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15  
16 **UNITED STATES DISTRICT COURT**  
17 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

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

21 Plaintiff,

22 v.

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

24 Defendants.  
25  
26  
27  
28

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

Judge: Hon. Dale A. Drozd

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

Date: December 17, 2019

Time: 9:30 A.M.

Courtroom 5

**Introduction**

1  
2  
3 Plaintiff Dakota Medical, Inc., seeks an order approving additional distributions to  
4 eligible class members. The settlement administrator, KCC, continues to hold about \$4.7  
5 million in class member funds. Plaintiff requests entry of an order to distribute most of  
6 these funds. The proposed order would authorize three distributions to class members.  
7 First, Plaintiff seeks authority to distribute funds to class members who failed to provide  
8 taxpayer identification numbers before the end of this year. Second, Plaintiff proposes a  
9 distribution to class members who failed to provide TINs in early 2020. Third, the order  
10 would approve redistribution to participating class members of about \$672,000, the sum of  
11 checks not cashed in the prior distributions.

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

19  
20 Last year the Court granted Plaintiff’s motion to approve additional distributions.  
21 (ECF No. 222.) On October 22, 2018, settlement administrator KCC distributed  
22 \$3,875,576.34 to some 11,542 class members. (Jue Decl. ¶ 3.) The distribution was in  
23 two parts. Distribution 3A, in the amount of \$423,833.87, was made to redistribute funds  
24 represented by uncashed checks in the series 1 distributions. A total of 5,791 class  
25 members received this distribution. (*Id.*)<sup>1</sup> Distribution 3B, in the amount of

26  
27 <sup>1</sup> The total redistributed for uncashed checks was \$1,004,797.24, but a majority of  
28

1 \$3,451,742.47, was made to 5,751 class members that were entitled to receive \$600 or  
2 more but had not provided valid TINs. (*Id.*) As instructed in the Court’s final approval  
3 order (*see* ECF No. 189, p. 22) and the Court’s September 21, 2018, order (ECF No. 222),  
4 these members were issued checks in the amount of \$599.99. (Jue Decl. ¶ 3.)  
5

6 KCC has made ongoing attempts to obtain valid TINs from this group. In its most  
7 recent order, the Court instructed KCC to include a notice requesting a valid TIN to class  
8 members that had not provided one. (ECF No. 222, p. 4.) As it had with earlier  
9 distributions, KCC again included the notice with the Distribution 3B checks. (Jue Decl.  
10 ¶¶ 3-4.) In addition, in May and June KCC conducted a telephone outreach campaign to  
11 members with the largest remaining eligible payments. (*Id.*, ¶ 7.) As a result of these  
12 efforts, KCC has obtained valid TINs from an additional 1,247 members. (*Id.*) By the end  
13 of 2019, the administrator will distribute the balance of funds due these members, totaling  
14 \$1,141,434.21. (*Id.* ¶ 8.)  
15

16 Class members were provided 120 days from the check date in which to negotiate  
17 their series 3 distribution checks. (ECF No. 222; *see also* ECF No. 171, ¶ 9.A.) A total of  
18 9,808 class members cashed series 3 checks in the cumulative amount of \$3,203,634.46.  
19 (Jue Decl. ¶ 4.) Some 1,736 class members, however, did not cash checks totaling  
20 \$671,941.88. (*Id.*)  
21

22 KCC now holds \$4,695,915.38 in class funds. (Jue Decl. ¶ 6.) In addition to the  
23 uncashed checks, this includes \$4,023,973.50 payable to class members that haven’t  
24 provided valid TINs. (*Id.*)  
25  
26

27 \_\_\_\_\_  
28 this amount (\$580,974.37) was included in the 3B distribution to class members that had failed to  
provide valid TINs. (*See* Jue Decl. ¶ 3.)

1 **Requested Relief**

2  
3 **I. Approval of 2019 Distributions for Class Members Who Have Not**  
4 **Provided Valid TINs**

5  
6 As discussed above, KCC continues to hold a little over \$4 million for class  
7 members that were eligible to receive \$600 or more but who had not provided valid TINs.  
8 KCC is now prepared to distribute additional funds to these members by the end of this  
9 year. As before, payments will be capped at \$599.99 per member. KCC projects a total  
10 distribution of \$2,031,730.66 to 3,520 class members. (Jue Decl. ¶ 8.) This will complete  
11 payouts of reserved funds to some 370 class members that did not supply valid TINs. (*Id.*)  
12 KCC projects this distribution will cost \$9,872. (*Id.*)

13  
14 **II. Approval of 2020 Distributions for Class Members Who Have Not**  
15 **Provided Valid TINs**

16  
17 Plaintiff also proposes a 2020 distribution to class members that have not provided  
18 TINs. After accounting for the proposed December 2019 distribution, 3,180 class  
19 members who have cashed a previous check would remain eligible for the balance of their  
20 share of the original settlement funds. KCC to is prepared to distribute an additional  
21 \$1,141,434.21 to these members. As before, payments would be capped at \$599.99 per  
22 member. (Jue Decl. ¶ 8.) Plaintiff proposes that the 2020 distribution take place no later  
23 than January 30. KCC projects this distribution will cost \$9,026.70.

24  
25 The proposed 2020 distribution would complete distributions for another 3,059  
26 members that did not supply valid TINs. (Jue Decl. ¶ 8.) This would leave \$850,808.63  
27 remaining to be distributed to 127 class members that have failed to supply valid TINs and  
28 have cashed previous checks. KCC projects these distributions would be completed by

1 2024. (*Id.*)<sup>2</sup>

2

3 **III. Approval of Redistribution of Uncashed Checks**

4

5 The class settlement agreement provides that if excess funds remain due to  
6 uncashed checks, “the Settlement Administrator shall make a further distribution to  
7 Settlement Class Members that timely negotiated checks in the initial distribution, unless  
8 the amounts involved are too small to make individual distribution economically viable.”  
9 (ECF No. 171, ¶ 11.B.) Payments to each class member would be calculated according to  
10 paragraph 11.B of the settlement agreement, which calls for members to be paid pro-rata in  
11 accordance with their shares of all “Fax Transmissions,” as defined in paragraph 3.B. (*See*  
12 *id.* ¶¶ 3.B, 11.B.)

13

14 Plaintiff believes a redistribution is economically viable. As discussed above, the  
15 cumulative amount of uncashed checks is \$671,941.88. At least 9,808 class members are  
16 eligible to participate in this redistribution because they cashed checks in the series 3  
17 distributions. (Jue Decl. ¶ 4; *see* ECF No. 171, ¶ 11.B.)<sup>3</sup> If approved by the Court, a total  
18 of \$342,848.67 would be distributed to 6,622 class members that provided TINs or for  
19 whom TINs are not required. (Jue Decl. ¶ 8.) KCC estimates the cost of this distribution  
20 would be \$5,844. (*Id.*)

21

22 The balance of these funds are payable to 3,186 members that have failed to provide  
23 TINs. The funds due these members will be credited to their account and included in the

24

25 <sup>2</sup> The vast majority of these distributions would be completed by 2022, however.  
26 Only two class members would receive a payment in 2023 and only one class member would  
receive a payment in 2024. (Jue Decl. ¶ 8.)

27 <sup>3</sup> This includes eligible class members that are capped at \$599.99 per year because  
28 they haven’t provided TINs. Plaintiff proposes that these members be credited with their shares of  
uncashed checks for distribution, subject to the \$599.99 per annum ceiling.

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**CERTIFICATE OF SERVICE**

*Dakota Medical, Inc. vs. RehabCare Group, Inc., et al.*  
Case No. 1:14-cv-02081-DAD-BAM

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I hereby certify that 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 200 N. Pacific Coast Highway, Suite 825, El Segundo, CA 90245.

On November 19, 2019, I served a true copy of the following document(s) described as **Plaintiff’s Memorandum of Points and Authorities in Support of Motion for Order Approving Additional Class Distributions** on the interested parties in this action via the United States District Court CM/ECF system on all parties or persons requiring notice.

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 November 19, 2019, at Los Angeles, California.

\_\_\_\_\_  
/s/ Brenda Mingleton

4836-8146-5516.2

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