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

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

16 Plaintiffs,

17 vs.

18 DELTA DENTAL OF CALIFORNIA, a  
California Corporation,

19 Defendant.  
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No.: CGC-14-538849

**DECLARATION OF COLIN LOVENESS**

Hearing Date: April 25, 2018

Time: 1:30 p.m.

Judge: Hon. Mary E. Wiss

Dept.: 305

1 I, Colin Loveness, hereby declare as follows:

2 1. I am an adult resident of the state of California and I make this declaration based on  
3 my personal knowledge as well as other facts and information made available to me. I am currently  
4 employed as a Senior Consultant by LitiNomics, Inc. I have over ten years of experience assisting  
5 clients in calculating damages and conducting statistical analysis in a variety of engagements  
6 including breach of contract, finance, patent and anti-trust issues. My experience includes  
7 calculating damages and performing statistical analysis on very large data sets performed in SAS,  
8 Stata and SQL. I hold a B.A. in economics from Carleton College and a M.S. in predictive analytics  
9 from Northwestern University. My education covers coursework in database systems, working with  
10 data stored in a distributed database architecture, multivariate linear regression analysis, time series  
11 and generalized linear models regression analysis, statistics, econometrics and applied math. The  
12 factual information set forth in this declaration is true to the best of my knowledge, information and  
13 belief and the opinions stated herein are accurate statements of my professional opinion on such  
14 matters. I could testify competently to these matters under oath if called as a witness.

15 **I. Methodology for Determining the Allocation of the Amended Settlement Amount**  
16 **under Appendix 3 to the Amended Settlement Agreement.**

17 **Determining the INAP Impact on Class Members**

18 2. Delta Dental tracks the vast majority of dental claims data in what it calls the  
19 MetaVance claim system. This Claims System includes all claims submitted by California dentists  
20 and orthodontists, with the exception of “Federal Claims,” which are claims for enrollees in various  
21 federal government programs. These Federal Claims are adjudicated in what Delta Dental refers to  
22 as the DDMI claim system.

23 3. Total INAP impact was determined in several steps. First, all claims from Delta  
24 Dental’s claims database are filtered to services rendered at California locations. Next, claims  
25 undergo a series of categorizations to determine if the claim is eligible for INAP impact. Claims are  
26 excluded from the INAP impact calculation if they (a) were filed by dentists whose contract with  
27 Delta Dental does not entitle him or her to file fees, (b) the provider never submitted a new fee  
28 request, (c) the most recent filed fee request was before January 1, 2011, (d) the provider has never

1 requested a filed fee, (e) the claim was denied, (f) the patient and paid amount is zero dollars, (g)  
2 the paid amount is zero dollars and the patient amount is as charged, (h) the claim was filed on any  
3 other fee schedule besides a Premier provider approved fee schedule (for example a Delta Dental  
4 PPO provider) (i) the filed fee is greater than the maximum amount allowed, (j) the filed fee is  
5 greater than the requested fee, (k) the charge amount is less than the approved amount or filed fee,  
6 or (l) the claim was determined to be a duplicate of another claim. All remaining claims were  
7 determined to be claims upon which the INAP may have operated to reduce the fee filed by a Class  
8 member. These are sometimes referred to as “INAP impact eligible” fees. If it is determined that a  
9 claim is INAP impact eligible, the methodology for calculating INAP impact is described in further  
10 detail below.

11 4. Claims data for determining whether INAP impact occurred and, if it did, the amount  
12 of that INAP impact for each non-orthodontic dental procedure performed by Class members  
13 (which Delta Dental refers to as “non-orthodontic” or “non-ortho” claims) was provided to me by  
14 Delta Dental. Using these data, I calculated on a provider by provider basis the INAP impact for  
15 each provider for claims involving non-orthodontic procedures for the period January 1, 2012  
16 through September 14, 2017. As discussed in greater detail below, INAP impact for 2011 had to be  
17 estimated due to limitations in the available data.

18 5. Each provider in Dental Dental’s MetaVance database is identified with a unique  
19 “servicing provider” identifier. The INAP impact for each class member is determined by first  
20 identifying those claims and procedures that were affected by the INAP during this period. The  
21 maximum reimbursement in absence of INAP would be the lowest of 1) the fee submitted by the  
22 dentist, 2) the billed charge the dentist submitted on the claim, and 3) the maximum amount allowed  
23 for the relevant period. The INAP impact was then determined by comparing maximum  
24 reimbursement in absence of INAP during the relevant period with the contracted fees accepted by  
25 Delta Dental. This basic procedure was followed for the entire period from January 1, 2012 through  
26 September 14, 2017. I developed algorithms to calculate on a provider by provider basis the INAP  
27 impact for each provider and to link the “servicing provider” identifier to the dentist’s unique  
28 California license number and address. These algorithms were checked and cross-checked by me

1 and then subjected to peer review within my firm to ensure that they produced accurate calculations  
2 of INAP impact for each provider. While that work constituted the bulk of the calculations that had  
3 to be made, it did not include claims for orthodontic procedures nor did it include the Federal  
4 Claims.

5 6. I determined the INAP impact for each Class member contained in the Federal  
6 Claims (DDMI) database in essentially the same manner described above, using the data provided  
7 by Delta Dental from this separate database. In the situation of Federal Claims, I developed similar  
8 algorithms to calculate on a provider by provider basis the INAP impact for each provider and to  
9 link the “servicing provider” identifier to the dentist’s unique California license number and  
10 address. These algorithms were checked and cross-checked by me and then subjected to peer  
11 review within my firm to ensure that they produced accurate calculations of INAP impact for each  
12 provider. The INAP impact determined using the Federal Claims data was added, again on a  
13 provider by provider basis, to the INAP impact determined for the “non-ortho” claims determined  
14 as described in paragraph 4 and 5 above.

15 7. The calculation of INAP impact for orthodontic claims necessarily differed from the  
16 procedures used for determining INAP impact for “non-ortho” claims described in paragraphs 4-6,  
17 above, because some orthodontic claims are based on a cycle of treatment (sometimes lasting a year  
18 or longer), but others are based on a procedure by procedure submission of claims similar to the  
19 “non-ortho” procedures. In order to accomplish this, the comprehensive orthodontic cycles unique  
20 to a single patient and provider were first identified. In those situations in which the dentist had  
21 submitted a fee that was less than the maximum amount allowed under the Participating Dentist  
22 Agreement but greater than the contracted fee accepted by Delta Dental for the relevant cycle of  
23 treatment or for the individual orthodontic treatment, the INAP impact was determined to be the  
24 difference between the submitted fee and the approved fee. If the fee submitted by the dentist was  
25 greater than the maximum amount allowed, then the INAP impact was determined to be the  
26 difference between the maximum amount allowed fee and the contracted fee. As with the claims  
27 described in paragraphs 4 and 6 above, each provider was identified with a unique “servicing  
28 provider” identifier, which was then linked to the dentist’s unique California license number in

1 order to be certain the INAP impact was attributed to the correct dentist. I developed algorithms to  
2 make each of these determinations, which were checked and cross-checked and additionally  
3 subjected to peer review according to the procedures for accuracy required by my firm. These  
4 algorithms were supplemented and cross-checked by extensive manual review of the data conducted  
5 both by me and by Class Counsel, and by numerous discussions with Class Counsel. Using this  
6 process, the INAP impact for orthodontic claims was identified on a Class member by Class  
7 member basis. If the relevant Class member already had sustained INAP impact from either the  
8 “non ortho” claims data or the Federal Claims data, the INAP impact from orthodontic procedures  
9 was added to the INAP impact sustained from either of these two other sources.

10 8. As mentioned in paragraph 4, above, the procedure for determining INAP impact for  
11 calendar year 2011 was necessarily different because the same level of detailed, claim by claim data  
12 in the MetaVance claim system were not available that year due to a change in Delta Dental’s  
13 claims systems beginning in 2012. In order to determine INAP impact for Class members for 2011,  
14 I first identified those Class members who submitted a request for an increased fee to Delta Dental  
15 in 2011, since those would be the fees to which the INAP would be applied. For each of these  
16 providers, I then determined the total INAP impact for the period January 1, 2012 through  
17 September 14, 2017 using the data provided to me from the MetaVance claim system. I then used  
18 these data to allocate to Class members the total amount of INAP impact for calendar year 2011 that  
19 I understood was accepted by the parties during the mediation as a fair and reasonable INAP impact  
20 for calendar year 2011. The INAP impact for each provider determined in this method was then  
21 added to the total INAP impact from all other sources, again on a provider by provider basis.

22 9. In addition to the foregoing, the available data indicated that a separate calculation  
23 needed to be performed for what Delta Dental denominates “down-coded claims.” I understand  
24 these to be claims submitted by or on behalf of a provider that, upon review by Delta Dental, were  
25 determined to be an ineligible benefit for the patient receiving treatment. As a result, the service is  
26 adjusted to an eligible service of similar scope in treatment. Although only the lower cost of the  
27 down-coded procedure is paid by the benefit plan, the servicing provider is still ultimately remitted  
28 the higher cost of the original treatment. In these situations, it was necessary to determine the INAP

1 impact by reference to the submitted and contracted fee for the “down-coded” claim. In each  
2 instance, the INAP impact on a provider by provider basis was added to the INAP impact for each  
3 provider determined as described above.

4 10. As stated above, each of these determinations was made on a provider by provider,  
5 or Class member by Class member, basis. The INAP impact for each Class member from each  
6 source was totaled into a single INAP impact for each Class member. There were a very few claims  
7 in the Delta Dental system for either a DeltaCare facility (“DC”) or a dental group (“GRP”) that  
8 could not be linked to an actual Class member because of the way the claims were submitted to  
9 Delta Dental in the first instance or the passage of time and lack of available information. In  
10 investigating these situations, I concluded that they were likely attributable to situations in which a  
11 dental procedure was performed by someone at, for example, a university dental clinic that did not  
12 record the name of the dentist who actually performed these procedures. Consistent with the Plan  
13 of Allocation and Distribution, the amount attributable to these procedures was not allocated to  
14 these unidentified persons but instead these amounts were included in the amount allocated to all  
15 Class members who could be identified using the procedures described above. In other words, these  
16 allocations went to Class members.

17 11. After these determinations were made, the INAP impact calculations for each Class  
18 member were totaled to arrive at a total INAP impact per Class member, as well as a total overall  
19 INAP impact upon the Class.

20 **Allocating the Amended Settlement Amount to Class Members Based on INAP Impact**

21 12. The allocation of the Amended Settlement Amount used the same original claims  
22 data provided by Delta Dental that I utilized to determine the total INAP impact on the Class, as  
23 described above.

24 13. Each Class member’s pro rata allocation of the Amended Settlement Amount was  
25 determined based on his or her pro rata share of the total INAP impact determined in this manner.  
26 In other words, a Class member’s pro rata allocation was determined by calculating the ratio of his  
27 or her individual INAP impact to the total INAP impact, then allocating to him or her a  
28 proportionate share of the Amended Settlement Amount.

1           14.       Under the Amended Settlement Agreement, it is my understanding that the allocation  
2 to any Class member whose pro rata allocation was greater than \$0 but less than \$500 is \$500. I  
3 therefore determined which Class members would qualify for an allocation of \$500 based on this  
4 criterion. I determined that 6,503 Class members are entitled to the minimum allocation of \$500,  
5 for a total of \$3,251,500. This determination was made using a goal seek function of Excel  
6 software that is designed to make such determinations.

7           15.       It was then necessary to allocate the remaining Amended Settlement Amount  
8 (\$65,029,299 less \$3,251,500 or \$61,777,799) to the remaining Class members who sustained INAP  
9 impact. This amount was allocated to 8,013 Class members on a pro rata basis based on their total  
10 INAP impact in relation to the total INAP impact determined in the manner described in this  
11 declaration. The average allocation of the Amended Settlement Amount for Class members who  
12 were injured by application of the INAP during the January 1, 2011 to September 14, 2017 time  
13 period is \$4,480.

14           16.       I linked the “servicing provider” identifications contained in Delta Dental’s database  
15 for each Class member who is allocated a portion of the Amended Settlement Amount to the Class  
16 member’s California dental license number, name, practice location and address. An electronic  
17 schedule containing this information will be provided to the Class Notice Administrator, Rust  
18 Consulting, who I understand will be responsible for sending out the settlement checks and also the  
19 letters to Class members identifying these payments.

20       **II.     Distributing the Amended Settlement Amount to Class Members and/or Group**  
21       **Practices.**

22           17.       By virtue of using actual claims data provided by Delta Dental, I was able to  
23 associate a Class member’s settlement allocation with the specific underlying claims that gave rise  
24 to the INAP impact associated with that allocation. This information is necessary in order to  
25 distribute the allocations pursuant to the Amended Plan of Allocation and Distribution. Whereas  
26 the allocation is an exercise in aggregation (*i.e.* identifying the claims associated with procedures  
27 performed by one provider and rolling them up in order to determine that provider’s INAP impact,  
28 and settlement allocation), the distribution involves a process of disaggregation, because the INAP

1 impact incurred by each provider must (in many cases) be separated into impact incurred by the  
2 provider individually and by the provider as part of one or more dental group practices.

3 18. It is my understanding that the Amended Plan of Allocation and Distribution requires  
4 that Class members whose INAP impact arose while he or she was employed by or working for a  
5 dental group practice be notified of the allocation associated with each such group practice. In  
6 addition, it is my understanding that the Amended Plan of Allocation and Distribution also requires  
7 each group practice whose members are allocated a portion of the Amended Settlement Amount to  
8 receive notice of the total amount of the allocations associated with the group practice and the  
9 identity or identities of the Class member(s) whose practice(s) generated that allocation. Using the  
10 claims data described in this declaration, which include the identity of the group practice or entity to  
11 which payment for the claim was made in the normal course of business, I determined which of the  
12 allocations to each Class member determined in the manner described above arose in connection  
13 with services the Class member performed for one or more group practices. Using the data, I was  
14 able to determine the portion of each Class member's allocation that is attributable to services he or  
15 she performed for one or more group practices, as well as the portion of each allocation (if any) that  
16 is attributable to services the Class member performed in his or her capacity as a solo practitioner,  
17 rather than as part of a group practice. The data reflecting each of these determinations will be  
18 provided in electronic form to the Class Notice Administrator, Rust Consulting. I understand that  
19 Rust Consulting will be responsible for sending letters to Class members and to the group practices  
20 describing these allocations and providing both the Class members and the group practices the  
21 opportunity to object to these allocations being paid to the group practice as set forth in the  
22 Amended Settlement Agreement and Amended Plan of Allocation and Distribution.

### 23 **III. Calculation of the Final Settlement Amount**

24 19. The Amended Settlement Agreement provides for an Amended Settlement Amount  
25 of "up to \$65,029,299", which I understand arose from the settlement negotiations between the  
26 parties, facilitated by the mediator, Professor Eric Green. (Amended Settlement Agreement,  
27 Exhibit A to 12-13-2017 Declaration of Paul Alexander, ¶ III.D.1. I understand that the reason for  
28 the words "up to" is that the Amended Settlement Agreement also provides that the allocations of




1 the Amended Settlement Amount for Class members who opt out of the Amended Settlement  
2 Agreement are removed from the Amended Settlement Amount. (Amended Settlement Agreement,  
3 Ex. A to 12-13-2017 Declaration of Paul Alexander, ¶ III.D.1.a). I understand that, as of the date of  
4 this declaration, there are a total of seven (7) opt outs, each of whom have been identified in a list  
5 provided to the Court. Notice of Settlement Class Opt Outs and Objections Provided Pursuant to  
6 December 27, 2017 Order filed March 20, 2018. I have determined that the total amount of the  
7 allocations for these seven opt outs is \$8,675. When the Amended Settlement Amount is reduced  
8 by the amount attributable to the seven opt outs, the remaining total is \$65,020,624. Following the  
9 language of the Amended Settlement Agreement, this is the amount to be paid by Delta Dental  
10 under the terms of the Amended Settlement Agreement. I understand that the parties refer to this  
11 sum as the “Final Settlement Amount” and I will adopt that term in this declaration for the sake of  
12 consistency.

13 20. Following the terms of the Amended Settlement Agreement, including Appendices 3  
14 and 4 thereof, it is my understanding that Delta Dental will pay into a bank account established as a  
15 Qualified Settlement Fund the Final Settlement Amount of \$65,020,624 no later than a date set by  
16 the Court. Rust Consulting will then be responsible both for sending the letters to Class members  
17 described in paragraph 17, above, and for making the actual payments to Class members and or to  
18 the dental group practices of which they were a part during the January 1, 2011 through September  
19 14, 2017 time period. The costs of sending these letters and making these payments will be borne  
20 by Delta Dental, so that process will not reduce the Final Settlement Amount. In the event Class  
21 members and/or group practices submit timely and valid objections to the distributions pursuant to  
22 the procedures set forth in the letters sent to them, and are unable to resolve these objections and  
23 advise the Class Notice Administrator in writing how the distribution should be made within 60  
24 days, the amount of the distributions subject to such unresolved objections will be held in sub-  
25 accounts within the Qualified Settlement Fund, to be administered in accordance with the  
26 provisions of Appendices 3 and 4 of the Amended Settlement Agreement. I understand the  
27 reasonable additional costs of administering a disputed claim payments will be paid out of the sub-  
28 account(s) in which those disputed funds are held in the Qualified Settlement Fund.

1           21.     In making the allocation and distributions described in this declaration, I have met in  
2 person, by remote web-based conferences, and by telephone conference calls on numerous  
3 occasions with Class counsel, Delta Dental's counsel and Delta Dental actuaries and employees.  
4 On occasions, when I had questions about an aspect of the data provided from the Delta Dental  
5 database, I spoke directly to actuaries or employees of Delta Dental to ensure that I was making  
6 proper use of the data or that I understood the meaning of the data or how it was used in the normal  
7 course of business. I reviewed both the methodology that I employed to make the allocation and  
8 distribution determinations that are described in this declaration. While it is my opinion that these  
9 determinations are largely complete, I am still in the process of double and triple checking the  
10 determinations and of resolving data issues that remain. This continual vetting process has been  
11 extremely valuable and I wish to express my appreciation to Delta Dental for its timely and candid  
12 explanations and assistance. That said, the allocation and distribution determinations that are  
13 described in this declaration have been made by me and I alone am responsible for their accuracy.  
14 Based upon the extensive work, checking and double checking, constant vetting and the peer review  
15 audit process described in this declaration, it is my professional opinion that the allocations and  
16 distributions that I have determined using the methodology described above are accurate and  
17 correctly reflect the fair and reasonable allocation of the Amended Settlement Amount to Class  
18 members and the correct calculation of the Final Settlement Amount as described in this  
19 Declaration.

20           I declare under penalty of perjury that the foregoing is true and correct to the best of my  
21 knowledge, information and belief and that the opinions expressed above correctly reflect my  
22 professional opinion as stated in this declaration.

23           Executed in San Francisco California on April 3, 2018.

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26           Colin Loveness  
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