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17 **UNITED STATES DISTRICT COURT**

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

19 DAKOTA MEDICAL, INC.,
20 individually, 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 Vilma Martinez 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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1 I, Vilma Martinez, declare:
2

3 1. I am Vice President and General Counsel at Avanté Group Inc.
4 (“Avanté Group”), which provides legal and back office consulting services to a
5 group of over twenty affiliated assisted living and skilled nursing and rehabilitation
6 centers in the Mid-Atlantic and Southeast United States (“Avanté facilities”). I am
7 authorized to submit this declaration on Avanté Group’s behalf and on behalf of
8 Avanté facilities. Certain Avanté facilities are members of the settlement class in
9 this lawsuit and are entitled to receive a share of the settlement fund. I make this
10 declaration in support of the motion to approve the settlement, the motion for class
11 counsel to recover attorneys’ fees and costs, and plaintiff’s request for an incentive
12 award. I have personal knowledge of the following facts, and could testify
13 competently thereto if called as a witness in this action.
14

15 2. I have been General Counsel for Avanté Group since July 2015. The
16 Avanté facilities are located in Florida, North Carolina, and Virginia. As General
17 Counsel, my responsibilities include working with and overseeing the work of
18 outside counsel, reviewing pleadings and other filings and reviewing legal bills
19 submitted for payment in relation to those filings. Of course, from my career as an
20 in-house lawyer and in private practice as a contingent fee consumer attorney, I am
21 intimately familiar with legal billing generally and, more specifically, with
22 contingent fee cases.
23

24 3. I understand that in the past few years, certain Avanté facilities were
25 sent fax advertisements promoting Polaris Group products and services. Avanté did
26 not agree to receive these faxes, nor, to the best of my knowledge, did anyone at the
27 facilities. Avanté facilities do not like or consent to these types of unsolicited faxes
28 because they tie up business fax machines and unnecessarily waste paper toner, and

1 other resources, including Avanté facilities employees' time.

2
3 4. The Avanté facilities may have thrown most of these faxes away as
4 junk mail, but I understand settlement administrator will nevertheless be able to
5 determine how many faxes Avanté facilities received from transmission records
6 produced in this case. Without these records, it appears the Avanté facilities would
7 have no way to be compensated.

8
9 5. The Avanté facilities support the proposed class settlement. I
10 understand from the class notice that Defendants agreed to create a \$25 million
11 common fund for the class's benefit. I understand that the law provides for
12 minimum statutory damages of \$500 per violation, but that despite a two-year
13 litigation that wasn't possible to obtain in settlement. Yet the class is still receiving
14 fair, reasonable, and adequate compensation because it is likely that few, if any, of
15 the class members kept copies of junk faxes they received. Under the
16 circumstances, I believe the overall settlement and Avanté facilities' recovery are
17 excellent.

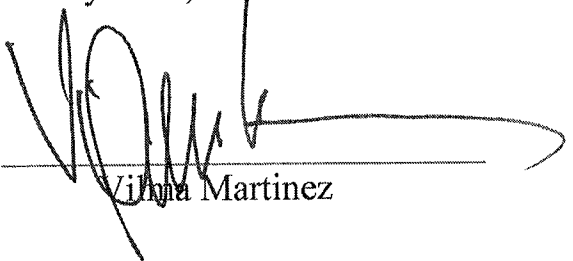
18
19 6. I also understand that attorneys' fees will be paid from the class
20 recovery, and that the class attorneys are seeking (1) one third of the fund for
21 attorneys' fees, (2) reimbursement of expenses, and (3) a \$15,000 incentive award
22 for the class representative. If requests are granted, I understand that the Avanté
23 facilities are still projected to receive over \$30,000. This will be a significant award
24 because *eighteen* Avanté facilities (almost all of them) are class members. Avanté
25 Group and Avanté facilities fully support the requested fees, reimbursement, and
26 incentive award because we believe the request is fair and the class lawyers and
27 class representative obtained an excellent recovery. The fee request generally lines
28 up with how we pay outside counsel on contingency, based on my knowledge of

1 contingent fee work. In fact, my understanding is that a higher percentage is usually
2 paid in contingency cases that are litigated through settlement or trial.

3
4 7. Overall, I appreciate class counsel's and plaintiff's efforts in this case.
5 In fact, the Avanté facilities would not have filled out class member information
6 forms and W-9s without the class assistance of class counsel. It was helpful that
7 counsel reached out to me directly to assist in presenting the forms on behalf of the
8 Avanté facilities. I have been working with class counsel to make sure we submit
9 them within the deadline. The overall result for Avanté is exemplary.

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

13 Executed this 17th day of July 2017 at Hollywood, Florida.

14
15
16
17 
18 Vilma Martinez

18 4826-9124-2313.2

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