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16 **UNITED STATES DISTRICT COURT**

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

18 DAKOTA MEDICAL, INC., individually,
and on behalf of all others similarly
19 situated,

20 Plaintiff,

21 v.

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

23 Defendants.

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

Judge: Hon. Dale A. Drozd

**Plaintiff's Status Report and
Memorandum of Points and Authorities
in Support of Motion for Order
Approving Additional Class
Distributions**

Date: September 5, 2018
Time: 9:30 A.M.
Courtroom 5

PAYNE & FEARS LLP
ATTORNEYS AT LAW
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1 **Status Report of Class Distributions**

2
3 Plaintiff Dakota Medical, Inc., respectfully submits this status report and
4 memorandum in support of its motion for an order approving additional distributions to
5 eligible class members. The motion seeks entry of an order (1) approving the next
6 installment of distributions to class members that failed to provide taxpayer identification
7 numbers, amounting to about \$3.8 million; (2) approving redistribution to the class of a
8 little over \$1 million, resulting from checks not cashed in the initial class distribution; and
9 (3) clarifying eligibility to participate in the redistribution for some 39 class members.

10
11 The Court granted final approval of this \$25 million settlement in September 2017.
12 (ECF No. 189.) The order directed the parties to abide by the terms of the Class Action
13 Settlement Agreement, including terms pertaining to class distribution. (*Id.*, p. 24.) The
14 settlement agreement (ECF No. 171) required net settlement funds to be automatically
15 distributed to class members at addresses contained in Defendants’ records, or as updated
16 in the class notice process. (*Id.* ¶ 11.A.)

17
18 On November 9, 2017, settlement administrator KCC, LCC, distributed
19 \$6,739,088.97 to some 12,294 class members. (Jue Decl. ¶ 3.) The distribution was in
20 two parts. Distribution 1A, in the amount of \$2,256,563.68, was made to 4,823 class
21 members that had provided valid taxpayer identification numbers, or were exempt from
22 IRS reporting because their settlement checks were less than \$600. (*Id.*) Distribution 1B,
23 in the amount of \$4,482,525.29, was made to 7,471 class members that were entitled to
24 receive \$600 or more but had not provided valid TINs. (*Id.*) As instructed in the Court’s
25 final approval order (*see* ECF No. 189, p. 22), these members were issued checks in the
26 amount of \$599.99. (*Id.*) KCC has reserved the balance of funds due these members, a
27 little over \$8.1 million, for payment this and subsequent years. (*Id.* ¶ 6.)

1 In its final approval order, the Court instructed KCC to include a notice to class
2 members that were required to but had not provided valid TINs. (ECF No. 189, p. 22.)
3 KCC included the notice with the Distribution 1B checks and, as a result, 1,160 class
4 members provided valid TINs to KCC. (Jue Decl. ¶¶ 3-4.) On December 27, 2017, the
5 administrator distributed the balance of funds due these members, totaling \$1,538,800.29,
6 in a Distribution 2A. (*Id.* ¶ 4.)

7
8 The settlement afforded class members 120 days from the check date in which to
9 negotiate their settlement checks. (ECF No. 171, ¶ 9.A.) A total of 11,391 class members
10 have cashed checks in the cumulative amount of \$7,270,081.79. (Jue Decl. ¶ 5.) Some
11 2,060 class members, however, have not cashed settlement checks in the cumulative
12 amount of \$1,004,797.29. (*Id.*)

13
14 KCC now holds \$9,127,349.36 in class funds. (Jue Decl. ¶ 6.) In addition to the
15 uncashed checks, this includes \$8,119,541.89 payable to class members that haven't
16 provided valid TINs, and three reissued checks in process (totaling \$3,010.18). (*Id.*)

17
18 **Requested Relief**

19
20 **I. Approval of 2018 Distributions for Class Members That Have Not**
21 **Provided Valid TINs**

22
23 As discussed above, KCC is holding a little over \$8.1 million for class members
24 that were slated to receive \$600 or more but who had not provided valid TINs. KCC is
25 now prepared to distribute additional funds to these members, not to exceed \$599.99 per
26 member. KCC projects a total distribution of \$3,786,536.89 to 6,311 class members. (Jue
27 Decl. ¶ 8.) (The balance will be reserved for payment in subsequent years.)
28

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1 **II. Approval of Redistribution of Uncashed Checks**

2
3 The class settlement agreement provides that if excess funds remain due to
4 uncashed checks, “the Settlement Administrator shall make a further distribution to
5 Settlement Class Members that timely negotiated checks in the initial distribution, unless
6 the amounts involved are too small to make individual distribution economically viable.”
7 (ECF No. 171, ¶ 11.B.) Plaintiff believes a redistribution is economically viable. As
8 discussed above, the cumulative amount of uncashed checks is \$1,004,797.29. At least
9 10,234 class members are eligible to participate in this redistribution because they cashed
10 checks in the initial distribution. (Jue Decl. ¶ 7; *see* ECF No. 171, ¶ 11.B.)¹ As a result,
11 the distribution amount would average about \$98 per member.²

12
13 Payments to each class member would be calculated in accordance with paragraph
14 11.B of the settlement agreement, which calls for members to be paid pro-rata in
15 accordance with their shares of all “Fax Transmissions,” as defined in paragraph 3.B. (*See*
16 ECF No. 171, ¶¶ 3.B, 11.B.)

17
18 **III. Approval of Participation by Certain Class Members in the Proposed**
19 **Redistribution**

20
21 As noted above, the settlement agreement limits eligibility for redistribution to
22 settlement class members that timely cashed checks in the “initial distribution.” (ECF No.
23 171, ¶ 11.B.) KCC’s 2017 payments to 1,160 class members were made in two
24

25
26 ¹ This includes eligible class members that are capped at \$599.99 per year because
27 they haven’t provided TINs. The proposed order states that these members will be credited with
their shares of uncashed checks for distribution, subject to the \$599.99 per annum ceiling.

28 ² The cost of a redistribution was anticipated and included in KCC’s original
administration budget of \$116,380.

Proof of Service

**Dakota Medical, Inc. vs. RehabCare Group, Inc., et al.
United States District Court, Eastern District of California (Fresno 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 400 Continental Blvd., Suite 600, El Segundo, CA 90245.

On August 3, 2018, I served true copies of the following document(s) described as **Plaintiff's Status Report and Motion for Order Approving Secondary Class Distribution** on the interested parties in this action as follows:

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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.

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1 I declare under penalty of perjury under the laws of the United States of America
2 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.

3 Executed on August 3, 2018, at Los Angeles, California.

4
5 _____ /s/ Arlene S. Comstock

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