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

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11 CALIFORNIA DENTAL ASSOCIATION, a
California Corporation,

12 Plaintiff,

13 vs.

14 DELTA DENTAL OF CALIFORNIA, a
15 California Corporation, and DOES 1-10,
16 inclusive,

17 Defendants.

Case No.: CGC-14-538849

DECLARATION OF PETER DUBOIS

Date: April 17, 2017
Time: 9:00 a.m.
Judge: Hon. Mary E. Wiss
Place: Dept. 305

18 I, Peter A. DuBois, hereby declare as follows:

19 1. I am the Executive Director of California Dental Association (“CDA”) and have
20 served as Executive Director since 2003. As Executive Director, my principal responsibility is to
21 serve as the chief executive of CDA and, in that capacity, to oversee all of the activity of CDA. I
22 have acted in that capacity during the entire time that CDA initially brought the litigation that is
23 now before the Court during the entire time it has been pending. I was personally involved in the
24 events that led to this litigation and in the negotiations that led to the settlement agreement that has
25 been proposed to the Court. The facts matters set forth herein are based upon my own personal
26 knowledge unless otherwise indicated.

27 2. CDA is the primary professional association for dentists in California. CDA’s
28 members include the vast majority of active dentists in California. Approximately 27,000 dentists

1 are members of CDA today, including those in active practice and those who have retired or ceased
2 practice in California. According to the Dental Board of California, there are approximately 36,500
3 licensed dentists in California. In general, therefore, I estimate that just over 70% of the dentists in
4 active practice in California are members of CDA. To the best of my knowledge as one personally
5 familiar with the dental community and professional organizations serving dentists in California,
6 CDA the primary association of its size in California that regularly advocates on behalf of dentists
7 on significant issues, including both legislative advocacy and, where it is determined to be
8 necessary, litigation. In many situations, including this litigation, CDA advocates positions that are
9 in the best interests of all similarly situated dentists, -including those who are not members of CDA.

10 3. From the outset, CDA has considered the claims advanced in this litigation to be
11 consistent with the interests of all California dentists who have entered into a Participating Dentist
12 Agreement (“PDA”) with Delta Dental of California (“Delta Dental) for participation in its Premier
13 network of dentists. While the action before this Court was initially brought on behalf of CDA
14 members under the doctrine of associational standing, this did not mean that the purposes or
15 benefits of the litigation would not benefit all California dentists who had PDA’s with Delta Dental
16 for participation in the Delta Dental Premier network. For example, one benefit of the litigation up
17 to this point has been the decision by Delta Dental to defer implementing the decreases in maximum
18 allowable amounts for Contracted Fees for Premier dentists in light of the legal issues raised in the
19 litigation. This benefit is not restricted to CDA members, but applies equally to all California
20 dentists who have PDA’s with Delta Dental, not just CDA members.

21 4. When the mediation that ultimately led to the settlement agreement began, CDA had
22 been responsible for bringing and supporting the litigation for well over two years. In fact, the
23 Court had issued its proposed decision deciding that CDA had properly invoked the doctrine of
24 associational standing to bring this action on behalf of its members. As the mediation sessions
25 continued, it became clear that a resolution that applied uniformly to all California dentists in Delta
26 Dental’s Premier network under a PDA since January 2011 was important to an overall resolution
27 of the case. In order to achieve this, it was my understanding that the procedure of a class action for
28 settlement purposes was the appropriate procedural vehicle. CDA agreed to this concept and agreed

1 to serve as a class representative. As Executive Director of CDA, I concluded that this was
2 appropriate and in the best interests of all similarly situated dentists, CDA member dentists and
3 those who were not CDA members alike. Throughout the remaining course of the mediation
4 sessions, we attempted to arrive at a resolution that would be uniform and in the best interests of all
5 California dentists who members of the Delta Dental Premier network pursuant to a PDA, CDA
6 members and non-members alike. CDA understands and agrees with this objective.

7 5. When the negotiations had progressed to a point at which it appeared a settlement
8 was reasonably likely, and that the settlement would involve a class action on behalf of all similarly
9 situated California dentists, we concluded that individual class representatives would be appropriate
10 in addition to CDA. The most logical choice for such class representatives was the six individual
11 dentists who had stepped forward to become a part of the litigation when it initially began, and were
12 individual claimants in the arbitration proceedings against Delta Dental. These six individual
13 dentists are very similar to the dentists in the class. They all are a part of the Delta Dental Premier
14 dentist network pursuant to a PDA with Delta Dental, all have different practices in different
15 geographical regions throughout the state. Though I believe their interests as class members are the
16 same as the class generally, including both CDA member dentists and those who are not members
17 of CDA, I understand that it was deemed desirable to add another individual dentist as a class
18 representative who is not and has never been a CDA member. CDA has no objection to this
19 because CDA agrees that the settlement in this case should apply equally to all California dentists
20 who have been Premier dentists pursuant to a PDA with Delta Dental at any time since January,
21 2011.

22 6. CDA has agreed to serve as a class representative on behalf of all class members,
23 including those who are not CDA members. In my opinion, CDA is a particularly well qualified
24 class representative because we have the ability, background, expertise and resources to maintain
25 the litigation, to address issues that are raised by the litigation, and to make decisions about the
26 course of the litigation that will benefit Premier dentists broadly, including those who are not
27 members of CDA. It is fair and accurate to say that this litigation, and the current settlement before
28 the Court that benefits all Premier dentists, would not have been possible had it not been for CDA.

1 In my opinion, no other organization or individual had the resources, expertise, and capacity to
2 assert the rights of California dentists that have been successfully asserted in this litigation. If
3 appointed by the Court as a class representative, CDA will represent all class members equally and
4 will perform the role of finalizing and assisting in the implementation of a settlement agreement that
5 treats all class members equally, whether they are CDA members or not.

6 7. I understand that the Court asked whether the provisions of paragraph III.C of the
7 settlement agreement, which provides that Delta Dental will provide the notice that it intends to
8 send of any future material amendment to the PDA to CDA twelve calendar days ahead of the date
9 that it intends to send that notice out, creates a unique advantage to CDA and/or CDA members. In
10 fact it does not and that was not the intent of this provision. The purpose of this provision is simply
11 to allow CDA a brief period of time before future announcements in order to analyze the proposed
12 amendment and be in a position to communicate accurately about the proposed amendment to all
13 dentists who may be affected by it. The history of this litigation confirms the importance of full,
14 accurate and meaningful communication between a dental insurer and dentists who are part of its
15 network. As a practical matter, CDA is uniquely situated to serve the role of analyzing a future
16 change on behalf of California dentists, communicating the results of that analysis, and responding
17 to questions that dentists may have about it. CDA has the physical and financial resource to serve
18 this role, has significant experience in analyzing and communicating with the dental community,
19 and in my opinion is generally regarded as a reliable source of accurate information on issues
20 affecting dentists and the dental profession.

21 8. CDA regularly communicates with dentists broadly throughout California, including
22 both members of CDA and non-members. Certain CDA publications, including the monthly
23 newspaper, *CDA Update*, and the peer-reviewed scientific Journal, are made available to the dental
24 community generally, including non-CDA members. In addition, information about this lawsuit
25 and the tentative settlement that has been reached is made available to the public on CDA's website,
26 and is available to anyone. In my opinion, CDA is recognized as the primary organization
27 representing the interests of dentists throughout California and thus dentists who are not CDA
28 members often access the CDA website for information such as that relating to this litigation.

1 Information about the status of this action, and the documents that pertain to the settlement will be
2 made available to the public, including CDA members and non-members alike. CDA has already
3 made certain basic information about this litigation generally, and the proposed settlement available
4 to the entire dental community and the public generally on its website, including a set of
5 "Frequently Asked Questions" that respond to questions that we think dentists may have. Similarly,
6 if a future announcement of a change to the PDA is made by Delta Dental that applies to Premier
7 dentists generally, CDA will include its analysis of that announcement on its website and make its
8 comments and analysis available to all dentists through its public facing website.

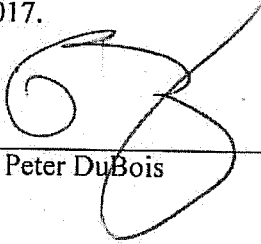
9 9. As reflected in my previous declaration in this matter, CDA regularly engages in
10 advocacy on the part of California dentists, which includes not only litigation such as this but also
11 sponsoring and supporting legislation for the benefit of California dentists. When CDA engages in
12 legislative advocacy, for example, CDA endeavors to develop and support policy positions that
13 support the legitimate and important interests of California dentists broadly, including CDA
14 members and non-members alike. CDA's advocacy for the dental profession has been guided by
15 serving the best interests of California dentists generally, not CDA members only. As reflected in
16 the preceding paragraphs of this declaration, that principle holds true for this litigation as well.

17 10. Neither the purpose nor the effect of the provision in paragraph III.C of the proposed
18 settlement agreement for 12 calendar days for CDA to study and analyze future amendments or
19 changes that Delta Dental may make in the PDA is to provide a benefit to CDA or CDA members
20 that is not shared broadly with the dental profession in California. To the contrary, the purpose and
21 effect of this provision is to provide CDA a brief period of time to analyze and understand future
22 amendments and how they may affect dentists going forward, and to provide its views and be able
23 to anticipate and respond to questions that California dentists may have about the amendment or
24 change, regardless of whether they are CDA members or not. As reflected above, CDA publishes
25 this information broadly in several publications that are available to the dental profession without
26 regards to whether they are CDA members or not. The purpose and effect of this provision is to
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1 allow CDA enough time to review and analyze any future material change in the Delta Dental PDA
2 change and then make the benefits of that analysis generally available to dentists in California.
3 CDA has and will continue to serve this function to all concerned, without regard to whether they
4 become CDA members or not.

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

7 Executed in Sacramento, California on April 18, 2017.

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12 Peter DuBois
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