Dowling Aaron Incorporated
Donald R. Fischbach, Bar No. 053522
dfischbach@dowlingaaron.com
Mark D. Kruthers, Bar No. 179750
mkruthers@dowlingaaron.com
8080 N. Palm Avenue, Third Floor
Fresno, California 93711
Telephone: (559) 432-4500

Payne & Fears LLP
C. Darryl Cordero, Bar No. 126689
cdc@paynefears.com
Scott O. Luskin, Bar No. 238082
sol@paynefears.com
Matthew K. Brown, Bar No. 252503
mkb@paynefears.com
Leilani E. Livingston, Bar No. 298896
llj@paynefears.com
1100 Glendon Avenue, Suite 1250
Los Angeles, California 90024
Telephone: (310) 689-1750
Facsimile: (310) 689-1755

Marko & Magolnick, P.A
Joel S. Magolnick, Bar No. 776068
magolnick@mm-pa.com
3001 S.W. 3rd Avenue
Miami, Florida 33129
Telephone: 305-740-1967

Attorneys for Plaintiff Dakota Medical, Inc., dba Glenoaks Convalescent Hospital

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

Hon. Dale A. Drozd

Plaintiff's Memorandum of Points and Authorities in Support of Motion for Award of Attorneys' Fees and Reimbursement of Reasonable Expenses

Date: Sept. 7, 2017
Time: 9:30 A.M.
Courtroom: 5

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

Table of Contents

Page

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

Table of Authorities

Page

Cases

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

Table of Authorities
(continued)

Page

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

Table of Authorities
(continued)

Page

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

Table of Authorities
(continued)

Page

Statutes

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

Table of Authorities
(continued)

Page

Other Authorities

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

Introduction

Class counsel achieved a $25 million recovery for over 12,000 skilled nursing facilities that had been besieged with "Polaris Group" junk faxes. It is the largest ever junk fax recovery in this circuit, measured by total settlement fund and by recovery per class member. The entire settlement fund, after fees and costs are deducted, will be automatically distributed to class members, who will not have to submit claims or even prove they received any fax transmissions. By any metric, this settlement is a tremendous success for the class.

Even more remarkable is that this case succeeded where prior legal efforts to obtain relief for the facilities had failed. Attorneys for Defendants Cannon & Associates and RehabCare Group had twice routed class-wide claims for the same junk faxes. The class attorneys assumed enormous risks to prosecute this case on a pure contingency.

Settlement did not come early or easily. Discovery consumed tremendous time and resources. It involved, among other things, taking or defending thirteen depositions across the country, reviewing tens of thousands of documents produced by defendants, engaging in countless discovery conferences, and filing multiple motions to compel. Class counsel also had to skillfully navigate numerous thorny legal issues and novel defenses asserted by two defense teams of the highest caliber.

For their efforts, class counsel request an award of attorneys' fees equal to one-third the common fund. This request is well justified under Ninth Circuit standards, especially given the exceptional result obtained and the massive undertaking to achieve it. The average class member recovery dwarfs by many orders of magnitude the recoveries in nearly every comparable settlement. It compares favorably to other TCPA settlements in this circuit, in which courts have awarded class attorneys one-third as fees. And numerous

class members, many with large stakes in the outcome, have stepped forward to support class counsel's fee request.

The requested fees are also amply bolstered by a lodestar cross-check. The class attorneys devoted considerable time, energy and resources to prosecute TCPA claims against two motivated Defendants, backed by highly-skilled legal defense teams. Because the class attorneys' lodestar equivalent is 2,970,000, the requested fee produces an implied multiplier of 2.8, well within the range customarily approved in the Ninth Circuit and nationwide.

Class Counsel's Work on Behalf of the Class

As this Court recognized in granting preliminary approval, the "court's docket reflects extensive litigation of this suit." (Doc. No. 177 at 2.) The Court's description is accurate. The parties battled in all aspects of the litigation, throughout discovery, class certification and dispositive motions. (*See, e.g.*, Doc. Nos. 83, 84, 97, 101-1, 106, 113.) Class counsel faced off against the highest caliber defense counsel, all having extensive class action experience. RehabCare assembled a formidable defense team led by Jon Wilson of Broad and Cassel, a veteran litigator, and Oliver Wanger, a former judge in this district. Cannon engaged David Jordan of Gordan & Rees, an experienced class action attorney.

After litigating against Defendants and their formidable legal teams for over two years, the class attorneys ultimately achieved a substantial recovery for the class. Glenoaks and class counsel utilized the information they obtained—70,000 documents, 900 pages of written discovery responses, and testimony from eight individuals—and the leverage from a pending class certification motion to achieve the third largest TCPA/junk fax settlement ever. (Cordero Decl. ¶ 4.)

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

Argument

I. Class Counsel Are Entitled to Recover a Reasonable Fee from the Settlement Fund

It is by now axiomatic that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The purpose of this doctrine is that "those who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it." *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994). To determine the appropriate fee, the district court may apply one of two methods: the percentage method or the lodestar method. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). "Under either approach, reasonableness is the goal, and mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion. [internal quotes and citations omitted]." *Mitchinson v. Love's Travel Stops & Country Stores, Inc.*, No. 1:15-CV-01474-DAD-BAM, 2017 WL 2289342, at *6 (E.D. Cal. May 25, 2017) (Drozd, J.).

Class counsel believe that the percentage method is appropriate in this contingency representation. Although courts in this circuit can use the lodestar method, "[t]he percentage-of-recovery method is favored in common-fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure." *Alberto v. GMRI, Inc.*, No. 07-cv-1895-WBS-DAD, 2008 WL 4891201, at *11 (E.D. Cal. Nov. 12, 2008) (Shubb, J.). There is a "general trend towards the percentage of the fund method to award class attorneys' fees," because it "aligns the interests of counsel and the class by allowing class counsel to directly benefit from increasing the size of the class fund." *Craft v. County of San Bernardino*, 624 F. Supp. 2d

1113, 1123 (C.D. Cal. 2008) (citations omitted).

This Court consistently applies the percentage method with a lodestar cross-check. *Mitchinson*, 2017 WL 2289342, at *7; *Aguilar v. Wawona Frozen Foods*, No. 1:15-cv-00093-DAD-EPG, 2017 WL 2214936, at *5 (E.D. Cal. May 19, 2017) (Drozd, J.); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, No. 1:13-CV-00474-DAD-BAM, 2017 WL 749018, at *7 (E.D. Cal. Feb. 27, 2017) (Drozd, J.); *Taylor v. FedEx Freight, Inc.*, No. 1:13-CV-01137-DAD-BAM, 2016 WL 6038949, at *6 (E.D. Cal. Oct. 13, 2016) (Drozd, J.).[1] There is no reason to treat this case differently.

II. One Third of the Settlement Fund Is a Reasonable Fee

Class counsel seek one-third of the $25 million settlement fund as their attorneys' fees. This request is reasonable and justified under applicable Ninth Circuit standards. Although the Ninth Circuit has observed that 25 percent is a proper benchmark, it is only the starting point from which the fee may "be adjusted upward or downward to account for any unusual circumstances" involved in the case. *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989). "[I]n most common fund cases, the award exceeds th[e] benchmark." *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 448 (E.D. Cal. 2013) (Oberto, J.) (quoting *Knight v. Red Door Salons, Inc.*, No. 08–01520 SC, 2009 WL 248367, at *3 (N.D. Cal. Feb. 2, 2009)); *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008). And fee recoveries equal to one third of the common fund have been frequently affirmed by the Ninth Circuit. *See, e.g., Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 457, 460 (9th Cir. 2000); *In re Pacific Enters. Secs. Litig.*,

[1] A lodestar cross-check is not required. *Lopez v. Youngblood*, No. CV-F-07-0474 DLB, 2011 WL 10483569, at *14 (E.D. Cal. Sept. 2, 2011) (Beck, J.). "[I]n a case such as this [with an all cash fund], is not a useful reference point." *Id.* (citing *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at *16 (N.D. Cal. Jan. 26, 2007)).

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

47 F.3d 373, 379 (9th Cir. 1995).

To assess the reasonableness of a class attorney's fee request, this Court applies the factors recently stressed by the Ninth Circuit: (1) the extent to which class counsel achieved exceptional results for the class, (2) whether the case was risky for class counsel, (3) the market rate in comparable cases for the particular field of law, (4) the burdens class counsel experienced while litigating the case, and (5) whether the case was handled on a contingency basis. *See, e.g., Taylor*, 2016 WL 6038949, at *6 (quoting *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015)). The Court also considers counsel's skill and experience, the complexity of the issues, and the reaction of the class. *See, e.g., Mitchinson*, 2017 WL 2289342, at *7.

The requested fee here measures very well against these standards. It is justified by the substantial value class counsel obtained for the class; it is supported by the considerable risks class counsel assumed in bringing this case; it is in line with the market rate in comparable TCPA class settlements; it reflects the extensive burdens litigating the case on an contingency basis; it is the product of negotiations by skilled and experienced advocates; and it is fully backed by the class members.

A. Class Counsel Obtained an Exceptional Result

The "most critical factor" in evaluating reasonable attorneys' fees "is the degree of success obtained" by class counsel. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *see also Vizcaino*, 290 F.3d at 1048. This factor weighs heavily in favor of the requested fee. The $25 million recovery represents a degree of success unparalleled in junk fax litigation in this circuit. It is remarkable not only for its size – it is believed to be the third largest junk fax settlement in the history of the TCPA – but also for its fair and equitable distribution to the class.

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

The settlement averages $1,943 per class member and, if fees and costs are approved in the requested amount, a $1,339 average member recovery. The per-member recovery eclipses all but one obtained in recent large TCPA settlements in this circuit. (*See* Doc. No. 179-1, p. 15; Lem Decl. ¶¶ 2-5.) It is also several orders of magnitude larger than other large Ninth Circuit TCPA recoveries. (*Id.*) That the "average award per class member is significantly higher than most awards in similar cases…weighs heavily in favor of granting the requested fees award." *Millan v. Cascade Water Servs., Inc*., No. 1:12-cv-01821-AWI-EPG, 2016 WL 3077710, at *10 (E.D. Cal. May 31, 2016) (Ishii, J.) (awarding class attorneys 33 percent of common fund).

Perhaps most importantly, the settlement here automatically distributes the entire common fund (after fees and costs are deducted) to class members, with no funds reverting to Defendants. (Doc. No. 171 § 11.) By contrast, each of the "comparable" settlements contain claims-made structures, with many reverting unclaimed funds to the defendant. Because consumer class actions experience extremely low claims rates, an automatic distribution is far more likely to provide meaningful compensation to the class. *See* Brian T. Fitzpatrick & Robert C. Gilbert, *An Empirical Look at Compensation in Consumer Class Actions*, 11 N.Y.U. J.L. & Bus. 767, 770 (2015). Low claim rates in reversionary settlements, particularly in consumer cases, generally enable defendants to retain significant portions of the "maximum potential recovery" they had theoretically committed to pay. *See* DEBORAH H. HENSLER, ET AL., CLASS ACTION DILEMMAS: PURSING PUBLIC GOALS FOR PRIVATE GAIN (Rand 2000); *see also In re TJX Cos. Retail Sec'y Breach Litig*., 584 F. Supp. 2d 395, 405 (D. Mass. 2008). That won't happen here.

Numerous "comparable" TCPA settlements have imposed arbitrary ceilings on class members' recoveries, further depressing the actual class recovery. *See, e.g., Palmer v. Sprint*, 09-cv-01211, Doc. No. 61-8 (W.D. Wash. April 26, 2011) (recovery capped at $2,000); *Pimental v. Google, Inc. et al*., 4:11-cv-02585, Doc. No. 84-1 (N.D. Cal. Oct. 5,

2012) (recovery capped at $500); *Arthur v. Sallie Mae, Inc*., 2:10-cv-00198, Doc. No. 184-1 (W.D. Wash. Oct. 11, 2011) (recovery capped at $500); *Satterfield v. Simon & Schuster, Inc*., 4:06-cv-02893, Doc. No. 112-1 (N.D. Cal. Feb. 17, 2010) (recovery capped at $175). Here, by contrast, class members will be paid for all junk faxes they received, with no cap on their payouts.

This automatic distribution, non-reversionary settlement provides an actual $25 million recovery for the class, unlike the "maximum potential recovery" that is never reached in other TCPA settlements due to a low claims rates and arbitrary caps on member recoveries. This reflects a high degree of success obtained, particularly *vis a vis* other comparable settlements. This factor weighs heavily in support of the requested fee.

B. Class Counsel Faced a Substantial Risk of Non-Payment

Class counsel assumed a high degree of risk in taking this case on a pure contingency basis. This substantial risk is "a relevant factor in addressing the proposed fee award" under the percentage method. *In re Immune Response Secs. Litig.*, 497 F. Supp. 2d 1166, 1175-76 (S.D. Cal. 2007) (citing *Pacific Enterprises,* 47 F.3d at 379). "[A]ttorneys whose compensation depends on their winning the case must make up in compensation in the cases they win for the lack of compensation in the cases they lose." *Vizcaino*, 290 F.3d at 1051. The risks here justify the one-third fee request.

The class attorneys confronted daunting risks from the very beginning. *See Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997, 1009 (9th Cir. 2002) (risks should be assessed at the outset). Cannon and RehabCare had a track record of successfully defending the "Polaris Group" fax advertising program, defeating two previous attempts to obtain class-wide relief. (*See* Doc. No. 172-2 (Cordero Decl.) ¶¶ 7-8 (citing the *Ballard v. Polaris Group* and *Pines Nursing Home (77), Inc. v. RehabCare Group, Inc*., matters).)

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

All three firms accepted this challenge on a pure contingency, diverting their resources from standard hourly billing matters. (Cordero Decl. ¶ 9; Magolnick Decl. ¶¶ 7, 12; Fischbach Decl. ¶¶ 6, 9.) Each risked a complete loss unless they could succeed where others before had failed.

In this context, "risk should be assessed when an attorney determines that there is merit to the client's claim and elects to pursue the claim on the client's behalf." *Fischel*, 307 F.3d. at 1009. When class counsel elected to pursue this case, they confronted several risks. Any of these factual and legal issues could have foreclosed recovery: (1) the risk that Glenoaks wouldn't have standing under the TCPA;[2] (2) the risk that the FCC's regulation requiring opt-out disclosure on solicited faxes would be invalidated;[3] (3) the risk that Defendants could establish that they received express permission to send the faxes (Doc. No. 172-2, ¶ 30); (4) the risk that Rehabcare would not be liable for the "Polaris Group" fax program, leaving only judgment-proof Cannon as a party (*see* Doc. Nos. 157-3, 162)[4]; (5) the risk that Defendants could defeat class certification;[5] and (6) the risk that

---

[2] At the time standing for plaintiffs pursuing statutory violations had been challenged, and a petition to the Supreme Court was pending. *Spokeo, Inc. v. Robins,* No. 13-1339, 2014 WL 1802228 (U.S.), 1 (U.S. Pet. filed May 1, 2014). Eighteen months later, the Supreme Court issued an opinion clarifying and confirming the standing requirements. *Spokeo, Inc. v. Robins,* 136 S. Ct. 1540, 1543 (2016), *as revised* (May 24, 2016). Shortly afterward, Defendants announced that they intended to amend their answers to assert Glenoaks lacked Article III standing for failing to identify a concrete injury. (Kennedy Decl. ¶ 10.) While almost every post-*Spokeo* decision confirmed that TCPA plaintiffs have standing, it was a risk at the time of filing.

[3] Glenoaks had charged defendants with violating the FCC regulation requiring opt-out disclosures on *all* faxes, whether solicited or unsolicited. (*See* Doc. No. 1, ¶ 30.) At the time, several parties had challenged the validity of the FCC's regulation requiring opt-out disclosures on solicited advertisements. *Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 29 F.C.C. Rcd. 13998, 14002 ¶ 10 (Oct. 30, 2014). Cannon even received a waiver from the rule requiring opt-outs on solicited faxes. FCC 14-164, Order, ¶ 36. Earlier this year the risk of total invalidation turned to reality with the issuance of the District of Columbia Circuit's ruling earlier this year in *Bais Yaakov*. *See Bais Yaakov of Spring Valley v. Fed. Commc'ns Comm'n,* 852 F.3d 1078 (D.C. Cir. 2017). There, the D.C. Circuit held that the FCC exceeded its authority under the TCPA to issue the regulation, and voided the regulation. *Id*. at 1083.

[4] At the outset, class counsel were unaware that RehabCare had spun off Cannon to (footnote continued)

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

RehabCare, even if ultimately liable for the Polaris Group faxes, wouldn't be able to satisfy the resulting judgment.

The substantial risks class counsel faced at the case's inception—possibly resulting in no fees for counsel's efforts—also heavily supports the fee request.

C. The Requested Award Is Consistent With Fee Recoveries in Comparable Cases

The fee requested by class counsel is also amply supported by comparison to awards in similar cases, another critical factor. *See Taylor*, 2016 WL 6038949, at *6. As discussed in the memorandum in support of final approval, this settlement compares favorably with other large TCPA settlements in this circuit. (*See* Doc. No. 179-1, p. 15.)

Take, for instance, the recent *Vandervort* class litigation in the Central District. *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200 (C.D. Cal. 2014). There, the court deemed "exceptional" a TCPA/junk fax recovery that *might reach* $3.3 million, and awarded fees equal to one-third of this maximum *potential* recovery. *Id*. at 1209. The *Vandervort* class was guaranteed only $2.3 million, however; the settlement could reach $3.3 million only through an extraordinary claim rate. *Id*. at 1204. And the settlement

---

Charles Cave, which significantly reduced the company's financial backing. They were also unaware of Cannon's precarious financial condition. As the Court recognized in its preliminary approval decision, Cannon's liabilities exceed its assets. (*See* Doc. No. 177, pp. 10-11 (citing Doc. No. 172-11 (Cave Decl.) ¶¶ 2-7).)

[5] "[T]here are no invariable rules regarding the suitability of a particular case filed under this subsection of the TCPA for class treatment; the unique facts of each case generally will determine whether certification is proper." *Gene and Gene, LLC v. BioPay, LLC*, 541 F.3d 318, 328 (5th Cir. 2008). Although a majority of courts have certified TCPA/junk fax classes, many have not. *See, e.g.*, *Sandusky Wellness Ctr. v. ASD Specialty Healthcare, Inc.*, No. 16-3741, __F.3d___, 2017 WL 2953039, at *6 (6th Cir. July 11, 2017); *Gene and Gene*, 541 F.3d at 327; *Carnett's, Inc. v. Hammond*, 610 S.E.2d 529, 532 (Ga. Ct. App. 2005).

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

didn't make this easy by imposing caps on amounts class members could recover, regardless of the number of junk faxes they received. *Vandervort v. Balboa Capital Corp.*, No. SACV 11-1578-JLS, Doc. No. 120-1, at 13:4-5 (C.D. Cal. Jan. 20, 2014). This settlement surpasses *Vandervort* by every measure. The *Vandervort* settlement averaged only $57 per class member, assuming *all* members made claims to hit the maximum settlement value; here, the average class member will recover $1,339. In *Vandervort*, class members were required to produce the faxes or declare under penalty of perjury that they received them to recover (*Vandervort*, 8 F. Supp. 3d at 1204); our class members can participate without having to submit proof of any kind. If the "exceptional result" in *Vandervort* supported one third of a hypothetical fund "ceiling" that might never be attained, the same percentage of a guaranteed, non-reversionary fund is no less justified.[6]

This result also compares favorably with another large TCPA settlement in this circuit, *Hageman v. AT&T Mobility LLC.* In that matter, the court awarded $15 million as attorneys' fees, equating to one-third of the $45 million recovery. *Hageman v. AT&T Mobility LLC*, No. 13-cv-00050-BLG-RWA, 2015 WL 9855925, at *5-6 (D. Mont. Feb. 11, 2015). The settlement averaged $2,812 per class member. The court granted one-third as attorneys' fees because it regarded the result as "extraordinary." *Id.* at *4. Class counsel here faced far greater challenges. Unlike *AT&T,* Cannon and RehabCare do not have the deep pockets of the second-largest cell phone provider in the country. That

---

[6] The Ninth Circuit has instructed that fees be awarded based on the maximum *potential* class recovery, rather than the amount *actually* paid by the defendant. *See Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997). For this reason, in claims-made settlements, attorneys' fees typically represent a substantially higher percentage of the amount actually paid by the defendant. *See, e.g., Couser v. Aprio Healthcare Inc.*, 13-cv-00035-JVS-RNB, Doc. No. 50, n.3 (C.D. Cal. Mar. 9, 2015). In one recent large TCPA/junk fax settlement (Stericycle), for example, a claims-made, reversionary structure produced a $15.2 million payment for attorneys' fees and incentive awards, outstripping the $13 million paid to class members that submitted claims. (*See* http://www.snl.com/Cache/c33402832.html, pp. 80-81, visited July 30, 2017.) Here, by contrast, class counsel seek one third of what Defendants will actually pay.

matter also didn't encounter the difficult RehabCare "sender" and vicarious liability issues present in this case. *See Hageman*, Doc. No. 60, at 12-14. The result achieved in this case under much more difficult circumstances is certainly on par with *AT&T*.

D. Class Counsel Experienced Numerous Burdens Litigating the Case

The class's extraordinary recovery did not come easily. Class counsel obtained it through two years of hard-fought litigation against highly skilled adversaries. The docket is packed with numerous motions and associated legal briefs. (*See* Doc. No. 100-1 ¶¶ 2-11; Cordero Decl. ¶ 14.) Because this a contingency case, the class attorneys bore the entire cost of this matter for a protracted period. Class attorneys and their firms expended over 5,800 hours (Cordero Decl. ¶¶ 12-13, Ex. B; Fischbach Decl. ¶ 9; Magolnick Decl. ¶ 13), which "necessarily require[d] Class Counsel to eschew other work in order to devote their energies to this case, which was intensely opposed and fervently litigated." *Aguilar*, 2017 WL 2214936, at *5.

Aguilar, a recent decision by this Court, is instructive. The Court found that a one-third fee was warranted by the level of opposition encountered, the 1,600 hours invested by the attorneys, more than 50,000 pages of documents reviewed, four depositions, and two mediations conducted prior to settlement. *Aguilar*, 2017 WL 2214936, at *5. This litigation was far more intensive. Here, class counsel and their respective firms took or defended 13 depositions in five states, reviewed over 70,000 documents and 900 pages of written discovery responses, engaged multiple experts, participated in multiple mediations, and extensively negotiated the class settlement agreement before achieving a recovery. (Doc. No. 172-2 ¶¶ 5-6.) Class counsel were opposed by veteran legal defense teams of the highest caliber, including a former judge in this Court. These considerable efforts against highly-skilled adversaries supports the requested fee. *Aguilar*, 2017 WL 2214936 at *5; *see Cohorst v. BRE Props., Inc.*, No. 3:10-CV-2666-JM-BGS, 2011 WL 7061923, at

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

*20 (S.D. Cal. Nov. 14, 2011), report and recommendation adopted as modified, No. 10CV2666 JM BGS, 2012 WL 153754 (S.D. Cal. Jan. 18, 2012) (citing *In re Equity Funding Corp. of Am. Secs. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977)).

E. Class Counsel Took the Case on Contingency

The three firms representing the class typically serve clients under standard hourly billing arrangements, but they elected to pursue this case on behalf of the class on a purely contingent basis. (Cordero Decl. ¶ 9; Magolnick Decl. ¶¶ 7, 12; Fischbach Decl. ¶¶ 6,9.) Class counsel's willingness to proceed under these circumstances—even though two prior cases had failed—also supports the requested award. *Taylor,* 2016 WL 6038949, at *6.

F. Class Counsel's Skill and Experience Support the Requested Award

The experience and skill of class counsel in this area also supports the requested fee. Courts, including this Court, consider the support of seasoned litigators in awarding fees. *See, e.g., Emmons,* 2017 WL 749018, at *7. The entire team here includes veteran business and class action attorneys. The lead partners at each firm have over 108 years of experience. (Fischbach Decl. ¶ 5; Magolnick Decl. ¶ 2; Cordero Decl. ¶ 18.) Payne & Fears alone has successfully prosecuted numerous class cases nationwide, including TCPA/junk fax actions. (Cordero Decl. ¶¶ 18-20.)

G. The Issues Were Complex

This was far from a straightforward, run-of-the-mill junk TCPA case. Class counsel confronted a host of complex issues that are not typically present in an ordinary TCPA lawsuit, any one of which could have sunk the class's prospects for recovery. Among these were: (1) the complex business relationships between RehabCare and Cannon, and

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

the role Kindred Healthcare, Inc., took after acquiring RehabCare and its subsidiaries in June 2011 (Doc. No. 149-1 at 22:25-24:20; 25:16-23, 26:5-27:3, 27:9-28:2, 40:8-24; Cordero Decl. ¶ 6); (2) the defense that a class could not be certified because WestFax did not always use a "regular telephone line" to broadcast the faxes (Doc. No. 172-2, ¶ 28); (3) whether claims concerning the "RehabCare Group" products were barred by limitations, or whether limitations were tolled; and (4) the extent to which Defendants could fund a potential class-wide judgment.

The complex and unique issues presented in this case support the requested award. *See Pacific Enterprises,* 47 F.3d at 379 (upholding one third award principally "because of the complexity of the issues and the risks"); *Lopez*, 2011 WL 10483569 at *5, 12; *Keller v. Elec. Arts, Inc.*, No. 4:09-cv-1967 CW, 2015 WL 5005057, at *3 (N.D. Cal. Aug. 18, 2015).

H. The Class Supports the Requested Fees

The class's reaction to settlement has been uniformly positive and supportive of the requested fees. *See Fischel*, 307 F.3d at 1007-08 (citing *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000)). The class notices informed members that class counsel would seek fees in an amount up to one third of the total recovery and that fees would be paid from the settlement fund. (Doc. No. 171, Ex. 1.) The notices informed members they could exclude themselves from the class or object to the settlement, including the requested fees, and how to make objections. (*Id.*)

To date, no class members have objected to the settlement or the fees.[7] (Jue Decl.

[7] Under the Court's preliminary approval order, class members have until August 17 in which to object to final settlement approval or the motion for reimbursement of attorneys' fees and costs. (*See* Doc. No. 177, p. 20.)

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

10.) Only one member opted out, a tiny fraction of a 12,876-member class. (Jue Decl. ¶ 9.)

To the contrary, numerous class members—including many with large stakes in this settlement—have expressed strong support for class counsel's fee request. (*See* Anderson Decl. ¶¶ 5-6 (38 Plum Healthcare Group facilities); Cranwell Decl. ¶¶ 5-6 (12 American HealthCare facilities); Creagh Decl. ¶ 6 (6 Grane Healthcare facilities); Grayson Decl. ¶ 6 (California Armenian Home); Hunter Decl. ¶¶ 5-7 (2 Brooke Grove Foundation facilities); Lane Decl. ¶¶ 5-6 (50 Rockport contracted facilities); Martinez Decl. ¶¶ 5-6 (20 Avante facilities); Nicoluzakis Decl. ¶ 6 (15 Autumn Corp. facilities); Pierce Decl. ¶¶ 5-8 (219 Golden Living facilities); Robinson Decl. ¶ 6 (36 Orianna Health System facilities); Sable Decl. ¶¶ 5-6 (20+ Windsor); Shelton Decl. ¶ 6 (8 Central Management facilities); Williams Decl. ¶ 6 (85 Evangelical Lutheran facilities).) These members appreciate the efforts by Glenoaks and class counsel to obtain compensation for junk faxes that disrupted their businesses. These are sophisticated enterprises—almost all are large health care systems that routinely hire outside counsel—and are fully capable of evaluating the requested fees, knowing payment will be made from their gross recovery. (*See, e.g.,* Sable Decl. ¶¶ 2, 6.) The fact that well-informed class members approve the requested fee weighs in its favor.

I. A Lodestar Cross-Check Supports the Requested Fees

Although courts often cross check the presumptive percentage fee with a lodestar analysis, the Court is not required to perform a cross-check. *Lewis v. Starbucks Corp.*, No. 2:07-cv-00490-MCE-DAD, 2008 WL 4196690, at *7 (E.D. Cal. Sept. 11, 2008) (England, J.); *Lopez*, 2011 WL 10483569, at *14. If the Court finds the fee reasonable as a percentage of the recovery, it may stop there. We recognize, however, the Court's practice to cross-check the requested fee against the class attorneys' lodestar, so we have provided the necessary data. *See, e.g., Aguilar*, 2017 WL 2214936, at *6-8.

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

The purpose of a lodestar cross-check is to identify potential windfall fees, *i.e.*, to "ensure that the percentage approach does not lead to a fee that represents an extraordinary lodestar multiple." *In re Cendant Corp. Secs. Litig.*, 404 F.3d 173, 188 (3d Cir. 2005). In performing a lodestar calculation, a court examines "(1) counsel's reasonable hours, (2) counsel's reasonable hourly rate, and (3) a multiplier thought to compensate for various factors..." *Young v. Polo Retail, LLC*, No. C 02 4546 VRW, 2007 WL 951821, at *6 (N.D. Cal. Mar. 28, 2007). But because "the lodestar cross-check calculation need entail neither mathematical precision nor bean counting," *Aguilar*, 2017 WL 2214936, at *6 (quoting *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 264 (N.D. Cal. 2015)), a court may "rely on summaries submitted by the attorneys and need not review actual billing records." *In re Rite Aid Sec. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005); *see, e.g.*, *Aguilar*, 2017 WL 2214936, at *6 (relying on time summaries provided by class attorneys). Here, the lodestar calculation strongly supports the requested fees.

1. The $2.97 million base lodestar

The base lodestar is $2.97 million, as shown in table 1.

TABLE 1.—*Lodestar Summary*

Professional	Rate	Hours	Lodestar
P&F Attorneys			
Cordero	775	1,244.6	964,565
Kennedy	560	1,037.7	581,112
Luskin	470	533.9	250,933
Brown	470	864.1	406,127
Lem	445	241.8	107,601
Jones	320	441.7	141,344
Others	466	332.4	154,830
P&F Paralegals	215	707.1	152,027
P&F Subtotal		5,403.3	2,758,539
DAI Attorneys			
Aaron	485	.7	339
Fischbach	460	274.5	126,270
Kruthers	410	36.3	14,883
Others			
M&M (Magolnick)	550	132.0	72,600
Total		**5,844.3**	**2,972,631**[8]

[8] These rates represent the class attorneys' current hourly charges. (Fischbach Decl. (footnote continued)

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

2. The hours expended by class counsel are reasonable

Under the lodestar method, class counsel are compensated for "all hours reasonably spent on the matter." *Charlebois,* 993 F. Supp. 2d at 1115. Class counsel and their respective law firms devoted substantial hours to developing and prosecuting the case. Altogether, 5,137 attorney hours – including 1,648 hours by class counsel and 3,489 hours by other partners and associates in their firms – have been dedicated to this case. (Cordero Decl. ¶¶ 12-13, Ex. B (4,696 P&F attorney hours, 707 paralegal hours); Fischbach Decl. ¶ 9 (311.5 DAI attorney hours); Magolnick Decl. ¶ 13 (132 hours).) The class attorneys aggressively pursued discovery over vigorous defense objections; participated in numerous informal discovery conferences; successfully moved to compel discovery; reviewed tens of thousands of documents produced by Defendants and third parties; took and defended 13 depositions nationwide, retained and deposed expert witnesses; attended two mediations; briefed and filed two class certification motions; drafted and negotiated a class settlement agreement over more than three months; moved for and obtaining preliminary approval; sought final approval; and participated in the settlement administration process. (*See* Cordero Decl. ¶ 14.) All work was performed by a core group of attorneys.

3. Class counsel's standard rates are reasonable

In determining the appropriate rate for the lodestar computation, the Court "should be guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." *Chalmers v. Los Angeles*, 796 F.2d 1205,

---

¶¶ 9, 11; Cordero Decl. ¶ 13; Magolnick Decl. ¶ 12.) "This is appropriate because, for the fee award to be reasonable, it must be based on current, rather than historic, hourly rates." *Charlebois v. Angels Baseball LP*, 993 F. Supp. 2d 1109, 1119 fn. 6 (C.D. Cal. 2012). "Hours" are those worked through July 28, 2017. They do not include time for work on the attorneys' fees motion or the motion for incentive award.

1210 (9th Cir. 1986). This is typically the forum in which the district court sits. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). A court should still be mindful of the rates awarded in other judicial districts in California. *Adoma v. University of Phoenix, Inc.*, 913 F. Supp. 2d 964, 984 (E.D. Cal. 2012) (Karlton, J.). Evidence of market rates may be established through declarations of counsel and rate determinations in other cases. *See Bouman v. Block*, 940 F.2d 1211, 1235 (9th Cir. 1991).

The hourly rates used to calculate the base lodestar are those customarily charged by class counsel in standard billable matters of similar complexity. (Cordero Decl. ¶ 13; Fischbach Decl. ¶ 9; Magolnick Decl. ¶ 13.) They are basically all within the range of rates approved by this Court as well as in other courts within this district. Courts in this district have accepted hourly rates between $370 and $525 for associates and between $545 and $720 for partners.[9] *Aguilar*, 2017 WL 2214936, at *6; *see also Taylor*, 2016 WL 6038949, at *7 ($525/hour for senior associates and $700/hour for senior partner); *Castillo v. ADT, LLC*, No. 2:15-383 WBS DB, 2017 WL 363108, at *7 (E.D. Cal. Jan. 25, 2017) (Shubb, J.) (approving $650/hr. rate for partners); *Barbosa*, 297 F.R.D. at 452 (awarding between $280 and $560/hr. for attorneys with two to eight years of experience, and $720/hr. for attorney with 21 years of experience); *Gong–Chun v. Aetna Inc.*, No. 1:09-cv-01995-SKO, 2012 WL 2872788, at *23 (E.D. Cal. July 12, 2012) (Oberto, J.). Class counsel's rates are generally on the low end, with associate rates ranging between $305 and $445, and even $470 rates for several partners, well below the bottom end of the $545 partner range. (Cordero Decl. Ex. B; Fischbach Decl. ¶ 9; Magolnick Decl. ¶ 12.) These rates satisfy the relevant market test of reasonableness.

---

[9] Lead counsel Darryl Cordero's rate is $775 per hour and Dan Fears's rate is $760 per hour (although Fears worked fewer than four hours). These rates are between $40 and $55 higher than what was approved in *Barbosa* for an attorney with 13 fewer years' experience. *Barbosa*, 297 F.R.D. at 452. If these rates were capped at the $720 *Barbosa* rate, the overall lodestar would be reduced by 68,609 to 2,902,872.

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

4. An implied 2.8 multiplier is easily supported in this case

When the lodestar method is used as a cross check, "the multiplier is implied by the ratio of the proposed percentage fee to the computed lodestar fee," and this implied multiplier is assessed for reasonableness. *Young,* 2007 WL 951821, at *6. A multiplier is used to adjust the base lodestar to reflect a number of factors. Among these are the degree of success and the risks incurred by class counsel. *Fischel*, 307 F.3d at 1007 n.7. The inherent risk of contingency work is a critical factor. The Ninth Circuit stresses that "[i]t is an abuse of discretion to fail to apply a risk multiplier. . . when (1) attorneys take a case with the expectation that they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence that the case was risky." *Id.* at 1008.

Applying the formula here, the $8,333,333 requested fee, divided by the 2,970,000 lodestar, produces an "implied multiplier" of 2.8. This does not approach the "extraordinary lodestar multiple" the cross-check is designed to unearth. *See Cendant*, 404 F.3d at 188. If anything, the results and overall risk of this case would support a considerably greater multiplier. Class counsel succeeded—where two previous attempts had failed—to obtain a favorable recovery for the class, no less the equal of the *Vandervort* settlement regarded as "exceptional." (*See* pp. 9-10, *supra*.) That class counsel's focus was turned away from cases involving little risk of non-payment for clients paying by the hour at their standard rates further supports the multiplier. *See Fischel*, 307 F.3d at 1007 n.7; *Aguilar,* 2017 WL 2214936, at *5.

A 2.8 multiplier is in line with similar cases and well within the range of reasonableness. This Court has found that "[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation." *Aguilar,* 2017 WL 2214936, at *5 (citing *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D.

Cal. 1995)); *Taylor*, 2016 WL 6038949, at *7 (approving 2.26 multiplier). The Ninth Circuit has approved a "reasonable" multiplier of 3.64. *See Vizcaino*, 290 F.3d at 1047-51. Strong empirical support for these findings is provided by an exhaustive survey of common fund multipliers by Class Action Reports. A 2003 survey of 1,120 class actions showed that lodestar multipliers averaged 3.89. *Attorney Fee Awards in Common Fund Cases*, 24 Class Action Rep. 4 (2003). The lodestar cross-check fully supports the requested percentage fee.

III. Class Counsel's Requested Allocation Is Fair and Reasonable

Class counsel have agreed to allocate fees among themselves in accordance with a co-counsel agreement. (Cordero Decl. ¶ 15.) The agreement, which was approved by Glenoaks, apportions any fee recovery based on a formula that takes into account the origination of the litigation by Payne & Fears and Marko & Magolnick, and the hours worked on the case by all three firms. (*Id.* ¶¶ 15-16.)[10] An interim calculation would apportion the fees in the following percentages: Dowling Aaron, Inc. (5.05), Marko & Magolnick, P.A. (3.79), and Payne & Fears LLP (91.16). (*Id.* ¶ 16.) Before the final approval hearing, class counsel will provide a final proposed allocations among the three firms.

The Court should approve a fee allocation if it is based on the "relative efforts of, and benefits conferred upon the class by, co-counsel." *In re FPI/Agretech Secs. Litig.*, 105 F.3d 469, 474 (9th Cir. 1997). We believe the co-counsel agreement meets this standard.

[10] The parties have agreed, subject to the Court's approval, to remit 3.33 percent of their respective shares to Frank Owen, the Florida attorney that originally worked with Cordero to develop the case. (Cordero Decl. ¶ 17.)

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

IV. Class Counsel's Expenses Are Reasonable

Class counsel also request reimbursement for the reasonable costs that were necessary to achieve the settlement's package of class benefits. Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are eligible for reimbursement. *In re Media Vision Tech. Secs. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995). "The standard of reasonableness [of costs] is to be given a liberal interpretation." *Id.* at 1368. In fact, "[w]ith the exception of routine office overhead normally absorbed by the practicing attorney, all reasonable expenses incurred in case preparation, during the course of the litigation, or as an aspect of settlement of the case, may be taxed." *Id.* Under Local Rule 292, many categories of items are taxable as costs, including filing fees, fees for service of process, clerk's fees, reporter's transcript fees, deposition costs, witness fees, and docket fees. The Court can also award non-taxable costs, such as: postage, telephone, fax and notice costs (*Immune Response*, 497 F. Supp. 2d at 1177); and photocopying costs (*Media Vision*, 913 F. Supp. at 1367).

The expense detail is set forth in the accompanying Cordero, Fischbach, and Magolnick declarations. The combined cost detail for all firms is shown in table 2:

TABLE 2.—*Expense Summary*

Description	Total
Delivery Services	$5,673.58
Deposition Transcripts	$12,272.23
Experts and Consultants	$61,265.95
Hearing Transcripts	$5,470.25
Mediator Charges	$20,526.03
Filing Fees and Court Costs	$784.00
Photocopies (in-house)	$1,198.85
Photocopies (outside)	$34.34
Private Investigator	$157.50
Subpoena Fees	$64.50
Telephone	$255.53
Travel	$28,937.78
Reserve for Future Expenses	$1,200.00
Total	**$137,840.54**

The expenses total about one half of one percent of the class's recovery, well below the 4-percent average in class cases. *See In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1041 (N.D. Ill. 2011) (citing Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27, 70 (2004)). The overall expenses are extremely reasonable for a case of this magnitude and duration.

Conclusion

This application is fair both to the class and class counsel and warrants the Court's approval. The fee request is justified in light of the substantial benefit conferred on the class, balanced against class counsel's risks, the quality of the legal representation and the nature and extent of the legal services performed by class counsel. In the end, their efforts were instrumental in obtaining an outstanding recovery for the class.

DATED: August 1, 2017

PAYNE & FEARS LLP

By: /s/ C. Darryl Cordero
C. DARRYL CORDERO

Attorneys for Plaintiff Dakota Medical, Inc., dba Glenoaks Convalescent Hospital

4846-8720-8779.11

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750

Proof of Service

R. Fellen, Inc., et al., vs. RehabCare Group, Inc., et al.
United States District Court, Eastern District of California (Sacramento Division)
Case No. 1:14-cv-02081-DAD-BAM

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1100 Glendon Avenue, Suite 1250, Los Angeles, CA 90024.

On August 1, 2017, I served true copies of the following document(s) described as **Plaintiff's Memorandum of Points and Authorities in Support of Motion for Award of Attorneys' Fees and Reimbursement of Reasonable Expenses** on the interested parties in this action as follows:

Jon M. Wilson
Erin K. Kolmansberger
Melissa Jill Gomberg
Kimberly Freedman
BROAD AND CASSEL
One Biscayne Tower, 21st Floor
2 S. Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 373-9400
jwilson@broadandcassel.com
ekolmansberger@broadandcassel.com
mgomberg@broadandcassel.com
kfreedman@broadandcassel.com

Counsel for Defendant RehabCare Group, Inc.

Oliver W. Wanger
WANGER JONES HELSEY PC
265 East River Circle, Suite 310
Fresno, California 93720
Telephone: (559) 233-4800
owanger@wjhattorneys.com

Counsel for Defendant RehabCare Group, Inc.

Fletcher C. Alford
David L. Jordan
Daniel S. Kubasek
GORDON & REES, LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 986-5900
FAlford@gordonrees.com
dljordan@gordonrees.com
dkubasak@gordonrees.com

Counsel for Defendant, Cannon & Associates

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 1, 2017, at Los Angeles, California.

Patricia David

PAYNE & FEARS LLP
ATTORNEYS AT LAW
1100 GLENDON AVENUE, SUITE 1250
LOS ANGELES, CALIFORNIA 90024
(310) 689-1750