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

16 **UNITED STATES DISTRICT COURT**

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

18 R. FELLEN, INC., *et al.*,

19
20 Plaintiffs,

21 v.

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

23 Defendants.
24
25
26
27
28

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

**Declaration of Joel S. Magolnick in
Support of Motion for Attorneys' Fees
and Reimbursement of Expenses**

[Fed. R. Civ. P. 23]

**Judge: Hon. Dale A. Drozd
Date:
Time:
Courtroom: 5**

1 I, Joel S. Magolnick, declare:
2

3 1. I am an attorney licensed to practice in Florida since 1988. I am “AV” rated
4 by Martindale-Hubbell. I represent, together with co-counsel, Dakota Medical, Inc., d/b/a
5 Glenoaks Convalescent Hospital (“Dakota”), and the putative class in this action. The
6 facts stated in this declaration are of my own personal knowledge and, if called and sworn
7 as a witness, I could and would competently testify with respect thereto.
8

9 2. I have been a litigator in state and federal courts throughout the United States
10 for approximately 29 years. I have substantial experience representing both plaintiffs and
11 defendants in various types of complex litigation matters. In addition to Florida, I
12 represent and/or have represented clients in various complex litigation matters pending in
13 New York, California, Pennsylvania, Oklahoma, Illinois, South Carolina, and Alabama,
14 among other states.
15

16 3. I am experienced in class action litigation. Since 1990, I have been involved
17 in various class action lawsuits, as well as various mass tort actions involving thousands of
18 plaintiffs, in Florida and other states, both as an associate and after founding my own firm
19 in 1991. I believe that I have the experience, knowledge and skill to have properly
20 handled this case as co-counsel with C. Darryl Cordero and Donald R. Fischbach.
21

22 4. I have also been involved in other types of multi-plaintiff matters, as lead
23 counsel and as a member of Steering Committees, including In Re: Skin Cap Product
24 Liability Litigation (Southern District of Florida), and In Re: New York ReNu With
25 Moistureloc Product Liability Litigation (New York state court). Additionally, I had
26 significant involvement with the Plaintiffs’ Steering Committee in the multi-district
27 litigation matter styled Pasha Anwar v. Fairfield Greenwich Limited, et al. (Southern
28

1 District of New York).

2
3 5. With respect to TCPA matters, I was counsel, along with C. Darryl Cordero,
4 for the plaintiff settlement class in the matter styled *Pines Nursing Homes (77), Inc. v.*
5 *PharMerica, Inc.*, Case No. 13-cv-23924-CIV-MOORE/McAliley, which was pending in
6 the U.S. District Court for the Southern District of Florida. The PharMerica matter also
7 involved junk faxes sent in alleged violation of the TCPA. In 2014, we negotiated a \$15
8 million settlement of the PharMerica case, which later received final approval from the
9 U.S. District Court, per the Hon. K. Michael Moore, Chief Judge.

10
11 6. I was also counsel for the plaintiff settlement classes in the matters styled
12 *Bam Marine of Florida, Inc., individually, and on behalf of all others similarly situated, v.*
13 *Isle of Capri Casinos, Inc.*, Case No. 12-17232, pending in the Circuit Court of Broward
14 County, Florida, and *Lawrence Jay Davis, individually, and on behalf of all others*
15 *similarly situated, v. Blue Cross and Blue Shield Association*, Case No. 11-019456, pending
16 in the Circuit Court of Broward County, Florida.¹

17
18 7. Prior to agreeing to act as co-counsel in this matter, I carefully considered
19 whether to take this case on a contingency basis because of the inherent risks of
20 contingency cases. Without the prospect of a contingency fee recovery to compensate for
21 the risks assumed, I would not have undertaken this case.

22
23 8. I participated significantly in drafting, reviewing, revising and finalizing
24

25 ¹ I was also counsel of record in a prior matter involving the same defendants and fax
26 advertisements as in the instant action. That matter was styled *Pines Nursing Homes (77), Inc. v.*
27 *RehabCare Group, Inc., et al.*, Case No. 14-20039-CIV-UNGARO/OTAZO-REYES, and was
28 pending in the U.S. District Court for the Southern District of Florida. The case eventually settled
on an individual basis only after the court denied class certification on grounds that Pines would
not be an adequate class representative.

1 documents, including, but not limited to, the complaint and amended complaint, written
2 discovery to Defendants, class certification-related memoranda, discovery-related motions
3 and memoranda, motions and memoranda relating to scheduling matters, and motions and
4 memoranda relating to settlement. I have also taken and defended depositions of key fact
5 and expert witnesses, in New York and Florida. I actively participated in a one day
6 mediation conference in California and a subsequent two day mediation session in
7 Washington, D.C.

8
9 9. The first mediation took place on May 12, 2016, in Los Angeles, with retired
10 judge William Cahill serving as mediator. The mediation lasted the entire day. By the end
11 of the day it was clear there was a substantial gap between the parties on key terms of any
12 settlement. This included not only the financial terms, but also the structure of any
13 settlement, i.e., whether funds should be distributed to all class members or whether
14 settlement proceeds should be available only on a claims-made basis. After mediation
15 concluded I did not believe there was any reasonable prospect of settlement in the near
16 term, and we resumed active litigation of the case.

17
18 10. I attended the second mediation in Washington, D.C., with mediator John
19 Bickerman. The mediation lasted two days, November 15 and 16. The negotiations were
20 difficult and intense. Eventually, on the second day, a potential settlement emerged, at
21 which point we began negotiating a settlement term sheet. (The term sheet was finalized
22 about a week later and filed with the Court.)

23
24 11. In addition to the foregoing, I have participated in numerous conference calls
25 with co-counsel, conference calls amongst Plaintiff and Defense counsel regarding the
26 litigation, as well as mediation/settlement conference calls amongst all counsel and Mr.
27 Bickerman. I am convinced from my involvement in the process that the settlement terms
28

1 are extremely fair and reasonable for the class and are by far the best that could be
2 achieved in settlement at this stage of the litigation.

3
4 12. At the time this action was commenced, and through its pendency, my hourly
5 billing rate has between \$500 and \$550. My hourly rate has never been rejected by any
6 court of law. Based upon my knowledge and experience, I believe that my rates are equal
7 to or below the generally prevailing range of billing for the South Florida business
8 litigation community for attorneys with my level of seniority and experience.

9
10 13. From inception through July 25, 2017, I had devoted over 132 hours to
11 prosecuting this case (not including, among other things, time spent on the motion for
12 fees/costs and motion for incentive award.

13
14 14. I personally kept track of the tasks performed and the amount of time such
15 taks took to perform on our firm's billing system. I recorded the tasks and the timer spent
16 on an ongoing basis as the case progressed. I made these entries (along with cost entries)
17 in the ordinary course of business, as we would on any other case that my firm handles. I
18 believe that the time spent on the case was necessary and appropriate to properly represent
19 Dakota and the class.

20
21 15. I expect to continue to be active in the case through its conclusion and
22 anticipate spending at least another 15-20 hours on the case from July 26, 2017 to
23 conclusion, relating to the motion for final approval of the settlement and attendance at the
24 hearing.

25
26 16. My firm has also advanced costs in this case, totaling \$9,229.46. I recorded
27 these expenses on my billing system on an ongoing basis as the case progressed. The costs
28

1 incurred are as follows:

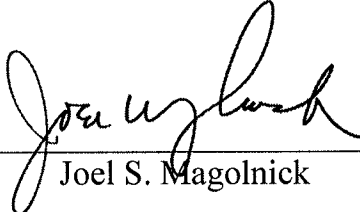
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3 a. California (Mediation) – travel, transportation and lodging expenses -
4 \$2876.26

5
6 b. New York (Deposition) – travel, transportation, lodging - \$2893.73;
7 court reporter/transcript expenses - \$686.00

8
9 c. Washington, DC (Mediation) – travel, transportation and lodging
10 expenses - \$2773.47

11
12 I believe that these expenses were necessary and appropriate to properly represent
13 Dakota and the class.

14
15 **I hereby declare under penalty of perjury, under the laws of the United States of**
16 **America, that the foregoing is true and correct. Executed on July 31, 2017, at Miami,**
17 **Florida.**

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Joel S. Magolnick

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