

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

R. FELLEN, INC., *et al.* v. REHABCARE GROUP, INC., *et al.*,
Case No. 14-CV-02081-DAD-BAM

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

A federal court authorized this notice.

**If you were sent faxes by RehabCare Group, Inc., or
Cannon & Associates LLC, d/b/a Polaris Group,
you may be entitled to a payment from a class action settlement.**

PLEASE READ THIS NOTICE CAREFULLY.

IT IS ABOUT YOUR RIGHT TO SHARE IN THE SETTLEMENT PROCEEDS.

I. A PROPOSED SETTLEMENT OF THIS CASE HAS BEEN PRELIMINARILY APPROVED BY THE COURT

A settlement has been reached in this class action lawsuit against Defendants RehabCare Group, Inc. (“RehabCare”), and Cannon & Associates LLC, dba Polaris Group (“Polaris”), about mass broadcasts of faxes between July 17, 2010, and February 4, 2014. The court presiding over the lawsuit has preliminarily approved the settlement and certified the Settlement Class, defined as:

All persons that were subscribers of facsimile telephone numbers to which there was a successful transmission of one or more facsimiles by Defendants (or either of them), between July 17, 2010, and February 4, 2014, in broadcasts by Westfax, Inc. (the “Faxes”).

If you are a class member – a “subscriber” of a fax telephone number to which the Faxes were successfully sent between July 17, 2010, and February 4, 2014 (“Class Period”) – you are entitled to receive a payment from the settlement. The fax telephone numbers to which the Faxes were sent can be viewed on the settlement website. Only subscribers of these fax telephone numbers during the Class Period are eligible to be paid, regardless of who else may have used the same fax telephone number. Before any money is paid, the court will have a hearing to decide whether to give final approval to the settlement.

II. WHAT IS THE LAWSUIT ABOUT?

Plaintiff Dakota Medical, Inc., dba Glenoaks Convalescent Hospital (“Plaintiff”) sued RehabCare and Polaris, alleging that they violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), by sending unsolicited facsimile advertisements and facsimile advertisements that do not comply with the TCPA’s opt-out notice requirements. The TCPA permits a person to whom such advertisements are sent to bring legal action against the sender and recover either actual damages or statutory damages of \$500 per violation. The TCPA also permits a court to increase the statutory damages up to a maximum of \$1,500 per violation if the defendant willfully and/or knowingly violated the TCPA. Defendants deny that they violated the TCPA and will defend the lawsuit if the proposed settlement is not approved. RehabCare denies any involvement in sending the Faxes.

The court has not decided who is right. Defendants have agreed to settle this action to avoid the costs and uncertainties of litigation. Plaintiff has agreed to settle because it believes that the settlement is in the best interests of the Settlement Class and provides substantial benefits to class members without the risk of continued litigation.

III. WHO REPRESENTS YOU?

The court has appointed C. Darryl Cordero of Payne & Fears LLP lead Settlement Class Counsel, and Donald R. Fischbach of Dowling Aaron Incorporated and Joel S. Magolnick of Marko & Magolnick, P.A., Settlement Class Counsel. You are free to retain your own attorney at your expense to represent you should you wish to do so.

QUESTIONS? Call 1-866-683-9606 Toll Free, or Visit www.rehabcaresettlement.com

IV. WHAT DOES THE SETTLEMENT PROVIDE?

After extensive negotiations, including mediation before an impartial mediator, the parties have reached a proposed settlement of the lawsuit. Under the settlement, Defendants will pay \$25 million to the Settlement Class. The costs of class notice and settlement administration expenses, attorneys' fees and litigation-related costs of Settlement Class Counsel, and any service award awarded to Plaintiff will be deducted from the settlement fund to determine the net amount (the "Members' Payment Amount") that will be distributed to class members.

The Members' Payment Amount will be distributed to Settlement Class members based on the number of Faxes they received. Each Settlement Class member will be awarded one share ("Share") for each successful Fax transmission sent to the class member as determined from records produced in the lawsuit. Each Share entitles a class member to be paid the dollar sum achieved by dividing the Members' Payment Amount by the total number of Shares awarded all class members. **You don't need to submit proof that you received any Faxes in order to receive payment.**

Each class member who may receive payment of \$600 or more will be asked complete an Internal Revenue Service Form W-9. A class member that fails to complete and return a Form W-9 to the Settlement Administrator by **September 7, 2017**, may have his or her payment subject to withholding, as required by IRS rules and regulations.

Settlement Class Counsel will file a motion with the court to approve payment of attorneys' fees in an amount no greater than one-third of the \$25 million settlement fund, and for reimbursement of litigation costs. (Through 2016, Settlement Class Counsel have devoted over 5,000 hours to prosecuting the case.) Plaintiff will also file a motion wherein it will ask the court to award an amount up to \$15,000 for its service as class representative. On or before **August 2, 2017**, both motions, including all supporting documents, will be available for review on the settlement website (www.rehabcaresettlement.com). The court will decide the amount of the attorneys' fees and costs and whether Plaintiff should receive a service award (and in what amount) at the final approval hearing discussed in later in this notice.

If the court approves the settlement, each class member (except a class member who has obtained proper and timely exclusion from the Settlement Class; see below) will fully and finally release Defendants, their parents, subsidiaries, affiliates, owners and all of their past and present officers, directors, members, servants, sureties, insurers, attorneys, fiduciaries and employees, and such persons' or entities' successors or predecessors in interest, assigns and legal representatives, for all claims, whether known or unknown, based on the transmission of the Faxes and/or the Action, including claims based on violations of the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227, regulations of the Federal Communications Commission under that act, and similar state laws. With respect to such claims, Settlement Class Members will waive all rights and benefits afforded by California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

V. WHAT IF YOU RECEIVED REHABCARE OR POLARIS FAXES BUT DIDN'T RECEIVE NOTICE OF SETTLEMENT?

Notice of settlement was sent to all known class members based on Defendants' records. If you are a class member and received a Notice and Class Member Information Form, and if the court approves the settlement, you will be mailed a settlement check based on the information contained in those records, including names and addresses, associated fax telephone numbers, and the number of transmissions of Faxes you received.

It is possible, however, that you received a Fax from Defendants during the Class Period but did not receive a Notice from the Settlement Administrator regarding this settlement. If so, you are entitled to submit proof to the Settlement Administrator that you were the subscriber of a fax telephone number to which the Faxes were sent. To participate in the settlement, you must mail or fax any such proof, together with a signed and completed Class Member Information Form (available for download on the settlement website) to the Settlement Administrator at the following address: RehabCare Settlement Administrator, KCC LLC, P.O. Box 43034, Providence, RI 02940-3034 and 415-798-3977. Your submission must be received no later than **September 7, 2017**.

QUESTIONS? Call 1-866-683-9606 Toll Free, or Visit www.rehabcaresettlement.com

VI. WHAT ARE YOUR OPTIONS?

Option # 1 - Do Nothing. If you received a Notice and Class Member Information Form from the Settlement Administrator and elect to do nothing, and if the court approves the settlement, you will be member of the Settlement Class and will receive payment for the Faxes sent to your facsimile telephone number, as reflected in Defendants' records (class members that do not return a completed Form W-9 will be subject to backup withholding). You will also be bound by all determinations or judgments in the lawsuit and release the Released Claims described in section IV above.

Option # 2 – Submit a Class Member Information Form. A “Class Member Information Form” was sent to all known class members and also is available for download at the settlement website, www.rehabcaresettlement.com. You can use it to provide your name, current address, telephone number and email address and fax telephone number(s) during the Class Period. You will receive payment for Faxes as determined by the Settlement Administrator from Defendants' records, and you will be bound by all determinations or judgments in the lawsuit and release the Released Claims. **IF YOU RECEIVED A FAX FROM REHABCARE OR POLARIS BUT DID NOT RECEIVE A NOTICE REGARDING THIS SETTLEMENT, UNLESS YOU SEND A CLASS MEMBER INFORMATION FORM TO THE SETTLEMENT ADMINISTRATOR YOU WILL NOT RECEIVE ANY MONEY UNDER THE SETTLEMENT.**

Option # 3 - Exclude Yourself. You may exclude yourself from the Settlement Class. If you choose this option, please follow the directions below and be sure that your request for exclusion is received by the Settlement Administrator no later than **July 14, 2017**. Your exclusion request must be mailed or faxed to: RehabCare Settlement Administrator, KCC LLC, P.O. Box 43034, Providence, RI 02940-3034 or 415-798-3977. **Do not request exclusion if you wish to participate in the settlement and receive payment under the settlement.** If you timely and validly ask to be excluded from the class, you will (a) not be entitled to any payment; (b) not be bound by any determinations or judgments entered in the lawsuit; and (c) not release any claims against Defendants. You will be permitted to prosecute an individual claim, if timely, against Defendants based on the issues raised in the lawsuit, but you will have to pay your own attorneys' fees and expenses in doing so.

Option # 4 - Object to the Settlement. If you do not exclude yourself from the Settlement Class, you have the right to object to any aspect of the settlement, including, but not limited to, the relief provided to class members, the requested attorneys' fees and expenses, and/or the requested service award. If you object, you must file and serve objections by following the directions below **no later than August 17, 2017**. Even if you object to the settlement, you will still be a class member and entitled to a payment from the settlement.

VII. HOW DO YOU OBJECT TO THE SETTLEMENT?

You have the right to object to the proposed settlement, the attorneys' fees and expenses requested by Settlement Class Counsel, the incentive or service award requested by Plaintiff, or any other motion made in connection with settlement approval. To be valid and considered by the court, any objections must be submitted in writing, filed with the Clerk of the Court – **DO NOT MAIL OR ATTEMPT TO FILE DOCUMENTS WITH THE JUDGE; THEY MUST BE FILED WITH THE CLERK OF THE COURT** – and served by mail and/or e-mail on counsel for the Parties **by no later than August 17, 2017**. Your objection must include the following:

(a) a Notice of Intention to Appear described herein, if applicable; (b) the full name, address and telephone number of the person objecting; (c) a statement of membership in the Settlement Class, including his or her facsimile telephone number(s) during the Class Period, including the name of the person or entity who was the subscriber of such facsimile telephone number(s) at the time the Faxes were sent; and (d) a statement of each objection, including any legal and factual support the objector wishes to bring to the court's attention and any evidence the objector wishes to introduce in support of the objection(s).

Only persons who file and serve a Notice of Intention to Appear, or his or her attorney identified in the Notice of Intention to Appear, may make an appearance or speak at the Final Approval Hearing. In the event that any class member objects to the settlement, Plaintiff and Defendants will have an opportunity to respond to such objections.

QUESTIONS? Call 1-866-683-9606 Toll Free, or Visit www.rehabcaresettlement.com

ANY SETTLEMENT CLASS MEMBER WHO DOES NOT OBJECT IN THE WAY DESCRIBED ABOVE WILL BE DEEMED TO HAVE WAIVED SUCH OBJECTIONS AND SHALL NOT HAVE ANY RIGHT TO OBJECT TO THE FAIRNESS OR ADEQUACY OF THE SETTLEMENT, ANY AWARD OF ATTORNEYS' FEES/COSTS, OR ANY AWARD OF INCENTIVE PAYMENT.

An original and one copy of all objections, including any Notice to Appear and all other papers required to be submitted, shall be timely filed with the Clerk of the Court at the following address: Office of the Clerk, Robert E. Coyle United States Courthouse, 2500 Tulare Street, Room 1501, Fresno, CA 93721. Copies of all documents filed with the Clerk of the Court must also be sent to counsel for the parties at the following addresses: Scott O. Luskin, Payne & Fears LLP, 1100 Glendon Avenue, Suite 1250, Los Angeles, CA 90024; Donald R. Fischbach, Dowling Aaron Incorporated, PO Box 28902, Fresno, CA 93729-8902; Joel S. Magolnick, Marko & Magolnick, P.A., 3001 S.W. 3rd Avenue, Miami, FL 33129; Erin K. Kolmansberger, Broad and Cassel LLP, 2 S. Biscayne Boulevard, 21st Floor, Miami, FL 33131; Oliver W. Wanger, Wanger Jones Helsley PC, 265 E. Park Circle, Suite 310, Fresno, CA 93720; and David L. Jordan, Gordon & Rees Scully Mansukhani, 275 Battery Street, Suite 2000, San Francisco, CA 94111.

IX. FINAL APPROVAL HEARING

The court has scheduled a Final Approval Hearing on **September 7, 2017, at 9:30 A.M.** in Courtroom 5 in the Robert E. Coyle United States Courthouse, 2500 Tulare Street, Room 1501, Fresno, CA 93721, for the purpose of deciding whether to grant final approval to the Settlement Agreement and to determine the amount of attorneys' fees and expenses to be paid to Settlement Class Counsel and any service award to be paid to Plaintiff. You don't need to attend the Final Approval Hearing to receive a settlement payment or otherwise participate in the settlement. The date and time of the Final Approval Hearing may be continued by the court without further notice.

X. HOW CAN YOU GET MORE INFORMATION?

This Notice is intended only as a summary of the lawsuit and proposed settlement. It is not a complete statement of the lawsuit or the proposed settlement. If there is any conflict between this Notice and the Settlement Agreement, the Settlement Agreement governs. To obtain additional information regarding this settlement you may: (1) call the Settlement Administrator at 1-866-683-9606; (2) visit the settlement website (www.rehabcaresettlement.com), which includes or will include copies in downloadable format of this Notice, the Class Member Information Form, and other important information relating to the settlement; (3) inspect the complete court file at the Office of the Clerk, Robert E. Coyle United States Courthouse, 2500 Tulare Street, Room 1501, Fresno, CA 93721, or (4) access the court file via PACER (information about PACER can be found at the court's general website: www.caed.uscourts.gov).

DO NOT CONTACT THE COURT, REHABCARE, POLARIS, OR DEFENDANTS' ATTORNEYS FOR INFORMATION.

BY ORDER OF THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA