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

Hon. Dale A. Drozd

**Declaration of Donald R. Fischbach in
Support of Plaintiff's Motions for Final
Approval of Class Settlement and
Certification of Settlement Class, and for
Attorneys' Fees and Reimbursement of
Expenses**

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

1 Declaration of Donald R. Fischbach

2 I, Donald R. Fischbach, declare:

3 1. I am an attorney duly admitted to practice in the State of California and one
4 of the attorneys of record for Plaintiff Dakota Medical, Inc., dba Glenoaks Convalescent
5 Hospital in this class action. I am a shareholder in the law firm of Dowling Aaron
6 Incorporated.

7 2. I was admitted to practice law in the State of California in 1972 after
8 graduating from the University of California, Hastings College of the Law, the same year.

9 3. Since that time I have been a litigator and trial attorney, practicing in courts
10 throughout California and in various federal districts, including the Eastern District of
11 California.

12 4. I have been an attorney of record in numerous class actions, for example as
13 co-counsel in *Massoyan, et al. v. HL Leasing, et al.*, Fresno Superior Court Case No.
14 09CECG01839, which resulted in an approximate \$115 million verdict and judgment in
15 2011.

16 5. I have been a member of ABOTA, the American Board of Trial Advocates,
17 since 1993, and I have tried many significant jury and court trials during my nearly 45 year
18 career.

19 6. We agreed to accept this case on contingency understanding that we would
20 bear the risk of non-payment along with co-counsel. As a co-counsel I have regularly
21 participated in this case, with almost daily interaction, including review of discovery,
22 consultation with co-counsel, and extensive participation in case analysis and mediations.
23 I actively attended and participated in the first mediation before retired Judge William J.
24 Cahill on May 12, 2016, in Los Angeles. After that unsuccessful mediation it was
25 apparent that the parties were far apart on key terms, not only with respect to the
26 settlement amount, but also how to structure the settlement. It appeared at that time there
27 was little prospect of settlement so further litigation followed, including extensive
28

1 discovery.

2 7. I also attended a further two day mediation in Washington, D.C. on
 3 November 15 and November 16, 2016, before John Bickerman, at which time the current
 4 settlement was reached. I subsequently participated in numerous conference calls with that
 5 mediator and opposing counsel in an attempt to resolve further issues that arose after the
 6 initial settlement was reached.

7 8. Based on my participation in this case, I recommend approval of the final
 8 settlement and proposed attorney's fees. The settlement is fair and reasonable. This has
 9 been a hard fought case with, as the court confirmed in a previous ruling, significant and
 10 lengthy discovery disputes. It has been contentious, strongly contested and never
 11 collusive. The settlement was reached at arm's length with significant involvement,
 12 participation, and time spent by the attorneys for all parties.

13 9. As of this date, the total number of hours devoted to this matter by attorneys
 14 from our office is 311.5, excluding time spent on the motion for award of attorney's fees
 15 and costs. This is broken down by attorney based on current standard rates as follows:

Professional	Rate	Hours
Richard M. Aaron	\$485	0.7
Donald R. Fischbach	\$460	274.5
Mark D. Kruthers	\$410	36.3
Total		311.5

20 10. It is anticipated that my further involvement in bringing this case to
 21 conclusion will take an estimated twenty hours.

22 11. Having been a litigator in Fresno, and the Eastern District, I am generally
 23 aware of current rates for attorneys and paralegals in this area. The hourly rates for
 24 experienced attorneys in our area range from \$375 to \$595; the higher rates are for
 25 attorneys who handle larger and more complex cases, especially in federal courts. As
 26 reflected in the above chart, the billable rates of the attorneys who have worked on this
 27 case are well within the normal range for experienced attorneys in the area.

28 12. Dowling Aaron Incorporated has also advanced costs in the sum of

1 \$4,302.28. Those costs are broken down as follows:

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Description	Total
Delivery Services	\$343.30
Hearing Transcripts	\$111.85
Mediator Charges	\$430.19
Photocopies (in-house)	\$18.45
Filing Fees and Court Costs	\$400
Travel	\$2,998.49
Total	\$4,302.28

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

Executed August 1, 2017, at FRESNO, California.



Donald R. Fischbach

DRF Declaration - Mtn for Final Approval Mtn for Attyns Fees (02226139xAB701) (002) 4829-3861-5372 v.I.docx