settlement Administrator for the settlement. The Settlement Administrator shall disseminate Class
7 Notice and supervise and carry out the notice procedure and other administrative functions, and
8 shall respond to Settlement Class Member inquiries, as set forth in the Stipulation and this Order
9 under the direction and supervision of the Court.

10 16. The Court directs the Settlement Administrator to establish a Settlement Website,
11 making available copies of this Order, the Class Notice, the Stipulation and all exhibits thereto, and
12 such other information as may be of assistance to Settlement Class Members or required under the
13 Stipulation.

14 17. The Settlement Administrator is ordered to substantially complete dissemination of
15 the Class Notice no later than 10 business days after it receives the Settlement Class Member
16 Information List.

17 18. The costs of the Class Notice, creating and maintaining the Settlement Website, and
18 all other Notice and Payment Distribution Administration Expenses shall be paid out of the
19 Settlement Fund in accordance with the applicable provisions of the Stipulation.

20 **Procedure for Settlement Class Members to Participate In the Settlement**

21 19. No later than five (5) business days after the entry by the Court of the Preliminary
22 Approval Order, Defendants shall furnish the Settlement Administrator with the Settlement Class
23 Member Information List (which shall include all Settlement Class Members), in accordance with
24 the Stipulation. The Settlement Administrator shall mail the Notice to all Settlement Class
25 Members at the addresses provided by Defendants, as updated by the Settlement Administrator,
26 and publish the Notice in a single publication of the USA Today (California weekday edition).

27 20. Settlement Class Members who wish to receive a settlement award need take no
28 action. If a Settlement Class Member is deceased, the legal successor for the Class Member may

1 obtain payment by providing the Settlement Administrator with appropriate proof of successor
2 status and a current address. Settlement Class Members (or legal successors) will not receive a
3 settlement award only if the Settlement Administrator lacks a valid address for that individual, as
4 determined by monitoring those Notice documents that were returned as undeliverable, or if the
5 individual opts out of the settlement by the Opt Out Date.

6 **Procedure for Requesting Exclusion from the Class**

7 21. Any Person falling within the definition of the Settlement Class may, upon his or
8 her request, be excluded from the Settlement Class. Any such Persons (or their legal successor)
9 must submit a request for exclusion to the Settlement Administrator postmarked no later than the
10 Opt Out Date, which shall be 35 days from the Notice Date, as set forth in the Class Notice.
11 Requests for exclusion purportedly filed on behalf of groups of persons are prohibited and will be
12 deemed to be void.

13 22. Any Settlement Class Member who does not send a signed request for exclusion
14 postmarked or delivered on or before the Opt-Out Date will be deemed to be a Settlement Class
15 Member for all purposes and will be bound by all further orders of the Court in this Action and by
16 the terms of the settlement, if finally approved by the Court. The written request for exclusion must
17 request exclusion from the Class, must be signed by the potential Settlement Class Member (or
18 his/her legal successor) and include a statement indicating that the Person desires to be excluded
19 from the Settlement Class. All Persons who submit valid and timely requests for exclusion in the
20 manner set forth in the Stipulation shall have no rights under the Stipulation and shall not be bound
21 by the Stipulation or the Final Judgment and Order.

22 23. A list reflecting all requests for exclusions shall be filed with the Court by
23 Defendants at or before the Final Approval Hearing.

24 **Procedure for Objecting to the Settlement**

25 24. Any Settlement Class Member (or their legal successor) who desires to object to the
26 proposed settlement, including the requested attorneys' fees and expenses or service awards to the
27 Plaintiff must timely file with the Clerk of this Court a notice of the objection(s), together with all
28 papers that the Settlement Class Member desires to submit to the Court no later than the Objection

1 Date, with shall be 35 days after the Notice Date as set forth in the Class Notice. The objection
2 must also be served on Class Counsel and Defendants' counsel no later than the Objection Date.

3 25. The written objection must include: (a) a heading which refers to the Action; (b) the
4 objector's name, address, telephone number and, if represented by counsel, of his/her counsel; (c) a
5 statement that the objector is a Settlement Class Member (resided at one of the California assisted
6 living facilities owned and/or operated by Defendants under the Emeritus name from July 29, 2009
7 through May 15, 2015 and contracted with Emeritus for services for which Emeritus was paid
8 money) or that the objector is the legal successor to a Settlement Class Member; (d) a statement
9 whether the objector intends to appear at the Final Approval Hearing, either in person or through
10 counsel; (e) a statement of the objection and the grounds supporting the objection; (f) copies of any
11 papers, briefs, or other documents upon which the objection is based; and (g) the objector's
12 signature.

13 26. Any Settlement Class Member (or their legal successor) may appear at the Final
14 Approval Hearing, either in person or through counsel hired at the Settlement Class Member's
15 expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement,
16 including attorneys' fees.

17 27. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in
18 connection with the administration of the settlement which are not materially inconsistent with
19 either this Order or the terms of the Stipulation.

20 IT IS SO ORDERED.

21
22 Dated: _____

23
24 _____
25 Honorable Samuel Conti
26 United States District
27
28

Exhibit 3 – Stipulation of Settlement

THOMAS J. NOLAN (SBN 66992)
 thomas.nolan@skadden.com
 JASON D. RUSSELL (SBN 169219)
 jason.russell@skadden.com
 LISA M. GILFORD (SBN 171641)
 lisa.gilford@skadden.com
 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
 300 South Grand Avenue, Suite 3400
 Los Angeles, California 90071-3144
 Telephone: (213) 687-5000
 Facsimile: (213) 687-5600

Attorneys for Defendants
 EMERITUS CORPORATION AND
 BROOKDALE SENIOR LIVING INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

ARVILLE WINANS, by and through his
 guardian ad litem, RENEE MOULTON, on his
 own behalf and on behalf of others similarly
 situated,

Plaintiff,

v.

EMERITUS CORPORATION and DOES 1
 through 100, inclusive

Defendants.

CASE NO.: 3:13-cv-03962-SC

**[PROPOSED] ORDER APPROVING
 CLASS ACTION SETTLEMENT**

Date:

Time:

Judge: Hon. Samuel Conti

Courtroom: 1

1 This matter came on for hearing on _____, 2015 at _____. The Court has
2 considered the Stipulation of Settlement filed May 8, 2015 ("Stipulation"), Dkt. No. ____, oral
3 and/or written objections and comments received regarding the proposed settlement, the record in
4 the action and the arguments and authorities of counsel. Good cause appearing,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

6 1. This Judgment incorporates by reference the definitions in the Stipulation, and all
7 terms used herein shall have the same meanings as set forth in the Stipulation unless set forth
8 differently herein. The terms of the Stipulation are fully incorporated in this judgment as if set
9 forth fully here.

10 2. The Court has jurisdiction over the subject matter of this action and all Parties to the
11 action, including all Settlement Class Members.

12 3. The Court approves the settlement as set forth in the Stipulation and finds that the
13 settlement is in all respects fair, reasonable, adequate and just to the Settlement Class Members.

14 4. Pursuant to Federal Rules of Civil Procedure, Rule 23(c), the Court certifies the
15 following Settlement Class:

16 Plaintiffs and all similarly situated persons who resided at one of the California assisted
17 living facilities owned and/or operated by Defendants under the Emeritus name from July 29, 2009
18 through May 15, 2015 (the "Class Period"), and who contracted with Emeritus for services for
19 which Emeritus was paid money. Excluded from the Settlement Class are: (i) those for whom the
20 Settlement Administrator does not have a valid address; (ii) Defendants and their officers, directors
21 and employees; (iii) any person who files a valid and timely Request for Exclusion; and (iv) the
22 Judges to whom this Action and the Other Actions are assigned and any members of their
23 immediate families.

24 5. Pursuant to Federal Rules of Civil Procedure, Rule 23(c)(3), all such Persons who
25 satisfy the Settlement Class definition above, except those Persons who timely and validly
26 excluded themselves from the Settlement Class, are Settlement Class Members bound by this
27 Order.
28

1 6. Pursuant to Federal Rules of Civil Procedure, Rule 23(a), the Court finds that the
2 Plaintiffs Arville Winans and Ruby Richardson, as Trustee of the Wilma F. Fritz Trust are
3 members of the Settlement Class, their claims are typical of the Settlement Class claims, and they
4 fairly and adequately protected the interests of the Settlement Class throughout the proceedings in
5 the Action. Accordingly, Arville Winans and Ruby Richardson, as Trustee of the Wilma F. Fritz
6 Trust, Wilma Fritz are properly appointed as the Class Representatives.

7 7. The Settlement Class meets all requirements of Federal Rules of Civil Procedure,
8 Rule 23(a) and (b)(3) for certification of the class claims alleged in the operative complaint,
9 including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the Class
10 Representative and Class Counsel; (e) predominance of common questions of fact and law; and (f)
11 superiority.

12 8. Having considered the factors set forth in Federal Rules of Civil Procedure, Rule
13 23(g)(1), the Court finds that Class Counsel are properly appointed to represent the Settlement
14 Class Members and they have fairly and adequately represented the Settlement Class for purposes
15 of entering into and implementing the settlement.

16 9. The list of persons excluded from the Class because they filed valid requests for
17 exclusion is attached hereto as Exhibit A. The persons listed in Exhibit A are not bound by this
18 Judgment or the terms of the Stipulation.

19 10. The Court directed that Class Notice be given to Settlement Class Members
20 pursuant to the notice program proposed by the Parties and approved by the Court. In accordance
21 with the Court's Preliminary Approval Order and the Court-approved notice program, the
22 Settlement Administrator caused the Class Notice to be disseminated as ordered. The Class Notice
23 advised Settlement Class Members of the terms of the settlement; of the Final Approval Hearing,
24 and their right to appear at such hearing; of their rights to remain in, or opt out of, the Settlement
25 Class and to object to the settlement; procedures for exercising such rights; and the binding effect
26 of this Judgment, whether favorable or unfavorable, to the Settlement Class.

1 11. The distribution of the Class Notice constituted the best notice practicable under the
2 circumstances, and fully satisfied the requirements of Federal Rules of Civil Procedure, Rule 23,
3 the requirements of due process, 28 U.S.C. §1715, and any other applicable law.

4 12. Pursuant to Federal Rules of Civil Procedure, Rule 23(e)(2), the Court finds after a
5 hearing and based upon all submissions of the Parties and other interested persons, that the
6 settlement proposed by the Parties is fair, reasonable, and adequate. The terms and provisions of
7 the Stipulation are the product of lengthy, arms-length negotiations conducted in good faith and
8 with the assistance of an experienced mediator, the Honorable William Cahill (ret.) of JAMS in
9 San Francisco. Approval of the Stipulation will result in substantial savings of time, money and
10 effort to the Court and the Parties, and will further the interests of justice.

11 13. All Settlement Class Members who have not timely and validly opted out of the
12 settlement are thus Settlement Class Members who are bound by this Judgment and by the terms of
13 the Stipulation.

14 14. The Stipulation and this Order are not admissions of liability or fault by Defendants
15 or the Released Parties, or a finding of the validity of any claims in the Action or of any
16 wrongdoing or violation of law by Defendants or the Released Parties. Neither this Judgment, nor
17 any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be
18 offered as evidence or received in evidence in any pending or future civil, criminal, or
19 administrative action or proceeding to establish any liability of, or admission by Defendants, the
20 Released Parties, or any of them. Notwithstanding the foregoing, nothing in this Final Judgment
21 shall be interpreted to prohibit the use of this Judgment in a proceeding to consummate or enforce
22 the Stipulation or Judgment, or to defend against the assertion of Released Claims in any other
23 proceeding, or as otherwise required by law.

24 15. The Court has considered the submissions by the Parties and all other relevant
25 factors, including the result achieved and the efforts of Class Counsel in prosecuting the claims on
26 behalf of the Class. Plaintiffs initiated the Action, acted to protect the Settlement Class, and
27 assisted their counsel. The efforts of Class Counsel have produced the Stipulation entered into in
28 good faith, and which provides a fair, reasonable, adequate and certain result for the Settlement

1 Class. Class Counsel have made an application for an award of attorneys' fees and expenses in
2 connection with the prosecution of the Action. The fee award requested is approximately 33% of
3 the value of the Settlement Fund, including a request for reimbursement of out-of-pocket expenses
4 totaling \$_____, which the Court finds to be a fair, reasonable and justified attorneys' fee and
5 expense award under the circumstances. The Court hereby awards \$_____ as attorneys'
6 fees and \$_____ in costs to be paid from the Settlement Fund. Class Counsel shall be
7 responsible for distributing and allocating the attorneys' fees and expense award amongst
8 themselves in their sole discretion.

9 16. Plaintiffs Arville Winans and Ruby Richardson, as Trustee of The Wilma F. Fritz
10 Trust, who have agreed to the terms of the Stipulation, and whose claims will be finally and fully
11 resolved by this Judgment, are each entitled to service awards in the amount of \$7,500 and \$3,500,
12 respectively.

13 17. Defendants are hereby ordered, and agree, to comply with the terms of the
14 Stipulation of Settlement.

15 18. Upon the Effective Date, and subject to fulfillment of all of the terms of this
16 Agreement, each and every Releasing Party shall be permanently barred and enjoined from
17 initiating, asserting and/or prosecuting any Released Claim against any Released Party in any court
18 or any forum.

19 19. The Plaintiff and all Settlement Class Members shall, as of the Effective Date,
20 conclusively be deemed to have acknowledged that the Released Claims may include claims,
21 rights, demands, causes of action, liabilities, or suits that are not known or suspected to exist as of
22 the Effective Date. The Plaintiff and all Settlement Class Members nonetheless release all such
23 Released Claims against the Released Parties. Further, as of the Effective Date, the Plaintiff and
24 all Settlement Class Members shall be deemed to have waived any and all protections, rights and
25 benefits of California Civil Code section 1542 and any comparable statutory or common law
26 provision of any other jurisdiction.

27 20. The Court hereby dismisses with prejudice the Action, and all Released Claims
28 against each and all Released Parties and without costs to any of the Parties as against the others.

1 Notwithstanding the foregoing, this Order does not dismiss any claims that have been or may be
2 asserted in the future by any persons or entities who have validly and timely requested exclusion
3 from the Settlement Class.

4 21. Without affecting the finality of the Judgment, the Court reserves jurisdiction over
5 the implementation, administration and enforcement of this Order, the Judgment and the
6 Stipulation, and all matters ancillary thereto.

7 22. The Court finding that no reason exists for delay in ordering final judgment
8 pursuant to Federal Rules of Civil Procedure, Rule 54(b), the clerk is hereby directed to enter the
9 Judgment forthwith.

10 23. The Parties are hereby authorized without needing further approval from the Court,
11 to agree to and adopt such modifications and expansions of the Stipulation, including without
12 limitation, the forms to be used in the process of distributing settlement payments, which are
13 consistent with this Judgment and do not limit the rights of Settlement Class Members under the
14 Stipulation.

15 24. Any objections to the Stipulation and approval of this settlement are without merit
16 and expressly overruled.

17 25. All other relief not expressly granted to the Settlement Class Members is denied.

18 IT IS SO ORDERED.

19
20 DATED: _____

21
22 _____
23 Honorable Samuel Conti
24 United States District
25
26
27
28

Exhibit “B”

(Healey Declaration)

May 8, 2015

Christopher J. Healey, Esq.
 McKenna Long & Aldridge LLP
 Matter: Assisted Living Matter - Settlement Administration Cost Estimate



ADMINISTRATION COST ESTIMATE SUMMARY

KEY ASSUMPTIONS:

- 1 - Total estimated class size of 19,000 individuals
- 2 - Direct notice will consist of 6-page Notice mailed to all Class Members
- 3 - Indirect notice will consist of publication in *USA Today* California edition
- 4 - Toll-free number with live operator support and estimated 3% total call volume
- 5 - Static case-dedicated website with information about settlement and downloadable case documents
- 6 - Settlement checks will be distributed in a one-time, non-rolling distribution to an estimated 18,950 Class Members who do not opt out
- 7 - Settlement fund reporting will be required for one year

CLASS SIZE:

Total Estimated Class Size	19,000
----------------------------	--------

SERVICES:

Notification	\$	34,283
Processing/Reporting		3,020
Distribution		63,705
		63,705

Total Estimated Administration Costs	\$	101,008
--------------------------------------	----	---------

Administration Fee Cap ("Not to Exceed" Price)	\$	110,000
--	----	---------

May 8, 2015

Christopher J. Healey, Esq.
 McKenna Long & Aldridge LLP
 Matter: Assisted Living Matter - Settlement Administration Cost Estimate
 Page 2 of 4



NOTIFICATION PROCEDURES

	Unit Rate	Volume	Cost	Total
Document Formatting & Class Data Preparation				
Case Setup	\$ 90.00	10 hrs	\$ 900	
Mailing Database Preparation	\$ 90.00	10 hrs	900	
Software Customization	\$ 90.00	6 hrs	540	
Document Formatting	\$ 90.00	6 hrs	540	
Case Management	\$ 90.00	25 hrs	2,250	
NCOA			250	
Subtotal Formatting & Data Prep				\$ 5,380
Printing/Mailing				
Notice Packet:	\$ 0.32	19,000	\$ 6,013	
6-page Notice, #10 env				
Domestic First Class Postage	\$ 0.406	19,000	7,714	
Print Production Staff Hours	\$ 90.00	5 hrs	450	
Subtotal Printing/Mailing				14,177
Returned Undeliverable Mail Handling ("RUM")				
Total % & # of RUM Pieces	15%	2,850		
RUM Scanning	\$ 0.10	2,850	285	
Request SSNs and load returned SSNs into the Software	\$ 90.00	5 hrs	450	
Subtotal RUM Handling				735
Address Search Services (Skip-Tracing)				
# of Searches (from RUM above)	\$ 0.25	2,850	713	
Class List Contains SSNs? (Y/N)	Y			
# of New Addresses Found and Re-mail	90% \$ 0.36	2,565	934	
Domestic First Class Postage	\$ 0.406	2,565	1,041	
Staff Hours performing Address Searches & Re-Mails	\$ 90.00	5 hrs	450	
Subtotal Address Searches				3,137
Publication				
USA Today	\$ 5,500	1	\$ 5,500	5,500
1x, 1/4 page B/W insertion in L.A. and San Francisco zones (which cover the State of California)				
Live Telephone Support				
Phone Script and FAQ development	\$ 90.00	5 hrs	\$ 450	
Estimated % and # of Class Member Calls	3%	570		
Average minutes per call		5 min		
Staff Hours Providing Phone Support	\$ 70.00	48 hrs	3,360	
Estimated % and # of Callers Requesting Notice	5%	29		
Notice Request Fulfillment	\$ 1.50	29	44	
Subtotal Telephone Support				3,854
Website Development				
Static case-dedicated website to host case documents & information	\$ 1,500.00	1	\$ 1,500	1,500
Subtotal Notification Procedures				\$ 34,283

May 8, 2015

Christopher J. Healey, Esq.
 McKenna Long & Aldridge LLP
 Matter: Assisted Living Matter - Settlement Administration Cost Estimate
 Page 3 of 4



PROCESSING AND REPORTING

	Unit Rate	Volume	Cost	Total
Request for Exclusion Processing				
Estimated # of Opt-Outs		50		
Minutes per Opt-Out	1			
Staff Hours Handling Requests for Exclusion (1 hr minimum)	\$ 70.00	1 hr	\$ 70	
Document Review				
Staff hours reviewing beneficiary documents	\$ 70.00	10 hrs	700	
<i>Review and change the payee on the checks if the Class Member is deceased</i>				
Reporting/Declaration				
Staff Hours for General Class Member Correspondence (mail & email)	\$ 90.00	5 hrs	450	
Staff Hours Handling Address Updates	\$ 90.00	2 hrs	180	
Declaration of Notice Procedures	\$ 90.00	8 hrs	720	
Reporting - Assumes 1x per week	\$ 90.00	10 hrs	900	
Subtotal Processing/Reporting				\$ 3,020

May 8, 2015

Christopher J. Healey, Esq.

McKenna Long & Aldridge LLP

Matter: Assisted Living Matter - Settlement Administration Cost Estimate

Page 4 of 4



DISTRIBUTION

	Unit Rate	Volume	Cost	Total
Distribution Preparation	\$ 135.00	10 hrs	\$ 1,350	
<i>Incl. reviewing settlement document, obtaining TIN, opening bank account, periodic review of investments, settlement document review, transmittal letter review, SSN verification, initial Funds Analysis</i>				
Distribution Calculations	\$ 135.00	16 hrs	2,160	
<i>Incl. calculate Class Member distribution values, review & prepare tax deposits, monthly reconciliation of QSF, review of daily transaction exceptions, current status Funds Analysis</i>				
% and # of Claimants Receiving W-9 Solicitation	50%	9,475		
% and # of Claimants Returning W-9 Form	75%	7,106	14,212	
Process Forms W-9 Returned by Claimants	\$ 90.00	25 hrs	2,250	
Check Print Rate	\$ 1.00			
Issue Checks		18,950 ea	18,950	
Issue IRS Forms 1099-MISC	\$ 0.50	18,950 ea	9,475	
Domestic First Class Postage	\$ 0.406	18,950 ea	7,694	
Returned Undeliverable Mail Handling ("RUM")				
Total % & # of RUM Checks	10%	1,895		
RUM Scanning	\$ 0.10	1,895	190	
Address Search Services (Skip-Tracing)				
# of Searches (from RUM above)	\$ 0.25	1,895	474	
Class List Contains SSNs? (Y/N)	Y			
# of New Addresses Found and Re-mail Check with 1099-MISC Form	90%	1,706	2,558	
Domestic First Class Postage	\$ 0.406	1,706	692	
Staff Hours performing Address Searches & Re-Mails	\$ 90.00	5 hrs	450	
Distribution Follow-up & Final Accounting	\$ 110.00	5 hrs	550	
<i>Incl. final Funds Analysis, bi-weekly re-issue run, post-distribution check RUM review</i>				
State Level Tax Administration Services	\$ 110.00	5 hrs	550	
<i>Incl. quarterly backup withholding reporting</i>				
Federal Level Tax Administration Services	\$ 110.00	5 hrs	550	
<i>Incl. annual backup withholding reporting, 1099 reporting</i>				
QSF Reporting	\$ 1,600.00	1	1,600	
Subtotal Distribution				\$ 63,705

1 THOMAS J. NOLAN (SBN 66992)
thomas.nolan@skadden.com
2 JASON D. RUSSELL (SBN 169219)
jason.russell@skadden.com
3 LISA M. GILFORD (SBN 171641)
lisa.gilford@skadden.com
4 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Avenue, Suite 3400
5 Los Angeles, California 90071-3144
Telephone: (213) 687-5000
6 Facsimile: (213) 687-5600

7 Attorneys for Defendants
EMERITUS CORPORATION AND
8 BROOKDALE SENIOR LIVING INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 ARVILLE WINANS, by and through his
guardian ad litem, RENEE MOULTON, on his
13 own behalf and on behalf of others similarly
situated,

14 Plaintiff,

15 v.

16 EMERITUS CORPORATION and DOES 1
17 through 100, inclusive

18 Defendants.

Case No.: 3:13-cv-03962-SC

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Date: May 15, 2015

Time: 10:00 a.m.

Judge: Hon. Samuel Conti

Courtroom: 1

1 WHEREAS, Plaintiffs Arville Winans and Wilma Fritz in this action entitled *Arville*
2 *Winans v. Emeritus Corp. and DOES 1 through 100*, case no. 3:13-cv-03962-SC and Defendants
3 Emeritus Corporation and Brookdale Senior Living, Inc. have entered into a Stipulation of
4 Settlement ("Stipulation"), filed May 8, 2015, after substantial discovery and lengthy arms-length
5 settlement discussions;

6 AND, WHEREAS, the Court has received and considered the Stipulation, including the
7 accompanying exhibits, and the record in this Action;

8 AND, WHEREAS, the Parties have made an application, pursuant to Federal Rules of Civil
9 Procedure, Rule 23(e), for an order preliminarily approving the settlement of this Action, and for
10 its dismissal with prejudice upon the terms and conditions set forth in the Stipulation;

11 AND, WHEREAS, the Court has reviewed the Parties' application and the supporting
12 memorandum for such order, and has found good cause for same.

13 NOW, THEREFORE, IT IS HEREBY ORDERED:

14 **The Settlement Class Is Preliminarily Certified**

15 1. If not otherwise defined herein, all capitalized terms have the same meanings as set
16 forth in the Stipulation of Settlement.

17 2. Pursuant to Federal Rules of Civil Procedure, Rule 23(c), the Court certifies the
18 following Settlement Class:

19 Plaintiffs and all similarly situated persons who resided at one of the California assisted
20 living facilities owned and/or operated by Defendants under the Emeritus name from July 29, 2009
21 through May 15, 2015 (the "Class Period"), and who contracted with Emeritus for services for
22 which Emeritus was paid money.

23 3. Excluded from the Settlement Class are: (i) those for whom the Settlement
24 Administrator does not have a valid address; (ii) Defendants and their officers, directors and
25 employees; (iii) any person who files a valid and timely Request for Exclusion; and (iv) the Judges
26 to whom this Action and the Other Actions are assigned and any members of their immediate
27 families.

4. The Settlement Class meets all requirements of Federal Rules of Civil Procedure, Rule 23(a) and (b)(3) for certification of the class claims alleged in the operative complaint, including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the Class Representative and Class Counsel; (e) predominance of common questions of fact and law Class; and (f) superiority.

5. Class Counsel and the Class Representative are found to be adequate representatives of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Court appoints Arville Winans and Ruby Richardson, Trustee of the Wilma F. Fritz Trust, as the Class Representatives of the Class. The Court also designates the following attorneys as Class Counsel: Kathryn Stebner of Stebner & Associates, Guy Wallace of Schneider Wallace Cottrell Konecky Wotkyns LLP, Robert Arns of The Arns Law Firm, Michael D. Thamer of the Law Offices of Michael D. Thamer, Tim Needham of Janssen Malloy LLP and Chris Healey of McKenna Long Aldridge LLP. The Court finds Class Counsel are experienced and adequate counsel having considered the factors set forth in Rule 23(g)(1).

The Stipulation Is Preliminarily Approved and Final Approval Schedule Set

6. The Court hereby preliminarily approves the Stipulation and the terms and conditions of settlement set forth therein, subject to further consideration at the Final Approval Hearing.

7. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Stipulation, and hereby finds that the settlement falls within the range of reasonableness meriting possible final approval. The Court therefore preliminarily approves the proposed settlement as set forth in the Stipulation.

8. Pursuant to the Federal Rules of Civil Procedure, Rule 23(e) the Court will hold a final approval hearing on _____, 2015, at ____a.m./p.m., in the Courtroom of the Honorable Samuel Conti, United States District Court for the Northern District of California, 450 Golden Gate Avenue, Courtroom 1 – 17th Floor, San Francisco, CA 94102, for the following purposes:

1 1. determining whether the proposed settlement of the Action on the terms and
2 conditions provided for in the Stipulation is fair, reasonable and adequate and should be
3 approved by the Court;

4 2. considering the application of Class Counsel for an award of attorneys' fees
5 and litigation expenses as provided for under the Stipulation;

6 3. considering the application for service awards to the Plaintiffs as provided
7 for under the Stipulation;

8 4. considering whether the Court should enter the [Proposed] Final Judgment
9 and Order Approving Settlement;

10 5. considering whether the release by the Settlement Class Members of the
11 Released Claims as set forth in the Stipulation should be provided; and

12 6. ruling upon such other matters as the Court may deem just and appropriate.

13 9. The Court may adjourn the Final Approval Hearing and later reconvene such
14 hearing without further notice to the Settlement Class Members.

15 10. Any Settlement Class Member may enter an appearance in the Action, at his or her
16 own expense, individually or through counsel. All Settlement Class Members who do not enter an
17 appearance will be represented by Class Counsel.

18 11. The Parties may further modify the Stipulation prior to the Final Approval Hearing
19 so long as such modifications do not materially change the terms of the settlement provided
20 therein. The Court may approve the Stipulation with such modifications as may be agreed to by the
21 Parties, if appropriate, without further notice to Settlement Class Members.

22 12. Opening papers in support of final approval of the Stipulation, and opening papers
23 in support of plaintiffs' application for attorneys' fees, litigation expenses and service awards, shall
24 be filed and served fifteen days prior to the deadline for any objections to the Stipulation. Reply
25 papers, if any, must be filed and served at least seven days prior to the Final Approval Hearing.

26 **The Court Approves the Form and Method of Class Notice**

27 13. The Court approves, as to form and content, the proposed Notice, which is Exhibit 1
28 to the Stipulation of Settlement on file with this Court.

1 14. The Court finds that the distribution of Class Notice substantially in the manner and
2 form set forth in this Order and the Stipulation of Settlement meet the requirements of Federal
3 Rules of Civil Procedure, Rule 23 and due process, is the best notice practicable under the
4 circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

5 15. The Court approves the designation of Gilardi & Co., LLC to serve as the
6 Settlement Administrator for the settlement. The Settlement Administrator shall disseminate Class
7 Notice and supervise and carry out the notice procedure and other administrative functions, and
8 shall respond to Settlement Class Member inquiries, as set forth in the Stipulation and this Order
9 under the direction and supervision of the Court.

10 16. The Court directs the Settlement Administrator to establish a Settlement Website,
11 making available copies of this Order, the Class Notice, the Stipulation and all exhibits thereto, and
12 such other information as may be of assistance to Settlement Class Members or required under the
13 Stipulation.

14 17. The Settlement Administrator is ordered to substantially complete dissemination of
15 the Class Notice no later than 10 business days after it receives the Settlement Class Member
16 Information List.

17 18. The costs of the Class Notice, creating and maintaining the Settlement Website, and
18 all other Notice and Payment Distribution Administration Expenses shall be paid out of the
19 Settlement Fund in accordance with the applicable provisions of the Stipulation.

20 **Procedure for Settlement Class Members to Participate In the Settlement**

21 19. No later than five (5) business days after the entry by the Court of the Preliminary
22 Approval Order, Defendants shall furnish the Settlement Administrator with the Settlement Class
23 Member Information List (which shall include all Settlement Class Members), in accordance with
24 the Stipulation. The Settlement Administrator shall mail the Notice to all Settlement Class
25 Members at the addresses provided by Defendants, as updated by the Settlement Administrator,
26 and publish the Notice in a single publication of the USA Today (California weekday edition).

27 20. Settlement Class Members who wish to receive a settlement award need take no
28 action. If a Settlement Class Member is deceased, the legal successor for the Class Member may

1 obtain payment by providing the Settlement Administrator with appropriate proof of successor
2 status and a current address. Settlement Class Members (or legal successors) will not receive a
3 settlement award only if the Settlement Administrator lacks a valid address for that individual, as
4 determined by monitoring those Notice documents that were returned as undeliverable, or if the
5 individual opts out of the settlement by the Opt Out Date.

6 **Procedure for Requesting Exclusion from the Class**

7 21. Any Person falling within the definition of the Settlement Class may, upon his or
8 her request, be excluded from the Settlement Class. Any such Persons (or their legal successor)
9 must submit a request for exclusion to the Settlement Administrator postmarked no later than the
10 Opt Out Date, which shall be 35 days from the Notice Date, as set forth in the Class Notice.
11 Requests for exclusion purportedly filed on behalf of groups of persons are prohibited and will be
12 deemed to be void.

13 22. Any Settlement Class Member who does not send a signed request for exclusion
14 postmarked or delivered on or before the Opt-Out Date will be deemed to be a Settlement Class
15 Member for all purposes and will be bound by all further orders of the Court in this Action and by
16 the terms of the settlement, if finally approved by the Court. The written request for exclusion must
17 request exclusion from the Class, must be signed by the potential Settlement Class Member (or
18 his/her legal successor) and include a statement indicating that the Person desires to be excluded
19 from the Settlement Class. All Persons who submit valid and timely requests for exclusion in the
20 manner set forth in the Stipulation shall have no rights under the Stipulation and shall not be bound
21 by the Stipulation or the Final Judgment and Order.

22 23. A list reflecting all requests for exclusions shall be filed with the Court by
23 Defendants at or before the Final Approval Hearing.

24 **Procedure for Objecting to the Settlement**

25 24. Any Settlement Class Member (or their legal successor) who desires to object to the
26 proposed settlement, including the requested attorneys' fees and expenses or service awards to the
27 Plaintiff must timely file with the Clerk of this Court a notice of the objection(s), together with all
28 papers that the Settlement Class Member desires to submit to the Court no later than the Objection

1 Date, with shall be 35 days after the Notice Date as set forth in the Class Notice. The objection
2 must also be served on Class Counsel and Defendants' counsel no later than the Objection Date.

3 25. The written objection must include: (a) a heading which refers to the Action; (b) the
4 objector's name, address, telephone number and, if represented by counsel, of his/her counsel; (c) a
5 statement that the objector is a Settlement Class Member (resided at one of the California assisted
6 living facilities owned and/or operated by Defendants under the Emeritus name from July 29, 2009
7 through May 15, 2015 and contracted with Emeritus for services for which Emeritus was paid
8 money) or that the objector is the legal successor to a Settlement Class Member; (d) a statement
9 whether the objector intends to appear at the Final Approval Hearing, either in person or through
10 counsel; (e) a statement of the objection and the grounds supporting the objection; (f) copies of any
11 papers, briefs, or other documents upon which the objection is based; and (g) the objector's
12 signature.

13 26. Any Settlement Class Member (or their legal successor) may appear at the Final
14 Approval Hearing, either in person or through counsel hired at the Settlement Class Member's
15 expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement,
16 including attorneys' fees.

17 27. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in
18 connection with the administration of the settlement which are not materially inconsistent with
19 either this Order or the terms of the Stipulation.

20 IT IS SO ORDERED.

21
22 Dated: _____

23
24 _____
25 Honorable Samuel Conti
26 United States District
27
28

1 Kathryn A. Stebner (SBN 121088)
kathryn@stebnerassociates.com
2 Sarah Colby (SBN 194475)
sarah@stebnerassociates.com
3 George Kawamoto (SBN 280358)
george@stebnerassociates.com
4 STEBNER AND ASSOCIATES
870 Market Street, Suite 1212
5 San Francisco, CA 94102
Tel: (415) 362-9800
6 Fax: (415) 362-9801

7
8 Michael D. Thamer (SBN 101440)
michael@trinityinstitute.com
LAW OFFICES OF MICHAEL D. THAMER
9 Old Callahan School House
12444 South Highway 3
10 Post Office Box 1568
Callahan, California 96014-1568
11 Tel: (530) 467-5307
Fax: (530) 467-5437
12

13 W. Timothy Needham (SBN 96542)
tneedham@janssenlaw.com
14 JANSSEN MALLOY LLP
730 Fifth Street
15 Eureka, CA 95501
Tel: (707) 445-2071
16 Fax: (707) 445-8305

Guy B. Wallace (SBN 176151)
gwallace@schneiderwallace.com
Mark T. Johnson (SBN 76904)
mjohnson@schneiderwallace.com
Jennifer Uhrowczik, State Bar No. 302212
juhrowczik@schneiderwallace.com
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
180 Montgomery Street, Suite 2000
San Francisco, CA 94104
Telephone: (415) 421-7100
Facsimile: (415) 421-7105

CHRISTOPHER J. HEALEY (SBN 105798)
chealey@mckennalong.com
AARON T. WINN (SBN 229763)
awinn@mckennalong.com
McKENNA LONG & ALDRIDGE LLP
600 West Broadway, Suite 2600
San Diego, California 92101-3372
Telephone: 619.236.1414
Facsimile: 619.232.8311

Robert S. Arns (SBN 65071)
ddl@arnslaw.com
THE ARNS LAW FIRM
515 Folsom Street, 3rd Floor
San Francisco, CA 94105
Tel: (415) 495-7800
Fax: (415) 495 -7888

17 Attorneys for Plaintiff and the Proposed Class
18

19 **UNITED STATES DISTRICT COURT**

20 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO**

21 ARVILLE WINANS, by and through his
22 guardian ad litem Renee Moulton, on his own
23 behalf and on behalf of all others similarly
situated,

24 Plaintiff,

25 v.

26 EMERITUS CORPORATION and DOES 1 to
27 100, inclusive,

28 Defendants.

Case No. 3:13-cv-03962-SC

CERTIFICATE OF SERVICE

I am employed with the law firm of McKenna Long & Aldridge LLP, whose address is 600 West Broadway, Suite 2600, San Diego, California 92101. I am over the age of eighteen years, and am not a party to this action. I hereby certify that on May 8, 2015, I electronically served the following document(s):

1. **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT;**
2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT;**
3. **DECLARATION OF CHRISTOPHER J. HEALEY IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT;**
4. **[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

on the interested parties in this action by the filing of the above-described document(s) with the clerk of the United States District Court, Northern District of California, through the CM/ECF system. The CM/ECF system will send email notification of the filing to the parties and their counsel of record who are registered with the court's CM/ECF system at the email address(es) provided as follows:

- **Robert Stephen Arns**
ddl@arnslaw.com, jce@arnslaw.com, lrc@arnslaw.com, jed@arnslaw.com, rsa@arnslaw.com, rcf@arnslaw.com
- **Sarah S Colby**
sarah@stebnerassociates.com
- **Lisa Michelle Gilford**
lisa.gilford@skadden.com, Laura.Olagues@skadden.com
- **Christopher J. Healey**
chealey@mckennalong.com, kcacka@mckennalong.com,
- **Mark T. Johnson**
mjohnson@schneiderwallace.com, efilings@schneiderwallace.com
- **George Nobuo Kawamoto**
george@stebnerassociates.com

- 1 • **William Timothy Needham**
2 tneedham@janssenlaw.com, kellis@janssenlaw.com
- 3 • **Thomas Jerome Nolan**
4 thomas.nolan@skadden.com, kevin.minnick@skadden.com,
5 rebecca.isomoto@skadden.com, al.chua@skadden.com
- 6 • **Harriet Spaulding Posner**
7 hposner@skadden.com, btravagl@skadden.com, pmorriso@skadden.com
- 8 • **Jason David Russell**
9 jrussell@skadden.com, ljohnsto@skadden.com
- 10 • **Kathryn Ann Stebner**
11 Kathryn@stebnerassociates.com, carole@stebnerassociates.com
- 12 • **Michael Dougald Thamer**
13 mthamer@trinityinstitute.com
- 14 • **Jennifer Ann Uhrowczik**
15 juhrowczik@schneiderwallace.com
- 16 • **Guy Burton Wallace**
17 gwallace@schneiderwallace.com, jroaquin@schneiderwallace.com,
18 efilings@schneiderwallace.com
- 19 • **Aaron Thomas Winn**
20 awinn@mckennalong.com, rmevans@mckennalong.com

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

23 Executed on May 8, 2015 at San Diego, California.

24 s/ Christopher J. Healey
25 Christopher J. Healey

26 USW 804593513.4