

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  
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  
Facsimile: (310) 689-1755

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

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

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.

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

Hon. Dale A. Drozd

**Declaration of Eric M. Kennedy 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**

**[Fed. R. Civ. P. 23]**

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

1 I, Eric M. Kennedy, declare:

2  
3 1. I am an attorney duly licensed to practice in the state of California, and a  
4 former partner at Payne & Fears LLP, attorneys of record for Plaintiff Dakota Medical,  
5 Inc., dba Glenoaks Convalescent Hospital. While at Payne & Fears, I worked on the  
6 above-captioned matter until I left the firm in August 2016. I have personal knowledge of  
7 the facts set forth herein, except as to those stated on information and belief and, as to  
8 those, I am informed and believe them to be true. If called as a witness, I could and would  
9 competently testify to the matters stated herein.

10  
11 1. I worked extensively on all aspects of this case from July 2014 until my  
12 departure from Payne & Fears in September 2016. Overall, I estimate that I spent over  
13 1,000 hours working on this case.

14  
15 2. Among my many responsibilities, I personally led our discovery efforts as to  
16 RehabCare. The discovery was highly contested. RehabCare took aggressive positions on  
17 discovery and several disputes arose. We held numerous and extensive Local Rule 251  
18 conferences (involving both oral and written communications) and multiple telephonic  
19 conferences with Magistrate Judge Snyder, and ultimately filed two motions to compel.  
20 (D.E. 83, 121.) Among other things, we exhausted all possible efforts to obtain discovery  
21 concerning RehabCare's key affirmative defense of prior express permission (PEP).

22  
23 3. I prepared numerous sets of requests for production, interrogatories, and  
24 requests for admission to both RehabCare and Cannon. I reviewed and analyzed all of  
25 RehabCare's responses to written discovery. I also reviewed nearly all the documents  
26 produced by both RehabCare and Cannon. RehabCare produced nearly 30,000 documents,  
27 including numerous multi-page and spreadsheets. Cannon produced nearly 40,000  
28 documents inclusive of transmission and customer data contained in hundreds of

1 spreadsheets.

2  
3 4. As discussed above, I prepared and filed two motions to compel. Both  
4 motions required extensive meet and confer efforts, as well as lengthy joint statements.  
5 The first involved RehabCare's responses to interrogatories concerning PEP. (See ECF  
6 No. 83.) The second involved additional depositions and testimony related to witnesses  
7 designated under Federal Rule 30(b)(6) depositions to testify on behalf of both RehabCare  
8 and Cannon. (See ECF No. 121.) For the latter, I prepared and participated in oral  
9 argument before Judge Snyder. Both motions were highly contested and involved many  
10 hours of research.

11  
12 5. I also coordinated subpoenas to third parties Web.com and Kindred Health  
13 Operating, Inc., including highly technical and extensive document requests in connection  
14 with those subpoenas. Upon receipt, I reviewed and analyzed the documents produced.

15  
16 6. I assisted in preparation for and attended the depositions of Plaintiff's  
17 witness, Henry Levine, as well as Charles Cave of Polaris Group.

18  
19 7. I personally handled four other depositions. Each required significant  
20 preparation and travel time, including in-depth review of previous deposition transcripts.  
21 These depositions include: (1) the Rule 30(b)(6) deposition of Web.com in Jacksonville,  
22 Florida; (2) the deposition of defense witness James Ballard in Louisville, Kentucky; (3)  
23 the deposition of defense witness Joseph Miller in Louisville, Kentucky; (4) the deposition  
24 of WestFax representative Barry Clark in Denver, Colorado.

25  
26 8. I defended the deposition of Plaintiff's expert, Robert Biggerstaff, in Mt.  
27 Pleasant, South Carolina. This deposition required me to procure, review, and coordinate  
28 the production of documents in response to Defendants' document requests to Mr.

1 Biggerstaff.

2  
3 9. I also actively participated in strategy development for this case. I helped  
4 prepare Plaintiffs' protective motion for class certification. I assisted with preparation for  
5 mediation.

6  
7 10. In or about July 2016, RehabCare's counsel informed me that it intended to  
8 file a motion to amend its answer and affirmative defenses in light of the Supreme Court's  
9 decision in *Spokeo, Inc. v. Robins*, in order to allege that Plaintiffs and the proposed class  
10 lacked Article III standing. RehabCare's counsel sent me a draft amended answer. At the  
11 time, however, we were considering amending our complaint, so RehabCare held off  
12 moving for leave to amend. Ultimately, the parties reached a settlement before RehabCare  
13 ever moved for leave to amend its answer.

14  
15 I declare under penalty of perjury under the laws of the United States that the  
16 foregoing is true and correct.

17  
18 Executed August 1, 2017 at Los Angeles, California.

19  
20  
21 

22  
23  
24  
25  
26  
27  
28  

---

Eric M. Kennedy