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**United States District Court**  
**Eastern District of California, Fresno Division**

R. FELLEEN, INC., *et al.*,

Plaintiffs,

v.

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

Defendants.

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

**Notice of Executed Class Action  
Settlement Agreement**

1       **PLEASE TAKE NOTICE** that Plaintiff Dakota Medical, Inc., dba Glenoaks  
2       Convalescent Hospital, and Defendants RehabCare Group, Inc., and Cannon & Associates  
3       LLC, dba Polaris Group, have executed a proposed Class Action Settlement Agreement. A  
4       true and correct copy of the executed agreement, including exhibits 1 through 7, is  
5       attached.

6  
7       DATED: March 20, 2017

Payne & Fears LLP

8       By: /s/ C. Darryl Cordero

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10       C. Darryl Cordero  
11       Attorneys for Plaintiff Dakota Medical, Inc.,  
12       dba Glenoaks Convalescent Hospital  
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**Final Execution Version**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

R. FELLEN, INC., *et al.*,

Plaintiffs,

v.

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

Defendants.

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

**Hon. Dale A. Drozd**

**Class Action Settlement Agreement**

This Class Action Settlement Agreement (“Settlement Agreement” or “Agreement”) is entered into between plaintiff Dakota Medical, Inc., dba Glenoaks Convalescent Hospital, individually, and on behalf of the Settlement Class (“Plaintiff”), on the one hand, and defendants RehabCare Group, Inc. (“RehabCare”), and Cannon & Associates, LLC, dba Polaris Group (collectively, “Defendants”), on the other. Plaintiff and Defendants are each separately referred to herein as a “Party” and are referred to collectively as the “Parties.”

### **Recitals**

A. WHEREAS, on December 29, 2014, Plaintiff commenced this action (“Action”) against Defendants in the United States District Court for the Eastern District of California (the “Court”);

B. WHEREAS, Plaintiff alleges in the Action that Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, and regulations of the Federal Communications Commission promulgated thereunder (collectively “TCPA”) by sending, via facsimile transmission, unsolicited advertisements and advertisements that do not comply with the TCPA’s opt-out notice requirements;

C. WHEREAS, RehabCare contends it has complied at all times with the TCPA and denies any liability or wrongdoing of any kind, including but not limited to liability or wrongdoing that was alleged or could have been alleged by Plaintiff;

D. WHEREAS, Defendants have asserted numerous affirmative defenses and other defenses;

E. WHEREAS, on October 3, 2016, Plaintiff moved for certification of a class of all persons that were at the time subscribers of telephone numbers to which material that discusses, describes or promotes the property, goods or services of Defendants (or either of them) was sent via facsimile transmission between July 1, 2010, and February 4, 2014;

F. WHEREAS, on October 28, 2016, RehabCare moved for summary judgment against Plaintiff;

G. WHEREAS, on November 14, 2016, Defendants filed their responses in opposition to Plaintiff’s motion for class certification;

H. WHEREAS, the Parties conducted extensive formal and informal discovery and analysis of the facts and claims in the Action, including several depositions;

I. WHEREAS, the issues in the Action would, if fully litigated, likely result in protracted litigation, multiple appeals, and continued uncertainty as to the outcome;

J. WHEREAS, commencing November 15, 2016, the Parties participated in good faith, arm's length settlement negotiations before mediator John Bickerman, in connection with which Plaintiff and Defendants submitted detailed written and oral mediation submissions to Mr. Bickerman, setting forth their respective views about strengths and weaknesses of each other's positions;

K. WHEREAS, Plaintiff, Settlement Class Counsel (as defined in paragraph 2 hereof), Defendants and Defendants' counsel have concluded that this Settlement Agreement provides an appropriate resolution of the Action;

L. WHEREAS, Plaintiff and Settlement Class Counsel recognize the uncertainties, risks and difficulties involved in successfully concluding the Action on behalf of the Settlement Class, and believe that this Settlement Agreement confers substantial benefits upon the Settlement Class and that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

M. WHEREAS, it is the mutual desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims raised in or related in any way to the Action;

N. WHEREAS, Plaintiff and each Class Member acknowledge that this Agreement is intended to include and resolve all claims arising from or related to the Action; and,

O. WHEREAS, the Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is, or may be, construed or interpreted as an admission of liability or wrongdoing by Defendants, or an admission that the claims in the Action have merit, an admission by Defendants that any of the claims asserted by Plaintiff should properly be certified as class claims or prosecuted as a representative action if the Parties were to continue litigating the issues of class certification or representative action status before the Court, or an admission by Plaintiff that the defenses to class certification and liability asserted by Defendants have merit.

NOW, THEREFORE, the Parties agree:

### **Class Certification for Settlement Purposes and Settlement Benefits**

#### **1. Proposed Settlement Class.**

A Settlement Class shall be established in the Action, consisting of 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”). All such subscribers shall hereafter be referred to as “Settlement Class Members” or “members.” Excluded from the class are officers, directors, and employees, accountants, and/or agents of Defendants; any affiliated company; legal representatives, attorneys, heirs, successors, or assigns of Defendants, Defendants’ officers and directors, or of any affiliated company; any entity in which any foregoing persons have or have had a controlling interest; any members of the immediate families of the foregoing persons; any federal, state and/or local governments, governmental agencies (including the Federal Communications Commission), government entities, government body and any attorneys of record in this action; and any person or entity that has released Defendants from all claims based on the transmission of faxes during the entire class period.

#### **2. Certification of Settlement Class.**

The Parties agree and stipulate that for purposes of preliminary approval and for settlement purposes only, the proposed Settlement Class satisfies the requirements of Federal Rule of Civil Procedure 23(a) because: (a) its members are numerous, (b) Plaintiff’s claims are typical and arise from the same event or practice or course of conduct that gives rise the claims of the other Settlement Class members and are based on the same legal theory, (c) the case presents common questions of law and fact, and (d) Plaintiff and Plaintiff’s counsel are qualified adequately to represent the Settlement Class. The Parties further stipulate, for settlement purposes only, that the proposed Settlement Class qualifies for class treatment pursuant to *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), to the appointment of Plaintiff as Class Representative, and to the appointment of C. Darryl Cordero of Payne & Fears LLP as Lead Settlement Class Counsel, and Donald R. Fischbach of Dowling Aaron Incorporated and Joel S. Magolnick of Marko & Magolnick, P.A., as settlement class counsel (collectively, “Settlement Class Counsel”). The stipulation and certification of the Settlement Class as provided in this paragraph shall be binding only with respect to settlement of the Action and shall not be cited or relied on by any Party in the event that this Settlement Agreement and the Judgment and Order do not receive full and final judicial approval in all material respects, or are reversed, vacated, or

modified in any material respect, or in the event of timely termination of this Agreement pursuant to paragraph 10.B. In any such event, the Parties shall be restored to their respective positions immediately prior to reaching an agreement on November 15, 2016, provided, however, that Defendants shall remain responsible for paying incurred notice and settlement administration expenses, as provided in paragraph 3.A.

### **3. Settlement Benefits**

**A. Common Fund.** Defendants will establish and fund a Common Fund for the benefit of the Settlement Class in the amount of \$25,000,000. Within 20 days following entry of a court order granting preliminary approval of settlement, Defendants will fund the Common Fund only to the extent of the budgeted cost of notice and settlement administration by the court-approved settlement administrator through the Final Approval Hearing. Within 20 days following entry of a Court order granting final approval of settlement, Defendants will fund the balance of the Common Fund. In each case, Defendants shall deposit the required funds in an account as directed by the Court. Other than payments for notice and settlement administration, no payments will be made from the Common Fund until the Effective Date as defined in paragraph 13.E. The advanced costs for notice and settlement administration will be a taxable cost against Plaintiff in the event that this settlement does not receive final approval and (1) class certification is denied or (2) if class certification is granted and the Defendants prevail in the litigated Action. In the event that Defendants exercise their right to terminate under paragraph 10.B, one half of the advanced costs for notice and settlement administration will be a taxable cost against Plaintiff if (1) class certification is denied or (2) if class certification is granted and the Defendants prevail in the litigated Action.

**B. Members' Payment Amount.** The Common Fund and any earnings thereon, less the amount awarded by the Court for attorneys' fees/costs, an incentive award to Plaintiff, and the fees and expenses of Class Notice and settlement administration, including fees of the Settlement Administrator, shall be distributed to eligible Settlement Class Members (the "Members' Payment Amount"). Only Settlement Class Members that do not timely and validly exercise their option to opt out in compliance with paragraph 10.A and for whom a mailing address is available or can be located shall be eligible to receive the distribution. The Members' Payment Amount shall be distributed based on the number of successful transmissions of Faxes ("Fax Transmissions") to eligible Settlement Class Members. Each eligible Settlement Class Member shall be awarded one share for each Fax Transmission to that member's facsimile telephone number(s), and shall be entitled to payment of a percentage of the Members' Payment Amount achieved by dividing the number of shares awarded to the eligible Settlement Class Member by the number of shares awarded to all eligible Settlement Class Members. Fax Transmissions to Settlement Class Members that are ineligible to participate in distributions shall not be considered for purposes of calculating payment shares.

**C. Determination of Fax Transmissions and Shares.** The total number of Fax Transmissions and the number of Fax Transmissions to each facsimile telephone number for purposes of determining Settlement Class Member shares and total number of shares awarded to all Settlement Class Members will be based on Exhibits A and B to the Declaration of Robert Biggerstaff filed in the Action on October 3, 2016, as updated or revised by Mr. Biggerstaff within 30 days after entry of the preliminary approval order, and as further modified based on Settlement Class Members that exercise their right to opt out in accordance with paragraph 10.A. Faxes or Fax Transmissions that have been previously released by one or more Settlement Class Members shall not be included in the calculation of shares. Mr. Biggerstaff's findings will be promptly distributed to the Parties and the Settlement Administrator. If neither Plaintiff nor Defendants object to Mr. Biggerstaff's findings within five business days after their service on the Parties, the calculation of Fax Transmissions for each facsimile telephone number and the total number of Fax Transmissions for all Settlement Class Members shall be based on those findings. Nothing in this paragraph precludes a Settlement Class Member from objecting to any findings of Mr. Biggerstaff under this paragraph.

### **Settlement Administration**

#### **4. Settlement Administrator, Settlement Administration and Costs of Administration.**

**A. Settlement Administrator.** The Settlement Administrator shall be Kurtzman Carson Consultants LLC, or such other person or entity as is approved by the Court (the "Settlement Administrator"). The Settlement Administrator shall administer the settlement in good faith and in accordance with the terms of this Settlement Agreement. The Settlement Administrator shall provide periodic reports to the Parties concerning settlement, comply with all federal and state tax laws regarding the Settlement Fund and any interest earned thereon, pay Settlement Class Members and Settlement Class Counsel, and comply with tax withholdings and reporting relating to such payments. Settlement administration and notice expenses shall be paid when incurred and shall not be refunded if the settlement does not receive final approval. The Settlement Administrator will be solely responsible for any errors or omissions it makes if it fails to perform its responsibilities or duties under this Agreement and the Parties have no obligation, nor will they be liable, for same.

**B. Payment and Records Retention.** All settlement administration costs and expenses, including, without limitation, costs of Class Notice, developing and maintaining the settlement website, fees and expenses of the mediator and fees and costs of the Settlement Administrator, shall be paid as they come due from the Common Fund. All records of the Settlement Administrator, including but not limited to writings pertaining to this Action sent to and received from Settlement Class Members or persons who are or



claim to be members of the Settlement Class, shall be available for inspection and copying by either Party or the representatives or attorneys of either Party. The Settlement Administrator shall retain all records relating to the administration of this settlement, including but not limited to notices sent to Settlement Class Members, communications with Settlement Class Members, Class Member Information Forms, and records regarding payments to Settlement Class Members for one year after the Settlement Administrator makes its final distribution of the Common Fund. Before destroying any documents relating to the administration of settlement, the Settlement Administrator shall inform counsel of the Parties of its intent to destroy such documents and provide them with the opportunity to take possession of such documents.

**5. Class Counsel Attorneys Fees' and Expenses and Class Representative Incentive Award.**

**A.** Plaintiff and/or Settlement Class Counsel will move for Court approval of attorneys' fees and litigation-related costs and expenses payable from the Common Fund ("Motion for Fees"). All attorneys' fees, costs and expenses approved by the Court shall be paid via wire transfer to a bank account of Payne & Fears, LLP, or as otherwise directed by Lead Settlement Class Counsel. The Settlement Administrator shall pay such attorneys' fees and expenses no later than 14 days after the Effective Date as defined in paragraph 13.E, provided, however, that one or more Settlement Class Counsel shall have the option to receive attorneys' fees in the form of periodic payments in lieu of a lump sum payment. This is solely for convenience and does not provide Settlement Class Counsel with any ownership interest in any portion of the Common Fund other than the right to receive fee payments in the future. Defendants shall have no responsibility to pay attorneys' fees to Settlement Class Counsel after fulfilling their obligations in paragraph 3.A.

**B.** The settlement of the claims of the Settlement Class is not conditioned upon the approval of fees, costs and expenses to Settlement Class Counsel by the Court.

**C.** Plaintiff will seek Court approval of an incentive award ("Motion for Incentive Award") payable from the Common Fund. The Settlement Administrator shall pay any incentive award approved by the Court within 14 days after the Effective Date as defined in paragraph 13.E via wire transfer to Plaintiff in accordance with wire instructions provided to the Settlement Administrator. Defendants shall have no responsibility to pay Plaintiff's incentive award after fulfilling their obligations in paragraph 3.A.

### **Class Notice and Class Member Information**

**6. Master Facsimile Transmission Database.** The Parties shall cooperate with assistance from the Settlement Administrator to assemble a Master Facsimile Transmission Database (“MFTD”) from records produced in discovery or otherwise available to Defendants, which will include the names, last known mailing addresses, last known telephone numbers, and unique facsimile telephone numbers of all Settlement Class Members as identified on the Billian lists produced in discovery and within Cannon & Associates’ customer records management database. If Defendants lack a mailing address or other contact information associated with a facsimile telephone number to which a Fax was transmitted, the Settlement Administrator shall make reasonable efforts to identify the subscriber of that facsimile telephone number during the period the Faxes were transmitted. The MFTD, as updated by class member responses, shall be used for purposes of notice and settlement administration.

**7. Class Notice.** No later than 21 days after entry of the Preliminary Approval Order, the Settlement Administrator will send all Settlement Class Members (i) a notice of the Action and Settlement Agreement substantially in the form of Exhibit 1 (“Notice”) and (ii) the Class Member Information Form substantially in the form of Exhibit 2, provided, however, that a Class Member Information Form substantially in the form of Exhibit 3 shall be sent to Settlement Class Members for whom the Parties have been unable to obtain a presumptively valid address in the MFTD. The Settlement Administrator shall include an Internal Revenue Service Form W-9 in notices to Settlement Class Members that are reasonably projected to receive \$600 or more. The Settlement Administrator shall send these documents by facsimile transmission to each unique facsimile telephone number contained in the MFTD. For any facsimile transmission that is unsuccessful after three attempts, the Settlement Administrator shall within three business days after the last unsuccessful attempt send the required documents by first-class mail to the name and address in the MFTD associated with the facsimile telephone number (and if there is no address in the MFTD, to an address obtained through a “reverse directory” internet search using the facsimile telephone number contained in the MFTD, which addresses shall be updated by the Settlement Administrator using the national change of address service of the United States Postal Service). For each mailed Notice and Class Member Information Form returned undelivered, the Settlement Administrator shall within three business days perform, on a rolling basis, a single search using public source databases to attempt to identify the Settlement Class Member’s current address. If the Settlement Administrator obtains a current address for a Settlement Class Member, within three business days it will re-mail the Notice, Class Member Information Form, and Form W-9 (if applicable) to that address. Otherwise the Settlement Administrator will note in its records that it was unable to locate a current address for the Settlement Class Member. Nothing herein shall extend the time for a Settlement Class Member to comply with any deadlines set forth in this Agreement. The sending of the Notice and Class Member Information Form in accordance

with this paragraph shall constitute the “Class Notice.” A Class Member Information Form and completed Form W-9 will be deemed timely returned if they are postmarked or faxed to the Settlement Administrator by the date of the Final Approval Hearing.

**8. Settlement Website.** The Settlement Administrator shall establish a settlement website that uses the URL [www.rehabcaresettlement.com](http://www.rehabcaresettlement.com), or, if not available, a similar domain name referencing “RehabCare” or “Polaris Group.” The website shall include or provide hypertext links to the long-form version of the Notice in the form of Exhibit 4 hereto; the Class Member Information Form in the form of Exhibit 3 hereto; an Internal Revenue Service Form W-9; the Complaint; this Agreement; the Motion for Preliminary Approval of Settlement; the Preliminary Approval Order; the Motion for Fees; the Motion for Incentive Award; the Motion for Final Approval of the Settlement, and the Judgment and Order. The settlement website shall include the deadlines for the submission of the Class Member Information Form, requests for exclusion from the Settlement Class, objections to final approval and other information pertaining to the settlement, and how to submit a Class Member Information Form, a FAQ’s section, and an interactive function that permits Settlement Class Members to download a Class Member Information Form and Exhibit 4. If feasible and cost-effective, the website shall contain a search function to identify facsimile telephone numbers to which there was a Fax Transmission. The website shall be operational no later than the initial issuance of Class Notice and accessible until 180 days after the Effective Date as defined in paragraph 13.E. Plaintiff or the Settlement Administrator shall provide the first draft of all content appearing on the website to Defendants no later than seven days before the website becomes operational and Defendants shall have seven days after receipt to object.

**9. Settlement Administration Reports.** The Settlement Administrator shall deliver periodic reports concerning settlement administration to the Parties. The reports shall (a) summarize the Settlement Administrator’s delivery of Notice, including statistics concerning the forms of delivery of Notice; (b) identify Settlement Class Members for whom the Settlement Administrator was unable to obtain an address; and (c) identify Settlement Class Members that have elected to opt-out of the Settlement Class, and state the number of Fax Transmissions to each such member. The Settlement Administrator shall, no later than five days after the Opt-Out Deadline, file with the Court a report that states the date of the Opt-Out Deadline and identifies all Settlement Class Members that timely and validly requested exclusion, including the facsimile telephone numbers in the MFTD associated with those members (“Exclusion Report”). No later than 30 days after the Opt-Out Deadline, the Settlement Administrator shall deliver a report that identifies all Settlement Class Members eligible for payment and the number of shares awarded to each Settlement Class Member. No later than 10 days following the entry of the orders finally approving settlement and on the Motion for Fees and Motion for Incentive Award, the Settlement Administrator shall deliver a report that includes the foregoing information and the dollar amount to be paid to each eligible Settlement Class Member. The Parties shall

have 10 days following the receipt of the reports to raise any objections to the Settlement Administrator's reports.

**10. Class Member Exclusion and Defendants' Termination Right.**

**A. Right of Exclusion.** A Settlement Class Member may be excluded from the Settlement Class by making a request in compliance with all terms and conditions of this paragraph. A request for exclusion must be in writing, contain a statement requesting that the member be excluded from the Settlement Class, state the name, address, current telephone number and facsimile telephone number(s) of the person or entity seeking exclusion, and be signed by an authorized representative of the Settlement Class Member. The request must be mailed or faxed to the Settlement Administrator at the street address or fax number provided in the Notice and postmarked or received no later than 60 days after the commencement of sending Notice provided in paragraph 7 ("Opt-Out Deadline"). A request for exclusion that is not signed, does not include all of the foregoing information, that is sent to an address or fax number other than the one designated in the Notice, or that is not received by the Opt-Out Deadline, shall be invalid and the person or entity serving such a request shall be a Settlement Class Member and shall be bound by the settlement of this Action and the release provided under paragraph 12. The sending of Notice to an address other than that contained in the MFTD shall not extend the Opt-Out Deadline. Any Settlement Class Member who timely delivers notice to the Settlement Administrator in accordance with this paragraph shall be excluded from the Settlement Class and shall have no other rights or obligations as a Settlement Class Member under this Settlement Agreement, including, without limitation, the right to distribution of the Members' Payment Amount. Any Settlement Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid written request not to participate in the Settlement Agreement shall be bound by all of its terms, as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement Agreement. Neither the Defendants nor any of their employees, representatives or attorneys shall initiate communication with any Settlement Class Member concerning the Action or this settlement. If a class member contacts a Defendant concerning the settlement, the Defendant shall refer the inquiry to the Settlement Administrator and may not encourage class members to opt out.

**B. Defendants' Option to Terminate.** Either Defendant may terminate this Settlement Agreement by delivering written notice in accordance with paragraph 31 within ten days after service of notice from the Settlement Administrator of the number and identity of Settlement Class Members that have timely exercised their right to opt out, in the event that Settlement Class Members holding shares equating to more than 4,000 Fax Transmissions timely and validly opt out of the class. In the event that any Defendant exercises its right to terminate the settlement, all sums deposited by Defendants shall be refunded within five days, less all notice and settlement administration expenses. In the

event that Settlement Class Members holding shares in excess of 2,000 Fax Transmissions timely and validly opt out of the class, an amount equal to \$500 times the number of shares in excess of 2,000 Fax Transmissions to Settlement Class Members that timely exercise their right to opt out shall be withheld from the initial class distribution and placed in an escrow account held by the Settlement Administrator. The maximum amount that can be withheld and placed in escrow is \$1 million. The withheld funds shall be available to indemnify Defendants for that portion of any judgment obtained by a Settlement Class Member for an individual suit for TCPA violations for transmission of Faxes (hereafter, "TCPA Lawsuits") in excess of \$1 million. The escrow funds and indemnity will apply only to TCPA Lawsuits filed prior to the expiration of one year of the Effective Date as identified in paragraph 13.E, and only to that portion of such judgment or judgments, individually or in combination, that exceed \$1 million. Neither Plaintiff nor the Settlement Class shall have any obligation to indemnify Defendants for any amount in excess of the funds placed in escrow. Any funds remaining in the escrow after payment of the judgments in TCPA Lawsuits will be distributed in accordance with paragraph 11. If no Settlement Class Member files suit within one year of the settlement becoming final or if the number of Fax Transmissions to plaintiffs in TCPA Lawsuits do not exceed 2,000, the escrowed funds will be distributed in accordance with paragraph 11.

#### **11. Distribution of Members' Payment Amount.**

**A. Initial Distribution.** No later than 14 days after the Effective Date, as defined in paragraph 13.E, the Settlement Administrator shall distribute the Members' Payment Amount to eligible Settlement Class Members as calculated in paragraph 3.C in the form of checks made payable to Settlement Class Members. Settlement checks shall be sent via first-class mail to the address in the MFTD, to the address in a timely submitted Class Member Information Form if different from the MFTD, or to the address obtained and believed to be correct by the Settlement Administrator if no address or an incomplete address appears in the MFTD. The amounts paid shall be calculated in accordance with paragraph 3.C, provided, however, that if a Settlement Class Member entitled to receive \$600 or more fails to timely deliver to the Settlement Administrator a completed and signed Form W-9 on or before the Final Approval Hearing, the member's payment will be subject to withholding as required by then-existing rules and regulations of the Internal Revenue Service. In the event that no name and/or other information are provided or otherwise added to the Class Member Information Form, the check shall be made payable to the name listed in the MFTD. The Settlement Administrator may, but is not required to, contact Settlement Class Members that fail to negotiate a check within 60 days of date of the check. Any Settlement Class Member that does not negotiate a check within 120 days of the date of the check forever waives and releases his or her claim for payment of the amount represented by the check. Each check shall indicate on its face that it shall go stale after 120 days from the date of issuance. After 120 days from the check issuance date, the Settlement Administrator shall close the account on which the checks were drawn (these checks are collectively the "Uncashed Checks").



**B. Redistribution and Cy Pres.** If any portion of the Members' Payment Amount remains after initial distribution to Settlement Class Members, including but not limited to amounts represented by Uncashed Checks and checks returned as undeliverable by the United States Postal Service, the Settlement Administrator shall make a further distribution to Settlement Class Members that timely negotiated checks in the initial distribution, unless the amounts involved are too small to make individual distribution economically viable. If any portion of the Members' Payment Amount remains after a second distribution, there will be subsequent distributions to Settlement Class Members that negotiated checks in the immediate prior distribution, unless the amounts involved are too small to make individual distribution economically viable. The amounts payable to eligible Settlement Class Members in any redistribution shall be calculated in accordance with paragraph 3.B provided, however, that Fax Transmissions to Settlement Class Members that are ineligible to participate in the redistribution shall not be considered for purposes of calculating payment shares. This process shall continue unless and until the Court finds that a further distribution is not economically viable, in which case the Parties shall identify a recipient whose interests reasonably approximate those being pursued by the class. If and only if no recipient whose interests reasonably approximate those being pursued by the class can be identified after thorough investigation and analysis, the Court may approve a recipient that does not reasonably approximate the interests being pursued by the class. Defendants shall have no reversionary or other interest in the Common Fund or excess funds not distributed to Settlement Class Members, including, without limitation, Uncashed Checks. The purpose of this term is to adopt the principles set forth in section 3.07 of the Principles of the Law of Aggregate Litigation (American Law Institute 2010). Any disagreement between the Parties arising out of this paragraph shall be resolved by the Court on application or motion by any party.

## **Releases**

**12. Releases of Defendants and Related Parties.** Without waiver of rights or remedies under the settlement, Settlement Class Members who do not timely and validly opt out of the Settlement Class consistent with paragraph 10.A 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 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.

Nothing in this waiver of section 1542 rights shall be construed to expand the scope of the release beyond claims based on the transmission of Faxes and/or the Action.

**13. Settlement Approval Process.**

**A. Preliminary and Final Approval Orders.** Plaintiff will move the Court for an order preliminarily approving the Settlement Agreement (the "Preliminary Approval Order") substantially in the form of the order attached hereto as Exhibit 5 as promptly as reasonably practicable. If the Preliminary Approval Order is granted, Plaintiff shall move for entry of an order finally approving the Settlement Agreement. The Final Approval Hearing shall take place as soon as reasonably practicable given the Court's calendar, the Objection Deadline, the service of CAFA Notice (as provided in paragraph 28), and the other timeframes established in this Agreement.

**B. Cannon Financial Data.** In connection with the approval process, Defendant Cannon & Associates, LLC, shall make available, no later than December 13, 2016, additional information concerning its financial condition in the form of a supplemental declaration of Charles Cave. In the event that Plaintiff and Cannon & Associates, LLC, have a disagreement concerning the information provided, the disagreement shall be resolved in accordance with paragraph 33.

**C. Right to Object.** Any Settlement Class Member that objects to the Settlement, the Motion for Fees and/or Motion for Incentive Award may appear in person or through counsel, at his or her own expense, at the Final Approval Hearing to present any evidence or argument that may be proper and relevant. To make a timely and valid objection, a Settlement Class Member shall, no later than 30 days before the Final Approval Hearing or such other date set by the Court (the "Objection Deadline"), file with the Clerk of Court and concurrently mail to Settlement Class Counsel and Defense Counsel specified in the Notice, written objections that include (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. Plaintiff and Defendants shall be afforded full opportunity to respond to objections by any putative Settlement Class Member.

**D. Final Approval Order and Judgment.** At the Final Approval Hearing, Plaintiff shall move that the Court enter a Final Approval Order substantially in the form attached hereto as Exhibit 6 and a Final Judgment substantially in the form attached hereto as Exhibit 7.

**E. Finality of Judgment and Effective Date.** The settlement will become final (the “Effective Date”) five days after the latest of the following has occurred: (i) the time to appeal from the Final Approval Order has expired and no notice of appeal has been filed; (ii) in the event of an appeal, any appeal from the Final Approval Order has been finally dismissed or the Final Approval Order and Final Judgment has been finally affirmed on appeal; (iii) the time to petition for review or move for reconsideration or rehearing with respect to any appellate decision affirming the Final Approval Order has expired; and (iv) if a petition for review or motion for reconsideration or rehearing of an appellate decision is filed, the petition or motion has been denied or dismissed, or, if granted, has resulted in final affirmance of the Final Approval Order. In the event the settlement does not receive final court approval in any respect, the settlement funds (less settlement administration and notice expenses) shall be returned to Defendants.

### **Miscellaneous Provisions**

**14. Nullification of Settlement Agreement.** In the event that: (a) the Court does not finally approve the Settlement Agreement as provided herein; (b) the Settlement Agreement is terminated under paragraph 10.B; or (c) the Settlement Agreement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it to effect, shall be null and void, except to the extent otherwise provided in paragraph 2. Any order or judgment entered by the Court in furtherance of this Settlement Agreement shall likewise be treated as void from the beginning.

**15. No Admission of Liability, Defenses or Class Certification for Other Purposes.**

**A.** Defendants deny any liability to anyone under the claims asserted in the Action, and further deny that, but for this Settlement Agreement, a class should be



certified or a representative action maintained, in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants.

B. Plaintiff denies that any arguments asserted by Defendants in opposition to its October 3, 2016, class certification motion have merit, and that defenses asserted by Defendants in the case have merit. Nothing in this Agreement is intended or will be construed as an admission of meritorious defenses by Defendants.

C. This Settlement Agreement and the fact that Plaintiff and Defendants were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Agreement).

D. The Parties have agreed to the certification of the Class for the sole purpose of effectuating this Settlement Agreement. Should the Settlement Agreement be voided by Defendants pursuant to this Settlement Agreement, or not approved by the Court, or should the Judgment not become Final, the fact that the Parties were willing to stipulate to class certification as part of the Settlement Agreement will have no bearing on, and will not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in this Action or any other action, and in any of those events Defendants expressly reserve the right to further challenge and oppose class certification.

E. Whether or not the Judgment becomes final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement Agreement will be (i) construed as, offered or admitted as evidence as, received as, or deemed to be evidence for any purpose adverse to the Parties or any other person released under paragraph 12 (the "Released Parties"), including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damages; or (ii) disclosed, referred to or offered in evidence against any Party or any Released Party, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the settlement pursuant to this Agreement.

F. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

**16. Binding Agreement.** This Agreement will be binding, enforceable, and admissible upon, and inure to the benefit of, the successors of each of the Parties and Settlement Class Members.

**17. Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential. The Parties further acknowledge that they are represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement.

**18. Interpretation.** This Settlement Agreement contains the entire agreement among the Parties and supersedes any prior agreements or understandings among them. All terms are contractual and not mere recitals.

**19. Headings.** The headings in this Settlement Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Settlement Agreement.

**20. No Rescission on Grounds of Mistake.** The Parties have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. The Parties shall reasonably cooperate to the extent necessary to respond to questions of fact that may be raised by the Court or other non-parties to this Settlement Agreement during the approval process. Therefore, the Parties agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake. The Parties expressly assume the risk that any fact not recited in the Settlement Agreement may turn out to be different from or contrary to the facts now known to them or believed by them to be true, and further agree that the Settlement Agreement shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

**21. Amendment.** This Settlement Agreement may be amended or modified only by an express written instrument signed by the Parties and their counsel, and approved by the Court.

**22. Construction.** For the purpose of construing or interpreting this Settlement Agreement, the Parties agree that it is to be deemed to have been drafted equally by all Parties and shall not be construed strictly for or against any of the Parties.

**23. Integration of Recital Paragraphs and Exhibits.** The Recital paragraphs

and exhibits to this Settlement Agreement are an integral and material part of the settlement and are hereby made a part of the Settlement Agreement.

**24. Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

**25. No Prior Assignments.** The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of the liability, claim, demand, action, cause of action or right herein released and discharged.

**26. Waiver.** No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

**27. Retention of Jurisdiction.** For purposes of the Settlement Agreement, including, but not limited to, its approval, enforcement and administration, the Court shall retain continuing jurisdiction over the Parties, the Settlement Class Members, the Settlement Administrator, the claims asserted in the Action, claims made by the Settlement Class, and all Released Claims.

**28. CAFA Notice.** Defendants shall comply with the requirements of 28 U.S.C. § 1715(b) and shall promptly file a notice with the Court that they have complied with the CAFA notice requirements.

**29. Governing Law.** This Settlement Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the state of California.

**30. Counterparts.** This Settlement Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same instrument. It shall not be necessary for the proof of this Settlement Agreement that any Party produce or account for more than one such counterpart. This Settlement Agreement may be signed and delivered by facsimile transmission or electronic transmission (pdf file format), and such facsimile or electronic signature shall be afforded same force and effect as original signatures for all purposes.

**31. Notices.** All demands, notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given (i) when delivered by courier service or messenger, or (ii) upon the date of actual receipt if transmitted by facsimile or email, to the following addresses, or such other addresses as may be furnished hereafter by notice in writing, to the following Parties:

(a) in the case of notice to Plaintiff and/or the Settlement Class to:

C. Darryl Cordero  
Payne & Fears LLP  
1100 Glendon Avenue, Suite 1250  
Los Angeles, CA 90024  
Fax number: (310) 689-1755  
cdc@paynefears.com

Donald R. Fischbach  
Dowling Aaron Incorporated  
8080 N. Palm, Third Floor  
Fresno, CA 93711  
Fax number: (559) 432-4590  
dfischbach@dowlingaaron.com

Joel S. Magolnick, Esq.  
MARKO & MAGOLNICK, P.A.  
3001 S.W. 3rd Avenue  
Miami, Florida 33129  
Fax number: (305) 285-5555  
magolnick@mm-pa.com

(b) in the case of notice to RehabCare to:

Jon M. Wilson  
Broad and Cassel  
One Biscayne Tower, 21st Floor  
2 S. Biscayne Boulevard  
Miami, Florida 33131  
Fax number: (305) 373-9443  
jwilson@broadandcassel.com

(c) in the case of notice to Defendant Cannon & Associates, LLP, to:

David L. Jordan  
Gordon & Rees LLP  
275 Battery Street  
Suite 2000  
San Francisco, CA 94111  
Fax number: (415) 986-8054  
dljordan@gordonrees.com

**32. Additional Documents and Actions.** Each of the Parties shall execute and deliver such further documents, and shall take or cause to be taken such other and further action, from time to time necessary or desirable, in order to effectuate the terms and provisions of this Settlement Agreement.

**33. Dispute Resolution.** Except as otherwise provided in paragraph 11.B, in the event the Parties have a disagreement concerning any term or action required by this Agreement, the disagreement shall be mediated by John Bickerman. If the Parties are unable to resolve their differences in mediation, they shall submit their respective positions to the Court for resolution.

**34. Tax Liability.** The Parties make no representation as to the tax treatment or legal effect of payments called for hereunder. All persons or entities receiving payments hereunder will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein. All persons or entities receiving payments hereunder are advised to seek their own independent tax advice or counsel in connection with this Agreement.

SETTLEMENT CLASS MEMBERS WILL BE SOLELY RESPONSIBLE FOR THE REPORTING AND PAYMENT OF TAXES OWED BY THEM PURSUANT TO THIS AGREEMENT (INCLUDING ANY PENALTIES INCURRED). CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2)

THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECT WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

**IN WITNESS WHEREOF**, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below:

ON BEHALF OF DAKOTA MEDICAL, INC., DBA GLENOAKS  
CONVALESCENT HOSPITAL, AND THE SETTLEMENT CLASS



Name: Henry E. LeVine, Jr.

Title: Administrator

Date: March 17, 2017

ON BEHALF OF REHABCARE GROUP, INC.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: March \_\_, 2017

ON BEHALF OF CANNON & ASSOCIATES, LLC

Name: Charles G. Cave

Title: Member

Date: March \_\_, 2017



THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

**IN WITNESS WHEREOF**, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below:

ON BEHALF OF DAKOTA MEDICAL, INC., DBA GLENOAKS  
CONVALESCENT HOSPITAL, AND THE SETTLEMENT CLASS

\_\_\_\_\_  
Name: Henry E. LeVine, Jr.  
Title: Administrator  
Date: March \_\_, 2017

ON BEHALF OF REHABCARE GROUP, INC.

*Matthew B. Steinberg*  
\_\_\_\_\_  
Name: Matthew B. Steinberg  
Title: Senior Vice President Litigation  
Date: March 20, 2017

ON BEHALF OF CANNON & ASSOCIATES, LLC

\_\_\_\_\_  
Name: Charles G. Cave  
Title: Member  
Date: March \_\_, 2017

THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECT WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

**IN WITNESS WHEREOF**, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below:


ON BEHALF OF DAKOTA MEDICAL, INC., DBA GLENOAKS  
CONVALESCENT HOSPITAL, AND THE SETTLEMENT CLASS

\_\_\_\_\_  
Name: Henry E. LeVine, Jr.  
Title: Administrator  
Date: March \_\_, 2017

ON BEHALF OF REHABCARE GROUP, INC.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: March \_\_, 2017

ON BEHALF OF CANNON & ASSOCIATES, LLC

  
\_\_\_\_\_  
Name: Charles G. Cave  
Title: Member  
Date: March 20 2017



# Exhibit 1

*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. This is not a solicitation from a lawyer.*

**If you were sent a fax 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.**

A settlement has been reached in a 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 certified the Settlement Class, which has been 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").

You received this notice because Defendants' records indicate you are a member of the Settlement Class. If you are a Settlement Class member and the court approves the settlement, you will be entitled automatically to receive a settlement payment. Only subscribers of the fax telephone numbers to which the Faxes were sent are eligible to be paid.

### WHAT IS THE LAWSUIT ABOUT?

Plaintiff Dakota Medical Inc., dba Glenoaks Convalescent Hospital ("Plaintiff"), brought litigation against RehabCare and Polaris, in which it alleged that they violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"), by sending unsolicited facsimile advertisements and facsimile advertisements that did not comply with the TCPA's opt-out notice requirements. The TCPA permits a person who is sent an advertisement in violation of the act to commence legal action against the sender and recover either his actual damages or statutory damages of \$500 per violation. The TCPA also permits the court to increase the statutory damages up to a maximum of \$1,500 per violation if the plaintiff proves the defendant willfully violated the act. Defendants deny they violated the TCPA and will continue to 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 conveys substantial benefits to class members without the risk of continued litigation.

### WHO REPRESENTS YOU?

The court has appointed C. Darryl Cordero of Payne & Fears LLP as lead Settlement Class Counsel and Donald R. Fischbach of Dowling Aaron Incorporated and Joel S. Magolnick of Marko & Magolnick, P.A., as Settlement Class Counsel. You may, but are not required to, retain your own attorney at your expense to represent you.

### WHAT DOES THE SETTLEMENT PROVIDE?

Defendants will pay the Settlement Class \$25 million. The costs of class notice and class administration expenses, court-approved attorneys' fees and litigation-related costs, and the amount of service award, if any, awarded by the court to Plaintiff will be deducted from the \$25 million settlement fund to determine the net amount to be distributed to class members.

Your share of the net settlement proceeds will be determined by the number of Faxes that were sent to your fax telephone number in relation to the total Faxes sent to all class members. **You don't need to submit proof that you received any Faxes in order to receive payment.** The number of Faxes to you will be determined from records produced by Defendants in the litigation.

Settlement Class Counsel will file a motion with the court to approve payment of attorneys' fees in an amount up to one third of the \$25 million fund, and for reimbursement of litigation costs. Plaintiff will also file a motion wherein it will ask the court to award an amount up to \$25,000 for its service as class representative. On or before August 1, 2017, both motions, including all supporting documents, will be available for review on the settlement website ([www.rehabcaresettlement.com](http://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 later in this notice.

Each class member (except a class member who has obtained proper and timely exclusion from the Settlement Class; see below) will release the Defendants and certain affiliates for all claims, whether known or unknown, based



on the transmission of the Faxes and/or the lawsuit, including claims for 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.

#### **HOW DO YOU RECEIVE PAYMENT?**

The accompanying Class Member Information Form contains the name of the payee to which the settlement check will be issued and the address to which the check will be sent, according to Defendants' records. You should use the form to correct payee and address information. If no corrections are necessary you don't need to return the form in order to receive payment. But if corrections are necessary, you must sign and return the form no later than September \_\_\_, 2017. An Internal Revenue Service Form W-9 also has been included for some class members. If the requested tax ID information is not timely provided by September \_\_\_, 2017, your payment will be subject to automatic withholding by the IRS.

#### **WHAT ARE YOUR OPTIONS?**

##### **1) DO NOTHING**

If you do nothing and the court approves the settlement, you will receive a check for the Faxes sent to your facsimile telephone number based on Defendants' records. The check will be mailed to the address to which this notice was sent. You will also be bound by the release provided to Defendants and related parties under the Class Action Settlement Agreement.

##### **2) RETURN THE CLASS MEMBER INFORMATION FORM**

If you return a Class Member Information Form containing updated information no later than September \_\_\_, 2017, the settlement check will be sent according to the updated information.

##### **3) EXCLUDE YOURSELF FROM SETTLEMENT**

You may exclude yourself from the Settlement Class by submitting a request for exclusion. If you exclude yourself, you will not receive money from the settlement and you will not be bound by the release in the Settlement Agreement. To exclude yourself from the class, you must return a signed, written request for exclusion that includes your name and current address, current telephone number, and facsimile telephone number(s) on and after July 17, 2010. Requests for exclusion must be received by the Settlement Administrator **no later than July 14, 2017**. The detailed notice on the settlement website ([www.rehabcaresettlement.com](http://www.rehabcaresettlement.com)) provides further information on how to exclude yourself.

##### **4) OBJECT TO THE SETTLEMENT**

You may object to any aspect of this settlement by filing an objection with the court and serving it no later than August 15, 2017. All objections must state the reason for your complaint about the settlement, and submit proof or evidence you may have in support of your objection and state whether you intend to appear at the final approval hearing. You may obtain further information on how to object from the settlement website.

#### **FINAL APPROVAL HEARING**

Before any money is paid, the court will have a hearing to decide whether to give final approval to the settlement, the amount of attorneys' fees and costs to be paid Settlement Class Counsel, and the amount, if any, of the service award to Plaintiff. The final approval hearing is scheduled to take place at 9:45 A.M., September \_\_\_, 2017, in Courtroom 5 of the Robert E. Coyle United States Courthouse, 2500 Tulare Street, Fresno, CA 93721. The hearing may be continued without further notice.

#### **WHERE 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. The Class Action Settlement Agreement governs in the event of any conflict between this Notice and the Agreement. To obtain additional information regarding the settlement you may: (1) view the settlement website ([www.rehabcaresettlement.com](http://www.rehabcaresettlement.com)), from which you can access a more detailed notice, the Class Member Information Form, and other important information relating to the settlement; (2) call the Settlement Administrator at [xxx xxx-xxxx]; (3) inspect the complete court file at the Office of the Clerk at the 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 on the court's general website: [www.caed.uscourts.gov](http://www.caed.uscourts.gov)).

**DO NOT CONTACT THE COURT, REHABCARE, POLARIS OR DEFENDANTS' COUNSEL FOR INFORMATION. DEFENDANTS AND THEIR COUNSEL, EMPLOYEES AND REPRESENTATIVES ARE NOT AUTHORIZED TO PROVIDE ANY INFORMATION ABOUT THE SETTLEMENT.**

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

4835-7803-8853.1

# Exhibit 2





**Taxpayer Identification Number Certification - Substitute IRS Form W-9**

«ClaimID»

Enter your Taxpayer Identification Number:

--	--	--	--	--	--	--	--	--	--	--	--	--

Print name as shown on your income tax return if different from «FirstI» «LastI»:

Under penalties of perjury, I certify that:

1. The taxpayer identification number shown on this form is my correct taxpayer identification number, **and**
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, **and**
3. I am a U.S. person (including a U.S. resident alien).

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above.

**The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.**

# Exhibit 3



RehabCare Settlement Administrator  
P.O. Box 43034  
Providence, RI 02940-3034

SWD

*R. Fellen, Inc., et al. v. RehabCare Group, Inc., and  
Cannon and Associates LLC, dba Polaris Group*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Case No. 14-CV-02081

**Must Be Received No Later  
Than September \_\_, 2017**

«Barcode»

Postal Service: Please do not mark barcode



## CLASS MEMBER INFORMATION FORM

**AN ADDRESS FOR YOU OR YOUR COMPANY WAS NOT AVAILABLE FROM DEFENDANTS' RECORDS. YOU MUST COMPLETE THIS FORM AND SUBMIT TO THE SETTLEMENT ADMINISTRATOR IN ORDER TO RECEIVE A SETTLEMENT PAYMENT**

**1. CHECK PAYEE and ADDRESS:**

**Defendants' records show that Faxes were successfully transmitted to «Fax Telephone Number», but do not necessarily identify the person or company that was the subscriber of this number or the address associated with the subscriber. It is therefore necessary that you complete this form in order to receive payment under the settlement.**

Payee

[illegible]

Street Address

[illegible]

Continuation of Street Address

[illegible]

City

[illegible]

State

--	--

Zip Code

--	--	--	--	--

**2. CERTIFICATION [Required only if you provide corrected information]:**

I certify under penalty of perjury that (a) the information I provided on this form is true and correct; and (b) in the case of a business entity named above, that I am an authorized representative of such business entity to provide the information in the form.

Signature:

Print Name: \_\_\_\_\_

Title/Position/Company:

Telephone Number (in case we need to contact you):

[illegible]

Email Address (in case we need to contact you):

[illegible]

In order to receive a settlement payment, you must sign and complete the certification and return this form **no later than September 11, 2017**, as follows:

- (a) By fax to: 1-877-839-3322 **OR**  
(b) By mail to: RehabCare Settlement Administrator, P.O. Box 43034, Providence, RI 02940-3034

**Questions? Call 1-866-596-9826 or visit [www.rehabcaresettlement.com](http://www.rehabcaresettlement.com)**

SWDREQ04

FOR CLAIMS PROCESSING ONLY	OB		CB		<input type="radio"/> DOC <input type="radio"/> LC <input type="radio"/> REV	<input type="radio"/> RED <input type="radio"/> A <input type="radio"/> B

**\*CASEFIRST\***



**Taxpayer Identification Number Certification - Substitute IRS Form W-9**

«ClaimID»

Enter your Taxpayer Identification Number:

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Print name as shown on your income tax return if different from «First1» «Last1»:

Under penalties of perjury, I certify that:

1. The taxpayer identification number shown on this form is my correct taxpayer identification number, **and**
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, **and**
3. I am a U.S. person (including a U.S. resident alien).

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above.

**The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.**

# Exhibit 4

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.

### 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 \_\_, 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 \$25,000 for its service as class representative. On or before August 1, 2017, both motions, including all supporting documents, will be available for review on the settlement website ([www.rehabcaresettlement.com](http://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, [address and fax number]**. Your submission must be received no later than September \_\_, 2017.

**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](http://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, [address and fax number]. **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 15, 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 15, 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.

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. Lusk, 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 \_\_, 2017, at 9:45 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 [add telephone]; (2) visit the settlement website ([www.rehabcaresettlement.com](http://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](http://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

4850-7173-5365.1

# Exhibit 5



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10 **UNITED STATES DISTRICT COURT**  
11 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**  
12

13 R. FELLEN, INC., *et al.*,

14 Plaintiffs,

15 v.  
16

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

18 Defendants.  
19  
20  
21  
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26  
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Case No.: 1:14-cv-02081-DAD-BAM

**CLASS ACTION**

**[Proposed] Order Preliminarily  
Approving Class Action Settlement  
Agreement**

1 THIS MATTER, having come before the Court on the motion of Plaintiff Dakota Medical,  
2 Inc., dba Glenoaks Convalescent Hospital ("Plaintiff") requesting preliminary approval of a  
3 settlement of this class action litigation (the "Action") with Defendants RehabCare Group, Inc.,  
4 and Cannon & Associates LLC, dba Polaris Group (collectively "Defendants"), in accordance  
5 with a Class Action Settlement Agreement made between them that, together with the exhibits  
6 annexed thereto (collectively, the "CASA") a copy of which was filed on March \_\_, 2017, sets  
7 forth the terms and conditions for the proposed settlement, and the Court having heard argument  
8 of counsel and being otherwise fully informed of the premises, the Court hereby finds that:  
9

10 1. The settlement proposed in the CASA has been negotiated at arms' length  
11 and is not collusive, and is preliminarily determined to be fair, reasonable, adequate, and in  
12 the best interests of the proposed Settlement Class (as defined below).  
13

14 2. For settlement purposes, the Court preliminarily finds that the proposed  
15 Settlement Class satisfies the requirements of Federal Rule of Civil Procedure 23(a)  
16 because: (a) its members are numerous, (b) Plaintiff's claims are typical and arise from the  
17 same event or practice or course of conduct that gives rise the claims of the other  
18 Settlement Class members and its claims are based on the same legal theory, (c) the case  
19 presents common questions of law and fact, and (d) Plaintiff and Plaintiff's counsel are  
20 qualified adequately to represent the Settlement Class. For settlement purposes, the Court  
21 further finds that the action may be maintained as a class action under rule 23(b)(3), that  
22 the proposed Settlement Class qualifies for class treatment pursuant to *Amchem Products,*  
23 *Inc. v. Windsor*, 521 U.S. 591 (1997), and that Plaintiff's counsel meet the requirements of  
24 rule 23(g).  
25

26 3. The Notices of Class Action and Proposed Settlement (short-form attached  
27 as Exhibit 1 to the CASA and long-form attached as Exhibit 4 to the CASA), the Class  
28

1 Member Information Forms (attached as Exhibits 2 and 3 to the CASA), and the method of  
2 providing such notices and forms to the proposed Settlement Class (as described in CASA  
3 ¶¶ 7 and 8), comply with Federal Rule of Civil Procedure 23(e) and due process, constitute  
4 the best notice practicable under the circumstances, and provide due and sufficient notice  
5 to all persons entitled to notice of the settlement of this Action.

6  
7 **IT IS THEREFORE ORDERED THAT:**

8  
9 1. For purposes of effectuating the settlement only, the following class (the  
10 “Settlement Class”) is conditionally certified:

11  
12 All persons that were subscribers of facsimile telephone numbers to which  
13 there was a successful transmission of one or more facsimiles by Defendants  
14 (or either of them) between July 17, 2010, and February 4, 2014, in  
15 broadcasts by WestFax Inc. (the “Faxes”). All such subscribers shall  
16 hereafter be referred to as “Settlement Class Members” or “members.”  
17 Excluded from the class are officers, directors, and employees, accountants,  
18 and/or agents of Defendants; any affiliated company; legal representatives,  
19 attorneys, heirs, successors, or assigns of Defendants, Defendants’ officers  
20 and directors, or of any affiliated company; any entity in which any  
21 foregoing persons have or have had a controlling interest; any members of  
22 the immediate families of the foregoing persons; any federal, state and/or  
23 local governments, governmental agencies (including the Federal  
24 Communications Commission), government entities, government body and  
25 any attorneys of record in this action; and any person or entity that has  
26 released Defendants from all claims based on the transmission of faxes  
27 during the entire class period.  
28

23 2. The settlement proposed in the CASA is preliminarily determined to be fair,  
24 reasonable, adequate, and in the best interests of the Settlement Class. The settlement is  
25 therefore preliminarily approved, subject to further consideration at the Final Approval  
26 Hearing described below.

1           3.     Plaintiff is designated and appointed representative of the Settlement Class.

2  
3           4.     The Court designates and appoints C. Darryl Cordero of Payne & Fears LLP  
4 as Lead Settlement Class Counsel, and Donald R. Fischbach of Dowling Aaron, and Joel  
5 S. Magolnick of Marko & Magolnick, P.A., as Settlement Class Counsel.

6  
7           5.     The Court designates and appoints Kurtzman Carson Consultants LLC as  
8 Settlement Administrator under the CASA.

9  
10          6.     The Notices of Class Action and Proposed Settlement and Class Member  
11 Information Forms attached to the CASA as Exhibits 1, 2, 3, and 4 are approved.

12  
13          7.     No later than seven days after the entry of this order, the parties shall deliver  
14 the completed Master Facsimile Transmission Database (as defined in paragraph 6 of the  
15 CASA) to the Settlement Administrator. No later than 20 days following the entry of this  
16 order, Defendants shall deposit funds sufficient to pay the budgeted cost of notice and  
17 settlement administration through the Final Approval Hearing into an escrow account  
18 established by the Settlement Administrator.

19  
20          8.     Within 21 days after the entry of this Order, the Settlement Administrator  
21 shall: (a) send Notices of Class Action and Proposed Settlement and Class Member  
22 Information Form attached to the CASA as Exhibit 2 to all putative Settlement Class  
23 Members in accordance with paragraph 7 of the CASA, and shall include in the notice a  
24 Form W-9 to Settlement Class Members reasonably projected to receive \$600 or more; (b)  
25 establish a settlement website in accordance with paragraph 8 of the CASA; and (c) post  
26 on the settlement website the long-form Notice of Class Action and Proposed Settlement  
27 attached to the CASA as Exhibit 4 and other documents called for by paragraph 8. For all  
28

1 notices to putative Settlement Class Members for whom name and address information is  
2 unavailable or incomplete, the Settlement Administrator shall substitute for Exhibit 2 the  
3 Class Member Information Form attached as Exhibit 3.

4  
5 9. The provisions for settlement administration set forth in the CASA shall be  
6 followed in administering the settlement.

7  
8 10. Members of the Settlement Class may request exclusion from the Settlement  
9 Class as provided in the CASA. Any request for exclusion must be received by the  
10 Settlement Administrator on or before July 14, 2017. Any request for exclusion received  
11 after the aforementioned date or that does not comply with the requirements as set forth in  
12 the CASA shall not be valid. On or before July 19, 2017, the Settlement Administrator  
13 shall file with the Court and serve on all parties a report that discloses all Settlement Class  
14 Members that timely and validly requested exclusion, and the shares held by each such  
15 member. In the event timely requests for exclusion are made by Settlement Class  
16 Members collectively holding more than 4,000 shares (as defined in paragraph 3.C of the  
17 CASA), either Defendant may terminate the settlement by delivering written notice to  
18 Plaintiff and the Court no later than ten days after the Settlement Administrator files the  
19 exclusion report.

20  
21 11. On or before August 1, 2017, Settlement Class Counsel and/or Plaintiff shall  
22 file a motion for final approval of the CASA, a "Motion for Fees," and a "Motion for  
23 Incentive Award" (as those terms are defined in paragraphs 5.A and 5.C, respectively, of  
24 the CASA).

25  
26 12. Members of the Settlement Class shall have the right to object to the  
27 proposed settlement, the Motion for Fees and the Motion for Incentive Award. No  
28

1 Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other  
2 documents submitted by any Settlement Class Member shall be received and considered by  
3 the Court unless, no later than August 15, 2017, the Settlement Class Member files with  
4 the Clerk of Court and concurrently personally serves or mails to addresses of Settlement  
5 Class Counsel specified in the Notice to the Settlement Class, written objections and if the  
6 objector intends to appear at the Final Approval Hearing, a notice of intention to appear,  
7 each of which conforms to the requirements set forth in paragraph 13.C of the Class Action  
8 Settlement Agreement. Plaintiff and Defendants may file replies in support of the motions  
9 for final approval, motion for fees, and motion for incentive award no later than August 29,  
10 2017.

11  
12 13. The deadline for Settlement Class Members to deliver a Class Member  
13 Information Form and a completed Form W-9 to the Settlement Administrator shall be  
14 September \_\_, 2017.

15  
16 14. A hearing to determine whether the Class Action Settlement Agreement  
17 should be given final approval, and to decide the Motion for Fees and Motion for Incentive  
18 Award (the "Final Approval Hearing"), will be conducted on September \_\_, 2017, at 9:30  
19 A.M. in Courtroom 5 of this Court.

20  
21 15. If the settlement proposed in the CASA, this Order and the Judgment and  
22 Order contemplated by the CASA do not receive full and final judicial approval in all  
23 material respects, or are reversed, vacated, or modified in any material respect, then neither  
24 the CASA, this Order nor the contemplated Final Judgment and Order shall have any force  
25 or effect; the parties shall be restored, without waiver, to their respective positions  
26 immediately prior to entering into the CASA; any certification of the Settlement Class  
27 shall be vacated; the action shall proceed as though the Settlement Class had never been  
28



certified; Plaintiff shall have the right to prosecute its motion for certification of a class, RehabCare shall have the right to prosecute its motion for summary judgment, and Defendants shall have the right to oppose class certification, provided, however, that the incurred costs of notice and settlement administration shall be deducted from the funds returned to Defendants. None of the Parties will be deemed to have waived any claims, objections, defenses, privileges, or arguments with respect to the merits of Plaintiffs' claims or Defendants' defenses to those claims.

16. The Court may extend any of the deadlines set forth in this Order or adjourn or continue the Final Approval Hearing without further notice to the Settlement Class.

17. The following summarizes the settlement administration and approval schedule:

Event	Timing
Deadline for parties to submit Master Facsimile Transmission Database to the Settlement Administrator	Within 7 calendar days after Order granting Preliminary Approval
Deadline for Settlement Administrator to send the notice, Class Member Information Form, and Form W9 (if applicable) to class members	Within 21 calendar days after Order granting Preliminary Approval
Deadline for class members to deliver opt-out requests to the Settlement Administrator	July 14, 2017
Deadline for Settlement Administrator to file Exclusion Report	July 19, 2017

1 Deadline for Defendants to terminate settlement Within 10 days after filing of Exclusion  
2 Report

3 Deadline for Plaintiff to file Motion for August 1, 2017  
4 Final Approval of Settlement

5 Deadline for Plaintiff and Class Counsel to August 1, 2017  
6 file Motion for Attorneys' Fees and Costs,  
7 and Motion for Incentive Award

8 Deadline for class members to file August 15, 2017  
9 objections to Motion for Final Approval of  
10 Settlement, Motion for Attorneys' Fees and  
11 Costs, and Motion for Incentive Award

12 Deadline for parties to file replies in August 29, 2017  
13 support of Final Approval, Motion for  
14 Attorneys' Fees, and Motion for Incentive  
Award

15 Deadline for class members to deliver September \_\_ 2017  
16 Class Member Information Form and  
17 completed Form W-9 to the Settlement  
18 Administrator

19 Hearing on Final Settlement Approval, September \_\_, 2017, 9:30 A.M.  
20 Motion for Attorneys' Fees and Costs, and  
21 Motion for Incentive Award

22 18. The Court retains jurisdiction to consider all further applications arising from  
23 or related to the CASA.  
24

25 Dated: April \_\_, 2017

\_\_\_\_\_  
26 Hon. Dale A. Drozd  
United States District Judge  
27  
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# Exhibit 6

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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

R. Fellen, Inc., *et al.*,

Plaintiffs,

v.

RehabCare Group, Inc., *et al.*,

Defendants.

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

**CLASS ACTION**

**[Proposed] Order Granting Motion for  
Final Approval of Settlement, Motion  
for Reimbursement of Attorneys' Fees  
and Costs, and Motion for Incentive  
Award**

1 THIS MATTER, having come on before the Court on the motion of Plaintiff  
2 Dakota Medical, Inc., dba Glenoaks Convalescent Hospital ("Plaintiff"), requesting final  
3 approval of a settlement of this class action litigation with Defendants RehabCare Group,  
4 Inc., and Cannon & Associates LLC, dba Polaris Group (collectively "Defendants"), and  
5 accompanying Motions for Reimbursement of Attorneys' Fees and Costs and for an  
6 Incentive Award. The procedural background is as follows:

7  
8 (a) On April \_\_, 2017, this Court entered an order (Dkt. \_\_) granting  
9 preliminary approval (the "Preliminary Approval Order") of the Class Action Settlement  
10 Agreement (Dkt. No. \_\_)<sup>1</sup> and settlement of this action and conditionally certifying, for  
11 settlement purposes only, a Settlement Class.

12  
13 (b) On May \_\_, 2017, in accordance with the Preliminary Approval Order, the  
14 Settlement Administrator provided notice of settlement to the Settlement Class.

15  
16 (c) \_\_ members of the Settlement Class timely exercised their right to opt-out of  
17 the class by the July \_\_, 2017, deadline;

18  
19 (d) On August 1, 2017, Plaintiff Dakota Medical, Inc., filed a motion for final  
20 approval of settlement and for an incentive award, and Plaintiffs' counsel filed a motion  
21 for reimbursement of attorneys' fees and costs;

22  
23 (e) The August 15, 2017, deadline under the Preliminary Approval Order for  
24 objecting to the Motions for Final Approval, Reimbursement of Attorneys' Fees and Costs,  
25 and Incentive Award expired without any objections being made or filed with the Court.

26  
27 <sup>1</sup> Unless otherwise indicated, all paragraph references in this order are to the Class  
28 Action Settlement Agreement filed as Dkt. No. \_\_.



1 (f) On September \_\_, 2017, the Court held a fairness hearing (the “Final  
2 Settlement Hearing”), for which members of the Settlement Class had been given  
3 appropriate notice. No class member appeared at the hearing.  
4

5 Having considered all papers filed in connection with the Final Settlement Hearing,  
6 the motions for reimbursement of attorneys’ fees and costs and for an incentive award and  
7 statements made on the record,  
8

9 **IT IS THEREFORE ORDERED THAT:**  
10

11 1. This Court has jurisdiction over Plaintiff, Defendants, members of the  
12 Settlement Class, and the Settlement Administrator.  
13

14 2. The Court finds that the Class Action Settlement Agreement has been  
15 entered into in good faith following arms’ length negotiations, and is non-collusive.  
16

17 3. No objections were filed, timely or otherwise, to final approval of the Class  
18 Action Settlement Agreement, or to the motions for reimbursement of attorneys’ fees and  
19 costs or for an incentive award [or the class members’ objections (Dkt.\_\_) are  
20 OVERRULED].  
21

22 4. Plaintiff’s motion for final approval of the Class Action Settlement  
23 Agreement is GRANTED. The Court finds that the settlement and Class Action  
24 Settlement Agreement are, in all respects, fair, reasonable, adequate, and in the best  
25 interests of the Settlement Class. Therefore, all members of the Settlement Class who have  
26 not timely and validly requested exclusion from the Settlement Class are bound by this  
27 Order and the Judgment to be entered in accordance with this Order.  
28

**Class Certification**

5. Plaintiff's request for certification of the Settlement Class is GRANTED.

The preliminarily certified Settlement Class is now finally certified, for purposes of effectuating the settlement, as follows:

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"). All such subscribers shall hereafter be referred to as "Settlement Class Members" or "members."

Excluded from the class are officers, directors, and employees, accountants, and/or agents of Defendants; any affiliated company; legal representatives, attorneys, heirs, successors, or assigns of Defendants, Defendants' officers and directors, or of any affiliated company; any entity in which any foregoing persons have or have had a controlling interest; any members of the immediate families of the foregoing persons; any federal, state and/or local governments, governmental agencies (including the Federal Communications Commission), government entities, government body and any attorneys of record in this action; and any person or entity that has released Defendants from all claims based on the transmission of faxes during the entire class period.

6. The Court finds that certification of the Settlement Class is appropriate for settlement purposes because (a) the class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any questions affecting only individual Settlement Class members; (c) Plaintiff's claims are typical of the claims of the Settlement Class; (d) Plaintiff has fairly and adequately protected the interests of the Settlement Class and, in the Court's opinion, will continue to do so; (e) Settlement Class Counsel are adequate class counsel; and (f) a class action is the superior method for the fair and efficient adjudication of this controversy.

7. In its Preliminary Approval Order, the Court designated Plaintiff as representative of the Settlement Class. The Court confirms that designation.

8. In its Preliminary Approval Order, the Court appointed C. Darryl Cordero of Payne & Fears LLP as Lead Settlement Class Counsel, and Donald R. Fischbach of Dowling Aaron Incorporated, and Joel S. Magolnick of Marko & Magolnick, P.A., as Settlement Class Counsel. The Court confirms these appointments and, after considering all factors set forth at Rule 23(g)(1), finds that Settlement Class Counsel are adequate under Rule 23(g)(1) and (4).

## Class Notice

9. The Declaration of \_\_\_\_\_, Senior Consultant of the Settlement Administrator (Dkt. \_\_\_\_\_), shows that Class Notice was given in the first instance by facsimile transmission and, in some cases, was followed by first-class mail in accordance with the Class Action Settlement Agreement and the Court's Preliminary Approval Order. The Class Notice (as described and defined in paragraph 7 and in the Declaration of \_\_\_\_\_) complies with Rule 23(e) and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of the settlement of this litigation.

## Final Approval of Settlement

10. The Court grants final approval of the settlement and the Class Action Settlement Agreement, including all terms and provisions therein.

12. Within 20 days following entry of this Order, Defendants shall deposit the sum of \$\_\_\_\_\_, representing the balance of the \$25,000,000 fund not previously funded for notice and settlement administration, in an account established by the Settlement Administrator. The Settlement Administrator shall distribute the Members' Payment Amount (as defined in paragraph 3.B) to Settlement Class Members in accordance with paragraph 11.A. For purposes of this distribution, Settlement Class Members shall be awarded the shares set forth in [name of document], Dkt. no. .

13. Each member of the Settlement Class (excepting the persons and entities that are excluded from the Settlement Class under this Order), shall automatically give the releases provided in paragraph 12 on the Effective Date (as defined in paragraph \_\_\_\_).

14. The motion for reimbursement of attorneys' fees and costs is GRANTED.

1 Settlement Class Counsel shall collectively be paid \$\_\_\_\_\_ as their attorneys' fees  
 2 from the Common Fund (as defined in paragraph 3.A), allocated as follows: \$\_\_\_\_\_ to  
 3 Payne & Fears LLP; \$\_\_\_\_\_ to C. Darryl Cordero, Inc.; \$\_\_\_\_\_ to Dowling Aaron  
 4 Incorporated; and \$\_\_\_\_\_ to Marko & Magolnick, P.A. Settlement Class Counsel shall  
 5 collectively be paid \$\_\_\_\_\_ for reimbursement of costs, allocated as follows:  
 6 \$\_\_\_\_\_ to Payne & Fears LLP; \$\_\_\_\_\_ to Dowling Aaron Incorporated; and \$\_\_\_\_\_ to  
 7 Marko & Magolnick, P.A. The Court finds these amounts to be fair and reasonable, and  
 8 sufficiently supported. Subject to paragraph 15 of this Order, all payments shall be made  
 9 from the Common Fund 14 days after the Effective Date, as defined in paragraph 13.E of  
 10 the Class Action Settlement Agreement. No other attorneys' fees shall be paid to  
 11 Settlement Class Counsel or any other plaintiff attorneys in connection with this action  
 12 absent further court order.

13  
 14 15. Some attorneys and firms referenced above have expressed an interest in  
 15 receiving their attorneys' fees in periodic payments, rather than in a lump sum, or at a time  
 16 other than that set forth in paragraph 14 of this Order. This is solely for convenience and  
 17 does not provide the attorneys with any ownership interest in any portion of the settlement  
 18 other than the right to receive fee payments in the future as specified in relevant documents  
 19 to be completed prior to receipt of fees by the attorneys. The Settlement Administrator is  
 20 permitted to enter into any and all agreements with the attorneys and third parties to  
 21 provide for such periodic payment of attorneys' fees.

22  
 23 16. Plaintiff shall be paid an incentive award in the amount of \$\_\_\_\_\_  
 24 from the Common Fund (as defined in paragraph 3.A) 14 days after the Effective Date (as  
 25 defined in paragraph 13.E). The Court finds this amount to be fair and reasonable, and  
 26 sufficiently supported.



17. The Settlement Administrator has been paid \$\_\_\_\_\_ for the costs of notice and settlement administration through July 31, 2017. These sums are reasonable and necessary for administration of the settlement, and are approved. The settlement administrator shall be paid an additional \$\_\_\_\_\_ from the Common Fund for the cost of settlement administration from August 1, 2017, through the initial distribution and further report to the Court.

## Other Provisions

18. The Parties and Settlement Administrator are ordered to take all necessary actions to complete and administer the settlement in accordance with the Class Action Settlement Agreement and shall comply with the terms of that agreement. The Parties expressly recognize and consent to enforcement of the terms of the Class Action Settlement Agreement by this Court through a motion for a rule to show cause.

19. Within 21 days of the date by which Settlement Class Members have to negotiate settlement checks (to be printed on the checks), the parties shall report to the Court on the amount of any Uncashed Checks and any remaining funds in the Common Fund. All such funds shall be redistributed to Settlement Class Members that timely negotiated checks in the initial distribution, unless the amounts involved are too small to make individual distribution economically viable. The amounts payable to each eligible Settlement Class Member shall be calculated in accordance with paragraph 3.B provided, however, that Fax Transmissions to Settlement Class Members that are ineligible to participate in the redistribution shall not be considered for purposes of calculating shares. Approved costs of the redistribution shall be paid from the Common Fund before calculating amounts payable to eligible Settlement Class Members.

22. This action is DISMISSED WITH PREJUDICE.

DATED: September \_\_, 2017

8

# Exhibit 7

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

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

R. FELLEEN, INC., *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No.: 1:14-cv-02081

**[Proposed] Final Judgment**

Judge: Hon. Dale A. Drozd  
Crtrm.: 5, 7th Floor



**Final Judgment**

WHEREAS, on April \_\_\_, 2017, this Court granted preliminary approval to the settlement of this action (Dkt. \_\_\_);

WHEREAS, on September \_\_\_, 2017, this Court granted final approval to the settlement of this action (Dkt. \_\_\_);

WHEREAS, on September \_\_\_, 2017, this Court granted Plaintiff Dakota Medical's motion for an incentive award (Dkt. \_\_\_); and

WHEREAS, on September \_\_\_, 2017, this Court granted the motion for an award of attorneys' fees and costs to class counsel (Dkt. \_\_\_).

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:

1. Final Judgment in favor of Plaintiff and the Settlement Class is hereby entered in accordance with the Court's Order Granting Motion for Final Approval of Class Action Settlement on September \_\_\_, 2017 (Dkt. \_\_\_).

2. The Court hereby retains jurisdiction to consider any further applications arising out of or in connection with the settlement.

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PAYNE & FEARS LLP  
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LOS ANGELES, CALIFORNIA 90024  
(310) 689-1750

1 IT IS SO ORDERED.

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3 DATED: September \_\_\_, 2017  
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Hon. Dale A. Drozd  
United States District Judge

4819-5543-4053.1

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