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ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
12/14/2017
Clerk of the Court
BY: RONNIE OTERO
Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 CITY AND COUNTY OF SAN FRANCISCO
10

11 CALIFORNIA DENTAL ASSOCIATION, a
California Corporation;
12 RICHARD W. BARNES, D.D.S.;
ROBERT E. REED, D.D.S.;
13 DEAN SCHWEITZER, D.D.S.;
GERALD MIDDLETON, D.D.S.;
14 WHITNEY JOHNSON, D.D.S.;
TERRENCE Y. LAU, D.D.S.,
15 BARBARA M. HAWTHORNE, D.D.S.,
individually and on behalf of all others
16 similarly situated,

17 Plaintiffs,

18 vs.

19 DELTA DENTAL OF CALIFORNIA, a
California Corporation,

20 Defendant.
21

Case No.: CGC-14-538849

**DECLARATION OF GERALD
MIDDLETON, DDS**

Date: December 27, 2017
Time: 10:30 a.m.
Judge: Hon. Mary E. Wiss
Dept.: 305

22
23 I, Gerald Middleton, DDS, hereby declare as follows:

24 1. I am a licensed California dentist and a member of the "Premier network" of dentists
25 of Delta Dental of California pursuant to a Participating Dentist Agreement ("PDA"). I have been a
26 member of the Delta Dental Premier network for many years and have been a member during the
27 period since January 1, 2011 pursuant to a PDA with Delta Dental. I am also a member of the
28 California Dental Association and have been a member of CDA since before January, 2011. I was

1 one of the claimants in the arbitration proceedings brought against Delta Dental in August, 2013.
2 The matters set forth herein are based on my personal knowledge unless otherwise indicated. This
3 Declaration supplements my previous declaration in this case dated April 18, 2017, which is
4 incorporated herein.

5 2. I understand that, subsequent to the Court's Order of April 21, 2017 granting
6 preliminary approval to the initial settlement agreement in this matter, the parties discovered a
7 miscalculation of the financial impact of Delta Dental's application of the INAP, and that the parties
8 have now recalculated that impact, and reached an Amended Settlement Agreement that includes
9 \$65,029,299 in payments to be allocated among dentists whose fees and been improperly limited by
10 Delta Dental. I have reviewed the Amended Settlement Agreement and had the opportunity to
11 discuss its provisions with Class Counsel. The change in the Settlement Amount in the Amended
12 Settlement Agreement from \$34,750,000 to \$65,029,299 is a very positive change from the
13 standpoint of the Premier dentist Class Members. Based on everything I know about the facts and
14 circumstances that produced the Amended Settlement Agreement, I have concluded that it is fair
15 and reasonable and, overall, a very good settlement for Class Members.

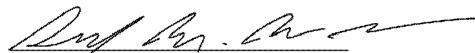
16 3. As of today, I do not know what, if any, actual monetary recovery will be paid to me
17 personally and my conclusion about the fairness and reasonableness of the settlement is not based
18 on the expectation that I personally will receive any particular monetary payment as a result of the
19 amended settlement. Rather, I believe it is fair and reasonable to require Delta Dental to reimburse
20 dentists for a significant portion of previous fee limitations that are claimed to be in breach of
21 contract, and that the amount that each dentist receive from the cash portion of the settlement be
22 related to the amount of actual harm that each dentist sustained, which is what I understand the
23 principle behind the allocation of the cash portion of the settlement to be. I am also in agreement
24 that the calculation of these allocations be based on the computerized records that Delta Dental has
25 maintained, because it would be very difficult for dentists such as me to do going all the way back
26 to 2011 and access financial records, some of which may have been lost or destroyed over the years.

27 4. Assuming the Court confirms my appointment as a class representative, I will
28 continue to work with counsel, to review materials related to the case and the amended settlement,

1 to participate in communications and conference calls concerning the case and the amended
2 settlement, and to act in a manner consistent with the interest of all California dentists in the class.
3 Though I am a member of CDA, I understand that all dentists who are a part of the class, whether
4 members of CDA or not, should be treated equally and that is the approach that I have taken and
5 will continue to take as a class representative if approved by the court.

6 5. I declare under penalty of perjury that the foregoing is true and correct to the best of
7 my knowledge, information and belief.

8 Executed in Riverside, California on December 13, 2017.

9
10 
11 Gerald Middleton, DDS