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Association and Richard W. Barnes, DDS

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

11 CALIFORNIA DENTAL ASSOCIATION, a
California Corporation,

12
13 Plaintiff,

14 vs.

15 DELTA DENTAL OF CALIFORNIA, a
California Corporation,

16
17 Defendant.

Case No.: CGC-14-538849

**DECLARATION OF BARBARA M.
HAWTHORNE, DDS**

Date: April 21, 2017

Time: 9:00 a.m.

Judge: Hon. Mary E. Wiss

Dept.: 305

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22 I, Barbara M. Hawthorne, DDS, hereby declare as follows:

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24 1. I am a licensed California dentist and, prior to my retirement in 2013, was a member of
25 the "Premier network" of dentists of Delta Dental of California pursuant to a Participating Dentist
26 Agreement ("PDA"). I have been a licensed California dentist since 1979 and was a member of the
27 Delta Dental Premier network since 1998. I was a member of California Dental Association from
28

1 1979-1994 but I ended my membership in 1994 and was not a member from 1994-2013 when I
2 retired.

3 2. In November, 2016, I was approached and asked whether I would consider serving as a
4 class representative on behalf of a class of California dentists who were members of the Premier
5 network of Delta Dental of California. I learned that this was a legal action that had been pending
6 for some time and that a potential settlement had arisen. I learned that there were six other dentists
7 who had already agreed to serve as class representatives but that each of them was a member of
8 California Dental Association and that it the parties were interested in the potential for an additional
9 class representative who had never been a member of CDA but who had served as a Premier dentist
10 for at least some portion of the time since January 1, 2011. I understood that my role would be to
11 act as a class representative on behalf of all class members but to pay particular attention to whether
12 any aspect of the proposed settlement seemed to favor CDA members over non-members. After
13 discussion, I agreed to serve as a class representative.

14 3. Based upon my review of the documents and discussions with counsel, I understand the
15 claims asserted against Delta Dental in this action are based upon in substantial part on the PDA
16 that became effective January 1, 2011. I was a member of the Delta Dental Premier network at that
17 time and a party to the PDA then in effect.

18 4. Based upon my review of the documents and discussions with counsel, I further
19 understand that the claims asserted in this action are claims for breach of contract and breach of the
20 covenant of good faith and fair dealing by Delta Dental arising from its attempt to amend the PDA
21 again in August, 2013, its attempt to impose reduced maximum allowable amounts for the
22 Contracted Fee under the PDA, and its imposition of limits on fee reimbursements through a
23 calculation that I now understand is referred to as the "INAP." As a member of the Delta Dental
24 Premier network both before after January 1, 2011, I have submitted fees to Delta Dental on
25 multiple occasions and Delta Dental has at times limited or reduced my submitted fees for a number
26 of procedures.
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1 5. Since agreeing to serve as a class representative should the class that is sought be
2 certified by the court, I have communicated with counsel concerning the potential settlement,
3 participated in conference calls with counsel and other potential class representatives in which the
4 potential terms of a settlement were described and discussed, reviewed the documentation sent to
5 me concerning the settlement, including drafts of the settlement agreement itself. I have attempted
6 to familiarize myself with the basic terms of the settlement as reflected in the draft settlement
7 agreement that I reviewed and in the revised settlement agreement that I have signed, as well as the
8 reasons for the settlement. I have reached the conclusion that the settlement agreement is a fair and
9 reasonable settlement not only for myself personally but for all California dentists who, like myself,
10 were parties to a PDA with Delta Dental for participation in its Premier network of dentists. I have
11 concluded that the provisions for enhanced 120 calendar days of notice and particularly the
12 individualized financial information that Delta must provide as part of that notice are valuable long
13 term benefits for Premier dentists, regardless of whether or not they were members of CDA. In
14 fact, I believe that requiring Delta to provide this more complete and informative notice is important
15 to the entire class of dentists who are members of Delta Dental's Premier network because this
16 addresses the problem of the "black box" nature of Delta Dental's communications about its fee
17 practices and provides important information that will allow dentists to plan their practices and the
18 actions they should take in response to actions that Delta Dental takes.

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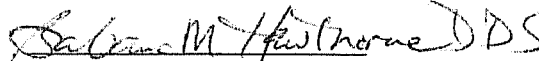
1 understand the principle behind the allocation of the cash portion of the settlement to be. I am also
2 in agreement that the calculation of these allocations be based on the computerized records that
3 Delta Dental has maintained, because it would be very difficult for dentists such as me to do going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

6 7. I have reviewed the revised Settlement Agreement that has been sent to me as well as the
7 emails from counsel describing that agreement. I had previously participated in discussions
8 concerning the agreement and reviewed emails describing the hearings before the Court and
9 revisions to the Settlement Agreement and its appendices that resulted from those hearings. I have
10 concluded that the revised Settlement Agreement treated dentists who were not CDA members in
11 the same manner that it treated CDA members. In particular, the provisions of the Settlement
12 Agreement that provide for additional notice and individualized financial analysis of future changes
13 in the PDA appear to be the same for CDA members and non-members. The provisions for
14 monetary compensation appear to treat CDA members and non-members equally. I do not regard
15 the provision for 12 days advance notice to CDA of future significant changes in the PDA by Delta
16 Dental as creating a significance difference between CDA members and non-members. As a
17 practical matter, CDA publications on significant issues become widely known to the dental
18 community in a relatively short period of time, either through press releases, public facing material
19 available on the CDA website, or from CDA member dentists forwarding this information to their
20 colleagues who are not CDA members.

21 9. If approved as a class representative, I will continue to work with counsel, to review
22 materials related to the case and the settlement, to participate in communications and conference
23 calls concerning the case and the settlement, and to act in a manner consistent with the interest of all
24 California dentists in the class. I understand that all dentists who are a part of the class, whether
25 members of CDA or not, should be treated equally and I have concluded that the current Settlement
26 Agreement does that. I will continue to review any future documents with that same approach if am
27 approved by the court as a class representative.

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

3 Executed in Laguna Beach, California on April 7, 2017.

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5 Barbara M. Hawthorne, DDS
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