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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

DAKOTA MEDICAL, INC., individually and on behalf of all others similarly situated, Plaintiff, v. REHABCARE GROUP, INC., *et al.*, Defendants.	Case No.: 1:14-cv-02081-DAD-BAM Judge: Hon. Dale A. Drozd **Declaration of Robert A. Sherwin 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

/ / /

I, Robert A. Sherwin, declare:

1. I am an Affiliate and former Managing Principal and Vice President of Analysis Group, Inc. Analysis Group was founded in 1981 and provides economic, financial, and business strategy consulting to law firms, corporations, and government agencies. In certain engagements, such as this one, I consult as an independent contractor and do not work with or through Analysis Group.

2. I submit this declaration in support of the motion by Plaintiff Glenoaks Convalescent Hospital for final approval of the proposed class-wide settlement of this litigation. I am informed that Glenoaks brought claims against Defendants Cannon & Associates and RehabCare Group, Inc. ("RehabCare"), for sending facsimile advertisements in alleged violation of the Telephone Consumer Protection Act. I also understand that earlier this year, the parties entered a settlement, that if approved, would require Defendants to pay $25 million to a class of all fax recipients.

3. I have been retained by Glenoaks to opine on the ability of a party (here, all fax recipients) to collect a hypothetical judgment against RehabCare that could be entered if case had not settled, went to trial, and RehabCare were found liable to the fax recipients. I was asked to opine, in particular, about the ability of fax recipients to collect a hypothetical $1.2 billion or, alternatively, a $39.12 million judgment, against RehabCare.

4. My opinion is that RehabCare would have no ability to pay a hypothetical $1.2 billion judgment. A judgment of this magnitude would result in certain bankruptcy for RehabCare. It is also my opinion that RehabCare has the likely, but far from certain, ability to pay a $39.12 million judgment. A judgment of this size, however, would be at the upper end of RehabCare's ability to pay and might, instead, result in its bankruptcy.

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1 5. I received a Bachelor's degree in Economics and Physics from Wabash
2 College, and a J.D. from the University of Chicago. My areas of expertise include applied
3 microeconomics and finance, and I have performed research and given expert testimony in
4 matters involving valuation, tax, capital adequacy, and commercial damages. I am a
5 Certified Public Accountant (Illinois), and a member of the American Economic
6 Association and the American and Illinois Bar Associations.
7
8 6. I have often been called upon to give expert testimony in court on valuation,
9 commercial damage, capital adequacy, reasonable royalty, and securities damage matters.
10 My current curriculum vitae is attached to this Declaration. I charge $685 per hour for my
11 work on this matter. Payment of my fees is not contingent upon the outcome of this
12 matter.
13
14 7. My review of public SEC filings shows that RehabCare was acquired by
15 Kindred Healthcare, Inc., on June 1, 2011. RehabCare was an independent, publicly-
16 traded company prior to its acquisition, and Kindred Healthcare was and remains a
17 publicly-traded company. Based on the value paid for RehabCare, it had approximately
18 $900 million in equity value and $400 million in financing (long-term) debt ("debt"
19 hereafter). Thus, its enterprise value was in the neighborhood of $1,300 million. Kindred
20 Healthcare, at the time, had similar values for equity and debt and thus for enterprise value.
21 Kindred Healthcare took on between $700 and $800 million of additional debt to finance
22 the RehabCare acquisition. Prior to the merger, RehabCare was earning about $180
23 million in earnings before interest, depreciation and amortization ("EBITDA") while
24 Kindred Healthcare had EBITDA of about $220 million for 2010.
25
26 8. RehabCare's debt to equity ratio (where equity is the market value of
27 stockholder's equity) was modest at around 45%. In my opinion, RehabCare had
28 considerable ability to add additional debt at that time.

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9. Since the acquisition of RehabCare by Kindred Healthcare, comprehensive financial information is no longer publicly available for RehabCare although the Kindred Healthcare annual reports indicate that RehbCare maintains its own separate corporate existence. Since 2014, Kindred Healthcare has published selected financial information concerning "RehabCare" under is segment reporting concerning "Rehabilitation Services." This information goes back to the year ending 2012 and includes revenue, operating income, and assets, but does not include an indication of the amount of debt carried.

10. I have been told that RehabCare no longer has the hospital operations that it had at the time of acquisition and thus the segment data should be a good indication of its total performance. I will look at the rehabilitation services segment data under the assumption that the only remaining RehabCare operations are in this segment.

11. In addition to the segment data, there are three factors that indicate that RehabCare's ability to satisfy a judgment has been dramatically reduced since the 2011 acquisition.

12. The first factor is that Kindred Healthcare financed the acquisition by nearly doubling the combined debt of Kindred Healthcare and RehabCare premerger to more than $1.5 billion. The immediate effect of this was to raise the debt to equity ratio to 150% (that is, 60% of the financing capital was in the form of debt). In my experience, acquiring companies that maintain the separate corporate existence of the acquired company attempt to place as much of the new debt on the books of the acquired company when increased debt is part of the financing package. Thus, there is reason to believe that RehabCare, as opposed to all of Kindred Healthcare, might be even more highly leveraged and thus even less able to finance an unexpected judgment by borrowing more.

13. The second factor is that the financial performance of Kindred Healthcare

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and, in particular, the segment data for RehabCare has been poor since mid-2011. Although the combined EBITDA of RehabCare and Kindred Healthcare based on premerger performance was on the order of $400 million per year, the actual results for 2011 of their combined operations was only $180 million. In 2016 disaster struck when Kindred Healthcare lost $700 million in that year alone. The performance of RehabCare's rehabilitation segment declined in this period as well. This poor performance is likely responsible for two Moody's downgrades of Kindred Healthcare's debt in 2016. In addition, the effects of its poor performance can be seen in its stock price which is now around one-half of its value seven years earlier despite a considerable run-up in stock prices generally. In a similar vein, I have noted that in February of this year, Kindred Healthcare suspended dividend payments to its stockholders in order to pay debt and to be able to continue making normal capital investments. Finally, Kindred Healthcare recently announced that it was selling its skilled nursing business for approximately $700 million.

14. The third and final factor is the continued deterioration of Kindred Healthcare's financial strength as it has dramatically increased the debt on its balance sheet. Part of this increase is undoubtedly from its acquisition of another competitor, Gentiva, in 2014 and part is from the poor financial performance. But whatever its causes, the result is a balance sheet that currently has nearly $3.4 billion of debt or, based on current stock prices, a debt to equity ratio of approximately 350% (that is, 78% of all financing capital is debt). This is very likely at, or beyond, the borrowing capacity of Kindred Healthcare. In other words, Kindred Healthcare is already at, or has exceeded, its likely borrowing capacity in my opinion.

15. When I examine the segment data that are specific to RehabCare, I find that between 2014 and 2016, RehabCare's rehabilitation business suffered severe financial reversals. Its revenue declined by over 20 percent and its operating income declined by about 40 percent. Its EBITDA was approximately $40 million for the last full year (2016).

Because the analysis presented above indicates that there is very little borrowing capacity for this firm, I find it unlikely that RehabCare could satisfy a judgment for more than one times its earnings.

16. Based on my analysis, I have concluded there is a real limitation on the amount RehabCare could reasonably pay in settlement. In my opinion it would be impossible for the company to satisfy a hypothetical $1.2 billion judgment. Alternatively, I believe that RehabCare would have a reasonable, but far from certain, chance that it could satisfy a hypothetical judgment of $39.12 million. Any judgment of this amount or larger would be pushing the boundaries (or exceeding them) of RehabCare's ability to pay such an amount.[1]

17. Further, whatever might eventually be received by fax recipients could well be years following the trial and the appeals, further reducing the present value of any such judgment. The importance of the time value of money (that is, the cost of delay in the receipt of any judgment) should not be underestimated. For example, the present value of an assumed $39.12 million judgment rendered in September 2019 is $31.29 million, and the present value of such a judgment rendered in September 2020 is $28.11 million. These calculations use an estimated interest (or "discount") rate of 11 percent per annum (compounded semi-annually), which I deem reasonable, if not conservatively low, for unsecured creditors of RehabCare in a hypothetical bankruptcy scenario.

18. Thus, RehabCare had a very credible threat point of requiring the plaintiff class to go to trial. The proposed settlement of $25 million is, in my opinion, in financial terms a superior solution for fax recipients compared with going through trial, appeal and a

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[1] In conducting this analysis, I have considered only assets now held by RehabCare and have not considered RehabCare's recovery under any liability insurance policies.

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potential bankruptcy proceeding.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed July 31, 2017, at Redondo Beach, California.

Robert A. Sherwin

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Documents Relied Upon

2010 to 2016 Forms 10K and Annual Reports for Kindred Healthcare, Inc.

March 2017 Form 10Q for Kindred Healthcare, Inc.

March 2011 Form 10Q for RehabCare Group, Inc.

Declaration of Charles Cave (March 21, 2017)

Kindred Healthcare stock price, site reviewed 7/26/2017
https://www.google.com/search?q=kindred+healthcare+quote&ie=utf-8&oe=utf-8

Moody's downgrades, sites reviewed 7/26/2017
https://www.moodys.com/research/Moodys-downgrades-Kindreds-CFR-to-B2-secured-debt-to-Ba3--PR_357953
https://www.moodys.com/research/Moodys-downgrades-Kindreds-senior-notes-to-B3-B1-CFR-affirmed--PR_350606

Kindred Healthcare's sale of nursing business, site reviewed 7/26/2017
http://investors.kindredhealthcare.com/news-releases/news-release-details/kindred-announces-definitive-agreement-divest-skilled-nursing