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SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT 305

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

Plaintiffs,

vs.

DELTA DENTAL OF CALIFORNIA, a
California Corporation,

Defendant.

Case No.: CGC-14-538849

**[PROPOSED] ORDER GRANTING
PLAINTIFFS’ MOTION FOR FINAL
APPROVAL OF AMENDED CLASS
ACTION SETTLEMENT. APPROVING
REQUESTED ATTORNEYS’ FEES AND
INCENTIVE AWARDS**

**Judge: Hon. Mary E. Wiss
Dept.: 305
Date: April 25, 2018; 1:30 p.m.**

This matter came before the Court on April 25, 2018, on the Motion for Final Approval of the Amended Settlement Agreement (“Motion For Final Approval”) by Plaintiffs the California Dental Association (“CDA”), Dr. Richard W. Barnes, Dr. Robert E. Reed, Dr. Dean Schweitzer, Dr. Gerald Middleton, Dr. Whitney Johnson, Dr. Terrence Y. Lau and Dr. Barbara M. Hawthorne (collectively, CDA and the individual named plaintiffs are referred to as the “Class

1 Representatives”). Plaintiffs’ Motion for Attorneys’ Fees and Award of Incentive Fees also came
2 before the Court for hearing.

3 Upon review and consideration of the motion papers, including the Amended Settlement
4 Agreement, and all exhibits thereto, the Court determines and Orders as follows;

5 1. The capitalized terms used in this Order shall have the same meaning as defined in
6 the Amended Settlement Agreement, except as otherwise provided.

7 2. The Court has jurisdiction over this matter and venue is proper.

8 3. The applicable requirements of California Code of Civil Procedure section 382 and
9 Rule 3.769 of the California Rule of Court have been satisfied with respect to the Class and the
10 Amended Settlement Agreement. The Court hereby makes final its earlier provisional certification
11 of the Class for settlement purposes, and defines the Class to include:

12 “All California dentists who are or were signatories to, or are or were parties to or subject to,
13 a Participating Dentist Agreement with Delta Dental of California for participation in its Premier
14 network at any time from January 1, 2011 through December 27, 2017.”

15 4. The Court confirms the appointment of Paul Alexander and George Langendorf of
16 Arnold & Porter Kaye Scholer LLP as Settlement Class Counsel, and confirms the appointment of
17 Plaintiffs CDA, Dr. Richard W. Barnes, Dr. Robert E. Reed, Dr. Dean Schweitzer, Dr. Gerald
18 Middleton, Dr. Whitney Johnson, Dr. Terrence Y. Lau and Dr. Barbara M. Hawthorne as Class
19 Representatives for the Settlement Class.

20 5. The Court finds that the notice (“Class Notice”) given to the Class Members as described
21 in the Declaration of Kim Schmidt, Senior Vice President of Rust Consulting, Inc. was the best
22 notice practicable under the circumstances; was valid, due and sufficient notice to all Class
23 Members; fully and accurately informed the Class Members of all material elements of the
24 Amended Settlement and of their opportunity to object to or to seek exclusion therefrom; and
25 complied fully with the laws of the State of California, the United States Constitution, due process
26 and other applicable law.

1 6. The Court finds that a full and fair opportunity has been afforded to the Class
2 Members to participate in this hearing, and all Class Members and other persons wishing to be
3 heard have been heard. The Class Members also have had a full and fair opportunity to exclude
4 themselves from the Settlement and the Class. Accordingly, the Court determines that Plaintiffs and
5 all Settlement Class Members are bound by the Amended Settlement Agreement, release of
6 Released Claims, and this Final Approval Order and Judgment.

7 7. The Court finds that the Amended Settlement Agreement was reached following
8 meaningful discovery and investigation conducted by Class Counsel; that it is the result of
9 informed, adversarial, arm's length negotiations between the Parties; and that the terms of the
10 Amended Settlement Agreement are in all respects fair, adequate, and reasonable. In so finding, the
11 Court has considered all of the evidence presented, including evidence regarding the strength of
12 the Plaintiff's case; the risk, expense, and complexity of the claims presented; the likely
13 duration of further litigation; the amount offered in Settlement; the extent of investigation and
14 discovery completed; and the experience and views of Class Counsel. The Court further has
15 considered the absence of objections to the Amended Settlement Agreement by Class Members, as
16 well as the low number of requests for exclusion. Accordingly, the Court hereby grants final
17 approval to the Amended Settlement Agreement, and directs that its terms be implemented
18 in a manner consistent with this Order.

19 8. The Court determines based on the evidence before it that, no later than _____,
20 2018, Delta Dental shall pay into a Qualified Settlement Fund the sum of \$65,020,624,
21 which shall be administered by the Class Notice Administrator pursuant to instructions from
22 Class Counsel and counsel for Delta Dental. The Class Notice Administrator will cause this
23 sum to be deposited in either an interest bearing nor non-interest bearing account, as
24 provided herein. at a national bank approved by Class Counsel and counsel for Delta Dental.
25 The Class Notice Administrator shall issue checks from the these accounts to Class members
26 and/or dental group practices in accordance with the Amended Plan of Allocation and
27 Distribution, and issue Form 1099-Misc forms to the recipients as provided in paragraph 10
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1 of the Amended Plan of Allocation and Distribution. Delta Dental shall be responsible for
2 the payment of any and all costs associated with the implementation of the Qualified
3 Settlement Fund save and except for costs incurred should a Class member or group practice
4 object to payment of the allocations and be unable to resolve that objection within 60 days
5 of mailing of notice to them of the allocations. In that event, the funds corresponding to the
6 allocations that are subject to an unresolved objection shall remain in the Qualified
7 Settlement Fund but be placed in an interest bearing account, which shall also be
8 administered by the Class Notice Administrator. Costs of administering these funds that are
9 subject to an ongoing objection shall be borne by the funds deposited in the interest bearing
10 account. These funds shall remain in the interest bearing account until either the Class
11 members and/or group practices involved reach a resolution of the objection and jointly
12 provide agreed upon instructions for the payment of these funds or the Class Notice
13 Administrator receives a final and non-appealable court order directing how these funds
14 should be paid. In either case, the Class Notice Administrator shall deduct the costs
15 incurred in administering these funds before paying them as instructed.

16 9. The Court finds that the Class Representatives and Class Counsel have fairly and
17 adequately represented the interests of the absent Settlement Class members. The Court further
18 finds that the Individual Class representatives have provided material assistance in the prosecution
19 of this action and have fulfilled their role as dutiful class representatives and that an incentive award
20 of \$3,500 is appropriate to provide incentive for individuals to step forward to serve as class
21 representatives. Based upon the evidence and motion papers presented, and the absence of any
22 objection, the Court hereby approves an Incentive Award to each of the Individual Class
23 Representatives in the amount of \$3,500 each and that Delta Dental pay these awards directly to
24 each Individual Class Representative no later than _____.

25 10. Additionally, the Court has considered Plaintiffs' Motion for an Award of Attorneys'
26 Fees and Costs as well as the evidence and memorandum filed in support thereof. The Amended
27 Settlement Agreement provides that the award of attorneys' fees is to be paid by Delta Dental and
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1 will not reduce the Amended Settlement Amount to be allocated to the Class. No objection has
2 been filed to the requested award of attorneys' fees. Accordingly, the Court hereby orders that
3 Class Counsel be awarded the sum of \$2,500,000 and that Delta Dental pay this sum directly to
4 Class Counsel no later than _____.

5 11. Pursuant to California Rules of Court, Rule 3.769, the Court reserves exclusive and
6 continuing jurisdiction over the Action, the Class Representative, the Class Members, and
7 Defendant for the purposes of supervising the implementation, enforcement, construction,
8 administration and interpretation of the Amended Settlement Agreement and this Judgment.

9 12. Entry into the Amended Settlement Agreement does not constitute an admission by
10 Defendant, and this Order does not constitute a finding of the validity of any claims in the Second
11 Amended Complaint or of any other wrongdoing by the Defendant.

12 13. Notice of entry of this Final Approval Order and Judgment shall be given to Class
13 Members by posting a copy of the Final Approval Order and Judgment on the settlement website.

14 **IT IS SO ORDERED.**

15 Dated:

16 _____
17 Hon. Mary E. Wiss
18 Judge of the Superior Court
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