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16 Glenoaks Convalescent Hospital

17 **UNITED STATES DISTRICT COURT**

18 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

19 DAKOTA MEDICAL, INC., individually,  
20 and on behalf of all others similarly  
situated,

21 Plaintiff,

22 v.

23 REHABCARE GROUP, INC., *et al.*,

24 Defendants.

Case No.: 1:14-cv-02081-DAD-BAM

**Hon. Dale A. Drozd**

**Plaintiff's Motion for Final Approval of  
Settlement and Certification of  
Settlement Class**

**[Fed. R. Civ. P. 23]**

Date: Sept. 7, 2017  
Time: 9:30 A.M.  
Courtroom: 5

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1 Plaintiff/Class Representative Dakota Medical, Inc., dba Glenoaks Convalescent  
2 Hospital (“Glenoaks”), on behalf of itself and the preliminarily certified Settlement Class,  
3 moves for entry of an order granting final approval to the settlement memorialized in the  
4 parties’ Class Action Settlement Agreement (Doc. No. 171). Glenoaks also moves for  
5 entry of an order that finally certifies the following Settlement Class:

6  
7 All persons that were subscribers of facsimile telephone numbers to which  
8 there was a successful transmission of one or more facsimiles by defendants  
9 (or either of them) between July 17, 2010 and February 4, 2014, in  
10 broadcasts by WestFax, Inc. Excluded from the class are officers, directors,  
11 and employees, accountants, and/or agents of defendants; any affiliated  
12 company; legal representatives, attorneys, heirs, successors, or assigns of  
13 defendants, defendants’ officers and directors, or of any affiliated company;  
14 any entity in which any foregoing persons have or have had a controlling  
15 interest; any members of the immediate families of the foregoing persons;  
16 any federal, state and/or local governments, governmental agencies  
17 (including the Federal Communications Commission), government entities,  
18 government body and any attorneys of record in this action; and any person  
19 or entity that has released defendants from all claims based on the  
20 transmission of faxes during the entire class period. (Doc. No. 177, p. 21.)

21 The motion is made on the following grounds pursuant to Federal Rule of Civil  
22 Procedure 23(a), (b)(3), (e), and (g):

23  
24 1. The Settlement Class meets all conditions for class certification. The Court  
25 previously granted conditional certification of the settlement class (Doc. No. 177).  
26 Nothing has happened since that ruling to revisit the certification issue.

27 2. The proposed settlement is fundamentally fair, adequate and reasonable to  
28 the class of Polaris Group fax recipients. The settlement provides a \$25 million class  
recovery. Its \$1,943 average gross recovery per class member dwarfs that of all but one  
TCPA settlement of \$5 million or greater that have been approved in the Ninth Circuit in  
this decade. This settlement stands alone among these settlement in providing for

1 automatic distribution to the class, without requiring class members to submit claims.  
2 Under no circumstances will any funds revert to the Defendants. As a result, the entire  
3 common fund (net of notice and settlement administration, attorneys' fees and expenses,  
4 and any incentive award) will be paid to class members.

5  
6 3. While the settlement provides a concrete and measurable recovery to the  
7 class, the benefit of continued litigation would have been highly uncertain. Had litigation  
8 continued, there were numerous litigation and financial risks, any one of which could have  
9 precluded any financial recovery for the class.

10  
11 4. The settlement administrator successfully notified over 97 percent of the  
12 class by following the Court-approved notice procedure. The settlement administrator's  
13 execution of that notice plan by faxing and mailing notice packets (including Notice of  
14 Class Action Settlement and Class Member Information Forms), and by establishing the  
15 settlement website, provided the best notice practicable. The class notice packets and  
16 settlement website gave class members all information they needed to evaluate the  
17 settlement and whether to exclude themselves from the class or object to the settlement.

18  
19 5. The class strongly supports the settlement. To date, no members of the class  
20 have objected to the settlement and only one out of 12,867 class members exercised its  
21 right to excluded itself from the class. At the same time, 272 class members have  
22 submitted class member information forms to the settlement administrator. And  
23 numerous class members, many with large stakes in the case, have affirmatively indicated  
24 their strong support for the settlement.

25  
26 6. The motion is based on the accompanying Memorandum in Support of  
27 Motion for Final Approval of Settlement and Certification of Settlement Class;  
28 declarations of Henry E. LeVine, Jr., C. Darryl Cordero, Kenneth Jue, Robert A. Sherwin,

1 Philip K. Lem, Matthew K. Brown, Eric M. Kennedy, Donald R. Fischbach, Joel S.  
2 Magolnick, and R. William Nemecek; declarations of class members Nicklas Anderson,  
3 Dean Cranwell, Therea Creagh, Lucy Kazanjian Grayson, Dennis R. Hunter, Derek Lane,  
4 Vilma Martinez, Gregory Nicoluzakis, Debra Pierce, Craig Robinson, Joshua Sable, James  
5 Shelton, and Rustan Williams; the Class Action Settlement Agreement previously lodged  
6 with the Court (Doc. No. 171); the previously filed Motion for Preliminary Approval of  
7 Class Action Settlement, including the declarations and the exhibits submitted in  
8 connection with that motion (Doc. No. 172); the pleadings and papers filed in this case;  
9 and on such further briefs and argument of counsel that will be received before or during  
10 the hearing on the motion.

11  
12 7. A proposed form of Judgment and Order has been agreed to by Glenoaks and  
13 Defendants, and will be submitted in accordance with the Court’s procedures.

14  
15 DATED: August 1, 2017

PAYNE & FEARS LLP

16  
17 Bv:                   /s/ C. Darryl Cordero                    
C. DARRYL CORDERO

18 Attorneys for Plaintiff Dakota Medical, Inc.,  
19 dba Glenoaks Convalescent Hospital, on  
behalf of itself and all others similarly situated

20 Motion for Final Approval of Settlement and Certification of Settlement Class 4834-4769-7484 v.1.docx

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**Proof of Service**

**R. Fellen, Inc., et al., vs. RehabCare Group, Inc., et al.**  
**United States District Court, Eastern District of California (Sacramento Division)**  
**Case No. 1:14-cv-02081-DAD-BAM**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1100 Glendon Avenue, Suite 1250, Los Angeles, CA 90024.

On August 1, 2017, I served true copies of the following document(s) described as **Plaintiff's Motion for Final Approval of Settlement and Certification of Settlement Class** on the interested parties in this action as follows:

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Erin K. Kolmansberger  
Melissa Jill Gomberg  
Kimberly Freedman  
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*Counsel for Defendant, Cannon & Associates*

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 1, 2017, at Los Angeles, California.



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