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16 Attorneys for Plaintiff Dakota Medical, Inc., dba
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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.

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

Hon. Dale A. Drozd

**Declaration of Gregory Nicoluzakis,
Esq., in Support of Plaintiff's Motions
for Final Approval of Class Settlement
and Certification of Settlement Class**

[Fed. R. Civ. P. 23]

Date: Sept. 7, 2017
Time: 9:30 a.m.
Courtroom: 5

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28 ///

1 I, Gregory Nicoluzakis, Esq., declare:

2
3 1. I am General Counsel of Autumn Corporation (hereinafter “AC”). AC is
4 affiliated with 25 assisted living and skilled nursing and rehabilitation centers in North
5 Carolina and Virginia (the “AC Facilities”). I am authorized to submit this declaration on
6 AC’s behalf and on behalf of AC Facilities. I understand certain AC Facilities are
7 members of the settlement class in this lawsuit and are entitled to receive a share of the
8 settlement fund. I make this declaration in support of the motion to approve the
9 settlement, the motion for class counsel to recover attorneys’ fees and costs, and plaintiff’s
10 request for an incentive award. I have personal knowledge of the following facts, and
11 could testify competently thereto if called as a witness in this action.

12
13 2. I have been General Counsel for AC since March 1, 2016. The AC Facilities
14 are located in North Carolina and Virginia.

15
16 3. I understand that certain AC Facilities were subscribers of telephone
17 numbers that had been sent fax advertisements promoting “Polaris Group” products and
18 services. AC did not agree to receive these faxes, nor, to the best of my knowledge, did
19 anyone at the AC Facilities. The AC Facilities do not like or consent to these types of
20 unsolicited faxes because they tie up business fax machines and unnecessarily waste paper
21 toner, and other resources, including AC Facilities employees’ time.

22
23 4. The AC Facilities may have thrown most of these faxes away as junk mail,
24 but I understand settlement administrator will nevertheless be able to determine how many
25 faxes the AC Facilities received from transmission records produced in this case. Without
26 these records, it appears the AC Facilities would have no way to be compensated.

27
28 5. The AC Facilities support the proposed class settlement. I understand from

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1 the class notice that Defendants agreed to create a \$25 million common fund for the class's
2 benefit. I understand that the law provides for minimum statutory damages of \$500 per
3 violation, but that despite a two-year litigation that wasn't possible to obtain in settlement.
4 Yet the class is still receiving fair, reasonable, and adequate compensation because it is
5 likely that few, if any, of the class members kept copies of junk faxes they received.
6 Under the circumstances, I believe the overall settlement and AC Facilities' recovery are
7 excellent.

8
9 6. I also understand that attorneys' fees will be paid from the class recovery,
10 and that the class attorneys are seeking (1) one third of the fund for attorneys' fees, (2)
11 reimbursement of expenses, and (3) a \$15,000 incentive award for the class representative.
12 If requests are granted, I understand that the AC Facilities that are class members are still
13 projected to collectively receive over \$23,400. This will be a significant award for these
14 facilities. AC and the AC Facilities fully support the requested fees, reimbursement, and
15 incentive award because we believe the request is fair and the class lawyers and class
16 representative obtained an excellent recovery. The fee request generally lines up with how
17 we pay outside counsel on contingency, based on my knowledge of contingent fee work.
18 In fact, my understanding is that a higher percentage is usually paid in contingency cases
19 that are litigated through settlement or trial.

20
21 7. Overall, I appreciate class counsel's and plaintiff's efforts in this case. In
22 fact, the AC Facilities would not have filled out class member information forms and W-9s
23 without the assistance of class counsel. It was helpful that counsel reached out to me
24 directly to assist in presenting the forms on behalf of the AC

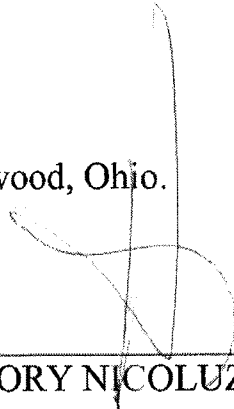
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1 Facilities. I have been working with class counsel to make sure we submit them
2 within the deadline. The result for AC and the settlement administration have both
3 been exemplary.

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

Executed this 28th day of July 2017 at Beachwood, Ohio.



GREGORY NICOLUZAKIS, ESQ.

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