

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 James Shelton 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**

1 I, James Shelton, declare:

2  
3 1. I am COO at Central Management Co. (“Central Management”), which  
4 operates a group of 19 affiliated assisted living and skilled nursing and rehabilitation  
5 centers in the Louisiana (“Central Management facilities”). I am authorized to submit this  
6 declaration on Central Management’s behalf and on behalf of Central Management  
7 facilities. I understand certain Central Management facilities are members of the  
8 settlement class in this lawsuit and are entitled to receive a share of the settlement fund. I  
9 make this declaration in support of the motion to approve the settlement, the motion for  
10 class counsel to recover attorneys’ fees and costs, and plaintiff’s request for an incentive  
11 award. I have personal knowledge of the following facts, and could testify competently  
12 thereto if called as a witness in this action.

13  
14 2. I have been COO for Central Management since 2000. The Central  
15 Management facilities are located in Louisiana. Central Management operates 19 skilled  
16 nursing facilities and assisted living centers.

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

25  
26 4. The Central Management facilities may have thrown most of these faxes  
27 away as junk mail, but I understand settlement administrator will nevertheless be able to  
28 determine how many faxes Central Management facilities received from transmission

1 records produced in this case. Without these records, it appears the Central Management  
2 facilities would have no way to be compensated.

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

12  
13 6. I also understand that attorneys' fees will be paid from the class recovery,  
14 and that the class attorneys are seeking (1) one third of the fund for attorneys' fees, (2)  
15 reimbursement of expenses, and (3) a \$15,000 incentive award for the class representative.  
16 If requests are granted, I understand that the 8 Central Management facilities that are class  
17 members are still projected to collectively receive over \$11,700. (*See* Schedule A.) This  
18 will be a significant award for these facilities. Central Management and Central  
19 Management facilities fully support the requested fees, reimbursement, and incentive  
20 award because we believe the request is fair and the class lawyers and class representative  
21 obtained an excellent recovery. The fee request generally lines up with how we pay  
22 outside counsel on contingency, based on my knowledge of contingent fee work. In fact,  
23 my understanding is that a higher percentage is usually paid in contingency cases that are  
24 litigated through settlement or trial.


25  
26 ///

27  
28 ///

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

8  
9           I declare under penalty of perjury under the laws of the United States that the  
10 foregoing is true and correct.

11  
12           Executed this   24th   day of July 2017 at Winnfield, Louisiana.

13  
14             
15           [DECLARANT]

PAYNE & FEARS LLP  
ATTORNEYS AT LAW  
1100 GLENDON AVENUE, SUITE 1250  
LOS ANGELES, CALIFORNIA 90024  
(310) 688-1750