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18 **UNITED STATES DISTRICT COURT**

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

20 DAKOTA MEDICAL, INC.,  
21 individually, and on behalf of all others  
similarly situated,

22 Plaintiff,

23 v.

24 REHABCARE GROUP, INC., *et al.*,

25 Defendants.

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

**Hon. Dale A. Drozd**

**Declaration of Derek Lane 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, Derek Lane, declare:  
2

3 1. I am Registered In-House Counsel for Rockport Healthcare Services.  
4 The facts set forth herein are of my own personal knowledge and if sworn I could  
5 and would testify competently to the same. I am authorized to submit this  
6 declaration on its behalf. I make this declaration in support of the motion to approve  
7 the settlement and the motion for class counsel to recover attorneys' fees and costs.  
8 I have personal knowledge of the following facts, and could testify competently  
9 thereto if called as a witness in this action.  
10

11 2. Rockport has professional and administrative service agreements with  
12 numerous skilled nursing facilities and assisted living facilities, mostly in California.  
13 Rockport provides assistance to these facilities in all aspects of their business  
14 operations. I have been in the Rockport legal department for about six years. In my  
15 current position, among my many responsibilities, I work with and oversee the work  
16 of outside counsel, especially to review legal bills submitted for payment. I have  
17 reviewed hundreds of these invoices.  
18

19 3. I understand that about 50 Rockport facilities were subscribers of  
20 telephone numbers that had been sent fax advertisements promoting "Polaris Group"  
21 products and services. Rockport did not agree to receive these faxes, nor, to the best  
22 of my knowledge, did anyone at the facilities. The facilities do not like or consent  
23 to these types of unsolicited faxes because they tie up business fax machines and  
24 unnecessarily waste paper toner, and other resources, including the employees' time.  
25

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

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

3  
4 5. The facilities support the proposed class settlement. I understand that  
5 the law provides for minimum statutory damages of \$500 per violation, but that full  
6 \$500 recovery was not possible in settlement. The class notice indicates that  
7 defendants Cannon & Associates and RehabCare agreed to pay \$25 million to create  
8 a settlement fund, that Class Counsel may seek up to one third of the settlement fund  
9 to compensate them for attorney fees and costs, and that the plaintiff may seek up to  
10 \$15,000 as an incentive award. This appears to be a significant recovery for the  
11 class.

12  
13 6. I also understand that attorneys' fees will be paid from the class  
14 recovery, and that the class attorneys are seeking (1) one third of the fund for  
15 attorneys' fees, (2) reimbursement of expenses, and (3) a \$15,000 incentive award  
16 for the class representative. I understand that the 50 Rockport facility class  
17 members received thousands of successful fax transmissions and, if the settlement is  
18 approved, are projected to collectively receive about \$80,000, after costs of  
19 settlement administration, attorneys' fees/expenses and incentive awards have been  
20 paid. (*See* Schedule A.) This will be a significant award for these facilities.  
21 Rockport fully supports the requested fees, reimbursement, and incentive award  
22 because we believe the request is fair and the class lawyers and class representative  
23 obtained an excellent recovery. The fee request generally lines up with how we pay  
24 outside counsel on contingency, based on my knowledge of contingent fee work. In  
25 fact, my understanding is that a higher percentage is usually paid in contingency  
26 cases that are litigated through settlement or trial.

27  
28 7. Overall, I appreciate class counsel's and plaintiff's efforts in this case.

1 The Rockport facilities may not have completed their Class Member Information  
2 Forms or W-9s without class counsel. It was helpful that counsel reached out to me  
3 directly to assist in completing the forms. The result for our facilities and the  
4 settlement administration have both been exemplary.

5  
6 I declare under penalty of perjury under the laws of the United States of  
7 America that the foregoing is true and correct.

8  
9 Executed July 31, 2017, in Los Angeles, California.

10  
11 

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13 

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Derek Lane

14 4846-9043-0283.1

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