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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 CITY AND COUNTY OF SAN FRANCISCO

13 CALIFORNIA DENTAL ASSOCIATION, a
14 California Corporation,

15 Plaintiff,

16 vs.

17 DELTA DENTAL OF CALIFORNIA, a
18 California Corporation,

19 Defendant.

Case No.: CGC-14-538849

**DECLARATION OF RICHARD W.
BARNES, DDS**

Date: April 17, 2017

Time: 9:00 a.m.

Judge: Hon. Mary E. Wiss

Dept.: 305

20 I, Richard W Barnes, DDS, hereby declare as follows:

21 1. I am a licensed California dentist and a member of the "Premier network" of dentists of
22 Delta Dental of California pursuant to a Participating Dentist Agreement ("PDA"). I have been a
23 licensed California dentist for the past 27 years and a member of the Delta Dental Premier network
24 of dentists for the past 26 years. I am also a member of California Dental Association and have
25 been a member of CDA for the past 27 years. I was one of the original claimants in the arbitration
26 proceedings brought against Delta Dental in August, 2013. The matters set forth herein are based
27 on my personal knowledge unless otherwise indicated.
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1 2. I understand the claims asserted against Delta Dental in this action are based upon in
2 substantial part on the PDA that became effective January 1, 2011. I was a member of the Delta
3 Dental Premier network at that time and a party to that PDA.

4 3. I further understand that the claims asserted in this action are claims for breach of
5 contract and breach of the covenant of good faith and fair dealing by Delta Dental arising from its
6 attempt to amend the PDA again in August, 2013, its attempt to impose reduced maximum
7 allowable amounts for the Contracted Fee under the PDA, and its imposition of limits on fee
8 reimbursements through a calculation that I now understand is referred to as the "INAP." As a
9 member of the Delta Dental Premier network since January 1, 2011, I have submitted fees to Delta
10 Dental each year and each year Delta Dental has limited or reduced my submitted fees for a number
11 of procedures.

12 4. In 2013, when I learned of the actions of Delta Dental with respect to its attempts to
13 amend the PDA and to reduce the maximum allowable amounts for Contracted Fees under the
14 PDA, I agreed to challenge the lawfulness of those actions in a legal action. When I did so, I
15 intended that the legal challenge be one that would speak for all dentists who, like myself, were
16 parties to a PDA with Delta Dental. While I believed at the time that I had valid claims to assert,
17 my purpose in being a party to litigation was not solely to benefit myself but also to raise a
18 challenge on behalf of dentists who, like myself, were Premier dentists under a PDA with Delta
19 Dental. At the outset, I understood that this legal challenge would take place in an arbitration
20 proceeding before the American Arbitration Association and I agreed to become a claimant in that
21 arbitration, which was commenced in August, 2013.

22 5. Thereafter, in 2014, I learned that it was possible that the arbitration might be limited
23 solely to the individuals who were claimants in that arbitration rather than benefit all dentists who
24 had a similar PDA with Delta Dental. As a result, I agreed that the arbitration proceeding was held
25 in abeyance due to litigation raising the same basic claims brought by CDA on behalf of its
26 members in the San Francisco County Superior Court. Because I was interested in a result that
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1 benefitted all dentists such as myself, that was acceptable and I agreed that the arbitration
2 proceedings should be held in abeyance in deference to the Superior Court action.

3 6. During the time that this litigation has been pending, I have stayed in contact with
4 counsel and read articles concerning the litigation in order to stay abreast of how it was proceeding.
5 Then, in September of 2016, I learned that as a result of mediation sessions held between Delta
6 Dental and CDA, a possible basis for a settlement of the litigation had arisen. I learned that in order
7 for the settlement to benefit all California dentists who had PDA's with Delta Dental, the procedure
8 of a class action was being considered. I was requested to consider being a representative of the
9 class of dentists who, like myself, had PDA's with Delta Dental since January 1, 2011 and who
10 believed that their fees had been unfairly and improperly limited by Delta Dental under that PDA
11 and that Delta Dental had not provided accurate or sufficient notice either of how it determined the
12 fee limitations or that it intended to reduce the maximum allowable amounts for Contracted Fees
13 under the PDA.

14 7. In my experience, a common issue in dealing with Delta Dental for dentists such as
15 myself is that the fee determinations seem to be a "black box" that Delta Dental does not explain,
16 even when questions are raised. Based on my experience and the conversations I have had with
17 other dentists over the past several years, I believe this to be a common issue among dentists who
18 are parties to a PDA with Delta Dental. Since one of my primary goals from the outset had been to
19 assert the legal rights of Premier dentists generally and not simply to pursue a claim on my own
20 behalf, I agreed to become a class representative if approved by the court and if the court certified a
21 class of which I am a member.

22 8. Since agreeing to serve as a class representative should the class that is sought be
23 certified by the court, I have communicated with counsel concerning the potential settlement,
24 participated in conference calls with counsel and other potential class representatives in which the
25 potential terms of a settlement were described and discussed, reviewed the documentation sent to
26 me concerning the settlement, including drafts of the settlement agreement itself and the revised
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1 drafts of the Settlement Agreement and its appendices. I have attempted to familiarize myself with
2 the basic terms of the settlement as reflected in the draft settlement agreements that I reviewed and
3 in the revised Settlement Agreement that I have now signed, as well as the reasons for the
4 settlement. I have reached the conclusion that the settlement agreement is a fair and reasonable
5 settlement not only for myself personally but for all California dentists who, like myself, are parties
6 to a PDA with Delta Dental for participation in its Premier network of dentists. I have concluded
7 that the provisions for enhanced 120 calendar days of notice and particularly the individualized
8 financial information that Delta must provide as part of that notice are valuable long term benefits
9 for Premier dentists such as myself. In fact, I believe that requiring Delta to provide this more
10 complete and informative notice is important to the entire class of dentists who are members of
11 Delta Dental's Premier network because this addresses the problem of the "black box" nature of
12 Delta Dental's communications about its fee practices and provides important information that will
13 allow dentists to plan their practices and the actions they should take in response to actions that
14 Delta Dental takes.

15 8. I also concluded that the monetary provisions of the settlement, calling for \$34,750,000
16 in cash payments to be allocated among dentists whose fees and been improperly limited by Delta
17 Dental was fair and reasonable, particularly since I did not expect that any financial recovery for
18 past injustices was likely or even possible when the litigation began. As of today, I do not know
19 what, if any, actual monetary recovery will be paid to me personally and my conclusion about the
20 fairness and reasonableness of the settlement is not based on the expectation that I personally will
21 receive any particular monetary payment as a result of the settlement. Rather, I believe it is fair
22 and reasonable to require Delta Dental to reimburse dentists for a significant portion of previous fee
23 limitations that are claimed to be in breach of contract, and that the amount that each dentist receive
24 from the cash portion of the settlement be related to the amount of actual harm that each dentist
25 sustained, which is what I understand the principle behind the allocation of the cash portion of the
26 settlement to be. I am also in agreement that the calculation of these allocations be based on the
27 computerized records that Delta Dental has maintained, because it would be very difficult for
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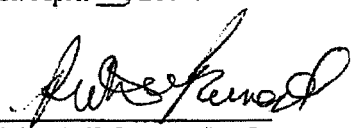
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dentists such as me to do going all the way back to 2011 and access financial records, some of which may have been lost or destroyed over the years.

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

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

Executed in Visalia, California on April __, 2017.


Richard W. Barnes, DDS