

PAYNE & FEARS LLP

ATTORNEYS AT LAW
801 S. FIGUEROA STREET, SUITE 1150
LOS ANGELES, CALIFORNIA 90017
(213) 439-9811

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

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

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

23 Plaintiff,

24 v.

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

26 Defendants.

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

Hon. Dale A. Drozd

**Declaration of Matthew K. Brown in
Support of Plaintiff's Motion for Award
of Attorneys' Fees and Reimbursement
of Reasonable Expenses**

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

1 I, Matthew K. Brown, declare as follows:
2

3 1. I am an attorney duly admitted to practice before this Court. I am a partner
4 with Payne & Fears LLP, attorneys of record for Plaintiff Dakota Medical, Inc., dba
5 Glenoaks Convalescent Hospital. I have personal knowledge of the facts set forth herein,
6 except as to those stated on information and belief and, as to those, I am informed and
7 believe them to be true. If called as a witness, I could and would competently testify to the
8 matters stated herein.
9

10 2. I have been actively involved in this case since its inception. I have devoted
11 861 total hours working on this matter. While I worked on the case, I contemporaneously
12 logged my time in our firm's billing system. I have reviewed my time entries from the
13 billing system and believe that the time entries accurately reflect my time and work on this
14 case.
15

16 3. As one of the primary members of our litigation team, I handled or assisted
17 with many aspects of this litigation. I participated in the Rule 26 conference and prepared
18 Plaintiffs' Rule 26 report and initial disclosures; helped prepare Plaintiffs' protective
19 motion for class certification; prepared written discovery requests; prepared responses to
20 RehabCare's written discovery; analyzed Defendants' responses and supplemental
21 responses to written discovery; participated in several discovery conferences with
22 opposing counsel and prepared multiple motions to compel discovery and related joint
23 statements; reviewed and analyzed voluminous documents produced by both Cannon and
24 RehabCare; conducted extensive legal research; reviewed and analyzed deposition
25 transcripts; helped prepare Glenoaks' mediation brief; and helped prepare other
26 miscellaneous motions and briefs.
27
28

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1 4. In particular, I personally led our discovery campaign against Cannon. For
2 nearly a year, we continuously engaged in hotly contested discovery battles with Cannon
3 over its fax program and its key affirmative defenses of prior express permission (PEP)
4 and established business relationships (EBR). In my view, Cannon resisted the discovery
5 at every turn. I exhausted all efforts to obtain this critical discovery, including numerous
6 and extensive Local Rule 251 meetings (both written and telephonic), multiple informal
7 telephonic discovery dispute conference with the magistrate judge, and ultimately several
8 motions to compel.

9
10 5. Cannon initially served unverified “responses” to the Plaintiffs’ discovery
11 requests consisting solely of boilerplate objections. We therefore moved to compel. (D.E.
12 66.) After an informal telephonic discovery dispute conference with Magistrate Judge
13 Snyder, Cannon belatedly served supplemental responses. (*See* D.E. 148, Exh. E.)

14
15 6. We believed that Cannon’s supplemental responses to the interrogatories
16 remained deficient because, among other things, they failed to provide the information
17 requested concerning Cannon’s PEP and EBR defenses. We again demanded that Cannon
18 properly answer the discovery. After extensive Local Rule 251 conferences with Cannon’s
19 counsel, and two additional telephonic conferences with Magistrate Judge Snyder, we
20 moved to compel a second time. (D.E. 84.) The Court issued an order granting in part
21 Sunnyside’s motion. (D.E. 97.)

22
23 7. Cannon continued to provide what we believed were deficient supplemental
24 discovery responses. Among other things, I maintained that Cannon’s general assertions
25 of PEP were insufficient, and that Cannon must not only specifically identify any fax
26 recipients who allegedly gave PEP but also identify the specific communications by which
27 they did so.


28

1 8. Consequently, we moved to compel a total of *four* times against Cannon.
2 (D.E. 66, 84, 96, 106.) Each motion was preceded by telephonic and written meet and
3 confer efforts. Facing court orders compelling further responses (D.E. 97, 113), Cannon
4 ultimately served *third* supplemental responses to our interrogatories and requests for
5 production.

6
7 9. We faced similar discovery battles with RehabCare. We met and conferred
8 extensively with RehabCare regarding its refusal to produce PEP discovery, and eventually
9 moved to compel. I assisted in these efforts to obtain discovery from RehabCare.

10
11 I declare under penalty of perjury under the laws of the United States of America
12 that the foregoing is true and correct.

13
14 Executed August 1, 2017, at Irvine, California.

15
16 
17 _____
18 Matthew K. Brown

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