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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.
25
26
27
28

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

Hon. Dale A. Drozd

**Declaration of Philip K. Lem in Support
of Plaintiff's Motion for Final Approval
of Settlement and Certification of
Settlement Class**

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

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1 I, Philip K. Lem, declare:
2

3 1. I am an attorney with the law firm of Payne & Fears LLP, counsel for
4 Plaintiff Dakota Medical, Inc., dba Glenoaks Convalescent Hospital, in this matter. I have
5 personal knowledge of the following facts and, if called as a witness, I would and could
6 competently testify to these facts.
7

8 2. In connection with the motion for final approval of settlement and
9 certification of settlement class, I researched other TCPA class action settlements in the
10 Ninth Circuit since 2010 that have been granted final approval, and that have created
11 common funds larger than \$5 million. I sought to locate every single TCPA settlement
12 that meets this criteria. I started my research with a settlement summary created by Seattle
13 attorney Beth E. Terrell which was filed in connection with the settlement in *Wikins v.*
14 *HSBC Bank Nevada, N.A.*, United States District Court for the Northern District of Illinois
15 Case No. 1:14-cv-00190. Ms. Terrell's settlement summary identifies 73 finally approved
16 class action settlements nationwide since 2010 under the TCPA. *Wikins v. HSBC Bank*
17 *Nevada, N.A.*, Case No. 1:14-cv-00190 JFH-MV, Dkt. No. 107-1 (N.D. Ill. Dec. 5, 2014).
18 From Ms. Terrell's list, I identified settlements larger than \$5 million in the Ninth Circuit.
19 To supplement the list, I performed Westlaw and Google searches to identify additional
20 finally approved TCPA settlements that meet the criteria. I found that most final approval
21 orders are not published in the West reporting system and are available only on PACER.
22 Therefore, after locating settlements that potentially meet the criteria in Westlaw or
23 through Google, I accessed each case's docket on PACER to determine whether the
24 settlement has been finally approved, and whether it creates a common fund larger than \$5
25 million.
26

27 3. From my research, I prepared table 1 in Plaintiff's Memorandum of Law in
28 Support of Plaintiff's Motion for Final Approval of Settlement and Certification of

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1 Settlement Class. This table shows every Ninth Circuit TCPA settlement of \$5 million or
2 greater since 2010, that I was able to identify. I did not omit any settlements that met the
3 criteria from the table.¹ I also reviewed PACER filings from these cases to identify (1) the
4 total common fund created by the settlement; (2) the number of class members; and (3)
5 how the settlement was structured (i.e., whether the settlement was a claims-made
6 settlement, and whether unclaimed funds reverted to the defendant). For most of the
7 settlements, however, all of this information was not contained in the final approval order.
8 Instead, I often found this information in the settlement agreements and/or in the
9 memoranda filed in support of final approval.

10
11 4. The far left hand column in the table reflects the name of the defendant in the
12 settlement. The “Year” column reflects the year the settlement was finally approved. The
13 “Recovery” column reflects the total common fund created by the settlement. The column
14 entitled “Avg./Member” contains the average class member recovery of the settlement
15 which I calculated by dividing the total common fund by the number of class members.
16 Finally, the “Structure” column reflects how the settlement structures payment to class
17 members. “CM” indicates a claims-made settlement. “CM Rev.” indicates a claims-made
18 settlement with some or all unclaimed funds reverting to the defendant.

19
20 5. A detailed list of all cases that are profiled in table 1 in Plaintiff’s
21 Memorandum of Law in Support of Plaintiff’s Motion for Final Approval of Settlement
22 and Certification of Settlement Class is attached to this declaration as Exhibit 1. The
23 citations contained in Exhibit 1 are to the final approval orders in each case populating

24
25 ¹ I did choose not to include the nominal \$7,335,000 settlement approved in this
26 district in *Lambert v. Buth-Na-Bodhaige, Inc.*, because the settlement did not provide for
27 any cash payment to class members. In the *Buth-Na-Bodhaige* settlement, class members
28 did not receive any cash payment; rather claimants received only \$25 gift cards. *Lambert
v. Buth-Na-Bodhaige, Inc., et al.*, Case No. 2:14- cv-00514-MCE-KJN, Dkt. No. 31-1
(E.D. Cal. Oct. 23, 2015).

1 table 1.

2

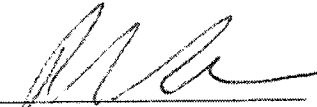
3 I declare under penalty of perjury under the laws of the United States that the
4 foregoing is true and correct.

5

6 Executed this 1st day of August, 2017 at Irvine, California.

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Philip K. Lem

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