

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

1 Dowling Aaron Incorporated
Donald R. Fischbach, Bar No. 053522
2 dfischbach@dowlingaaron.com
Mark D. Kruthers, Bar No. 179750
3 mkruthers@dowlingaaron.com
8080 N. Palm Avenue, Third Floor
4 Fresno, California 93711
Telephone: (559) 432-4500

5 Payne & Fears LLP
C. Darryl Cordero, Bar No. 126689
6 cdc@paynefears.com
Scott O. Luskin, Bar No. 238082
7 sol@paynefears.com
Matthew K. Brown, Bar No. 252503
8 mkb@paynefears.com
Leilani E. Livingston, Bar No. 298896
9 llj@paynefears.com
1100 Glendon Avenue, Suite 1250
10 Los Angeles, California 90024
11 Telephone: (310) 689-1750 * Facsimile: (310) 689-1755

12 Marko & Magolnick, P.A
Joel S. Magolnick, Bar No. 776068
13 magolnick@mm-pa.com
3001 S.W. 3rd Avenue
14 Miami, Florida 33129
Telephone: 305-740-1967

15 Attorneys for Plaintiff Dakota Medical, Inc.,
16 dba Glenoaks Convalescent Hospital

17 UNITED STATES DISTRICT COURT

18 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

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

Declaration of Henry E. LeVine, Jr., in
Support of Plaintiff's Motions for Final
Approval of Class Settlement and
Certification of Settlement Class

[Fed. R. Civ. P. 23]

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

1 I, Henry E. LeVine, Jr., declare:

2
3 1. I am the president and administrator of Dakota Medical, Inc., the plaintiff in
4 this action. Dakota Medical does business under the name “Glenoaks Convalescent
5 Hospital” in Glendale. I have served in my positions since the company was formed in
6 September 2003. I have a bachelor’s degree in finance from New Mexico Highlands
7 University, which was conferred in 1969. I have an MBA in finance from Golden Gate
8 University in San Francisco, which I earned in 1971. I know the facts stated in this
9 declaration of my own personal knowledge and if called and sworn as a witness, I could
10 and would competently testify with respect to such facts.
11

12 2. Glenoaks is a 99-bed skilled nursing facility that provides 24-hour, extended-
13 stay nursing care to seniors with varying levels of disabilities. Glenoaks is dedicated to the
14 highest standards of professional nursing and rehabilitative services. Our staff consists of
15 registered nurses, licensed vocational nurses, and certified nursing assistants. We also have
16 a rehabilitation department that offers complete therapy services for patients recovering
17 from fractures, joint replacement, stroke, and other related issues.
18

19 3. Glenoaks is, and has been since September 2003, the subscriber of the
20 telephone number (818) 247-0949. Throughout this time the telephone number has been
21 connected to a fax machine located at our nursing station.
22

23 4. My duties and responsibilities as administrator include supervising all
24 aspects of Glenoaks’ business activities and health-care operations. Among other things, I
25 review the faxes received at the fax machine located at the nursing station. Those faxes are
26 typically brought to me by someone at the nursing station. On a regular basis the machine
27 receives fax advertisements from persons and companies with whom we do not do
28 business. Glenoaks does not give these advertisers permission to send these faxes. These

1 junk faxes disrupt our business and healthcare operations, waste valuable personnel
2 resources to identify and dispense with them, and force us to consume paper and toner
3 against our wishes.

4
5 5. For several years we had received numerous junk faxes promoting products
6 and services offered by “Polaris Group.” A few faxes have mentioned “RehabCare
7 Group.” The faxes have promoted the sale of books, manuals, and services. To the best of
8 my knowledge, after making inquiries of our staff and business records, Glenoaks has had
9 no business relationship with “Polaris Group” or “RehabCare Group” and did not give
10 either company permission to send junk faxes.¹

11
12 6. In 2014 I retained Darryl Cordero of Payne & Fears LLP to represent
13 Glenoaks in legal action against parties that might be legally responsible for these fax ads.
14 I understood that Glenoaks would seek to represent all others that had received the same
15 “Polaris Group” fax advertisements, and authorized Mr. Cordero to select additional
16 attorneys for our legal team—from Payne & Fears and other firms—as he saw fit. I was
17 pleased with his selection Don Fischbach from Dowling Aaron Incorporated and Joel
18 Magolnick of Marko & Magolnick, P.A. The attorneys later presented me with their
19 signed co-counsel agreement, which includes terms governing the distribution of any
20 attorneys’ fee recovery in this case. I reviewed and approved the agreement.

21
22 7. I caused Glenoaks to bring this lawsuit and requested appointment as class
23 representative because of our desire to stop, as much as possible, junk fax ads and to obtain
24 monetary and other relief for all other facilities (and persons) to whom defendants sent

25
26 ¹ Before settlement, I learned that Cannon & Associates had contended that
27 Glenoaks gave permission to send fax ads through its alleged membership in the California
28 Association of Health Facilities. But Glenoaks has never been a member of CAHF and, to
the best of my knowledge, we have never given CAHF our fax telephone number.

1 these faxes. I understand that federal law (Telephone Consumer Protection Act) may
2 provide such relief, and during this case I have become more familiar with the legal
3 requirements. I have overseen prosecution of this case on behalf of Glenoaks and the
4 absent class members.

5
6 8. I recognize Glenoaks' responsibilities as a class representative to fairly and
7 adequately protect the interests of absentee class members. I have exercised my
8 independent judgment throughout this case, and I have discharged my class representative
9 responsibilities in the interest of the proposed class. Glenoaks has not and will not place its
10 interests ahead of the interests of the class members. I know of no conflicting interests
11 between Glenoaks and class members as it concerns this case.

12
13 9. I have kept abreast of case developments in regular contacts with our
14 attorneys. I have actively participated in this case. I coordinated the collection of
15 documents requested by the defendants, assisted my attorneys in preparing Glenoaks'
16 interrogatory responses, and appeared for deposition.

17
18 10. On May 12, 2016, I attended a full-day mediation in downtown Los Angeles.
19 Our lead attorney, Darryl Cordero, was present, along with the rest of our legal team—Eric
20 Kennedy of his office, Mr. Fischbach and Mr. Magolnick. I was present during the entire
21 mediation, which ended around 6 P.M. That session did not end in a settlement and, in my
22 opinion, the parties were very far apart on financial and other settlement terms.

23
24 11. In October a second mediation was scheduled for November 2016, in
25 Washington, D.C. Unfortunately, I could not attend that mediation because of an
26 upcoming state inspection, for which we do not notice until one day before arrival. I was
27 in regular communication with Mr. Cordero throughout the mediation, by email and by
28 phone. I ultimately approved the tentative settlement achieved at mediation, and I am

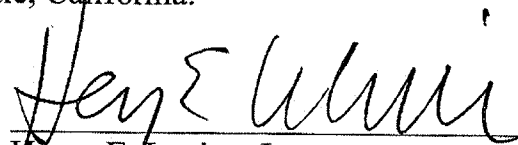
1 extremely proud of the result we achieved. I believe the \$25 million settlement is in the
2 best interests of the class, particularly given the limits on the Defendants' ability to pay
3 larger sums, and I support approval by the Court.
4

5 12. I reasonably estimate that I have devoted approximately 60-70 hours to this
6 case. Neither Glenoaks nor I have been provided with any financial consideration to
7 prosecute this case, nor have we been promised any such consideration. Glenoaks has
8 requested a \$15,000 incentive award, but I understand that any incentive award is entirely
9 discretionary with the Court. The requested award did not influence my independent
10 judgment in determining that the settlement was fair and reasonable for the class.
11

12 13. I understand that my attorneys will seek legal fees of one third of the
13 settlement fund as compensation. I recognize that any fee recovery will be paid from the
14 settlement fund, but I think that the requested fees are fair compensation for the
15 exceptional results achieved here. In fact, I am proud of the work the attorneys have done.
16 I recognize that the Court will ultimately determine the appropriate fees. In connection
17 with the attorneys' request for fees, however, I approved the ultimate fee allocation among
18 my attorneys in accordance with the co-counsel agreement. I have approved no other fee
19 arrangement.
20

21 I declare under penalty of perjury under the laws of the United States of America
22 that the foregoing is true and correct.
23

24 Executed on July 27, 2017, at Glendale, California.

25 
26 _____
27 Henry E. Levine, Jr.
28

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