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10 Attorneys for Plaintiffs and the Class

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

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

Plaintiffs,

v.

DELTA DENTAL OF CALIFORNIA, a
California Corporation,

Defendant.

Case No.: CGC-14-538849

**DECLARATION OF PAUL ALEXANDER
IN SUPPORT OF MOTION FOR
ATTORNEYS' FEES AND INCENTIVE
AWARDS TO CLASS
REPRESENTATIVES**

Date: April 25, 2018

Time: 1:30 p.m.

Judge: Hon. Mary E. Wiss

Dept.: 305

I, Paul Alexander, hereby declare as follows:

1. I am an attorney licensed and authorized to practice before this Court and am one of the counsel for the plaintiffs in this action. I have served as counsel for plaintiff California Dental Association ("CDA") as well as the individual plaintiffs since the beginning of this litigation. I was provisionally appointed Class Counsel in this case by the Court's Order of December 27, 2017. The matters set forth in this declaration are based on my personal knowledge as set forth with more particularity below.

1 2. I have been a member of the California Bar since 1972, and have continuously
2 practiced commercial litigation since then. Prior to joining Arnold & Porter, I was a shareholder in
3 the law firm of Heller, Ehrman, White & McAuliffe. I have extensive experience litigating
4 complex commercial cases, including contract and related claims of the type at issue in this case. I
5 also have substantial experience litigating class action lawsuits both in state court and federal court,
6 involving both California and federal law. I also have significant experience and expertise in cases
7 involving insurance issues and the laws and regulations that govern the conduct of insurance
8 companies. I have served as lead counsel representing major insurance companies doing business
9 in California in both state court actions regarding its business as an insurer and in legal and
10 regulatory actions, including regulatory proceedings and hearings before the California Department
11 of Insurance and the California courts. I am an experienced trial attorney and a member of the
12 American College of Trial Lawyers. I have been recognized as a Northern California Super Lawyer
13 many times since 2005, as well as a “Best Lawyer” for Insurance Law (2010-2017), Bet-the-
14 Company Litigation (2010-2017), and Commercial Litigation (2009-2017) and “San Jose Lawyer of
15 the Year” for Insurance Law (2017).

16 3. I have served as lead counsel for plaintiffs throughout this litigation. This case
17 presented novel and complex legal issues and I anticipated from the outset that Delta Dental would
18 present an aggressive defense. In light of the significance and nature of the litigation, as a part of
19 retention as counsel in the litigation, I committed to Ms. Sandman, CDA’s Chief Legal Officer, that
20 I would commit to a high level of personal involvement in the prosecution of the case and that I
21 would remain personally responsible for the litigation throughout its pendency. This proved to be a
22 necessary and appropriate commitment because, among other things, Delta Dental retained a skilled
23 and aggressive legal team headed by Robert Rosenfeld of Orrick, Herrington & Sutcliffe, LLP. In
24 addition to Mr. Rosenfeld, Orrick staffed the litigation with two additional senior lawyers, David
25 Goldstein, a partner, and Howard Ullman, both of whom I knew to be highly talented and
26 hardworking lawyers, as well as an equally talented associate, Ellen Caro. The Orrick team
27 presented a strong and aggressive defense, which began with a series of motions and proceedings
28 intended to obtain a dismissal of the litigation from the outset. This high level staffing continued

1 throughout the case, including both mediations. This called for a significant commitment of time on
2 my part to respond. As a result, the fees for my services represent a significant percentage of the
3 total fees incurred during the course of the litigation. Given the issues presented, the able and
4 aggressive defense, and the need for continuity in the representation of the plaintiffs, this was
5 necessary and appropriate to the litigation.

6 4. The fees and costs incurred in this litigation are set forth in the Declaration of
7 George Langendorf, which I have reviewed and believe to be accurate. In light of the significance
8 and complexity of the issues raised in the case, the able and aggressive defense presented on behalf
9 of Delta Dental, the requirements for discovery, the motions, hearings, the one day Court trial, and
10 the two mediations, the fees incurred were necessary and appropriate to the case and represent fair
11 and reasonable legal fees and costs in this case. On a regular and ongoing basis, the fees and costs
12 incurred were reviewed by Alison Sandman, Chief Legal Officer of CDA. Ms. Sandman is an
13 experienced and sophisticated attorney well versed in the retention and supervision of outside
14 counsel and in supervising litigation such as this one. Ms. Sandman exercised continuing
15 supervision to ensure that the legal fees and costs were reasonable and focused on tasks and issues
16 that were most likely to produce effective results. This process, and the requirement to be
17 responsible to Ms. Sandman throughout, provides further assurance that the fees and costs incurred
18 in the prosecution of this action were fair, reasonable and necessary to achieving the successful
19 result for the Class that is contained in the Amended Settlement Agreement.

20 5. The initial settlement agreement in this case achieved an excellent result in this case,
21 including important revisions to the participating dentist agreement and an agreement by Delta
22 Dental to pay a settlement amount of up to \$34,750,000. That initial settlement agreement also
23 called upon class counsel to perform certain due diligence to ensure that the allocation of that
24 settlement amount was calculated and administered correctly. In performing this duty, I identified a
25 number of class members with different practices and who appeared to be representative of the
26 entire class, and requested Delta Dental to determine the INAP impact for each of them for my
27 review. In the course of performing these calculations, it was discovered that the initial calculations
28 that Delta Dental had performed to determine the total financial impact of the INAP upon the class

1 were significantly incorrect. These were essential to establishing the factual merit of the case and to
2 the ultimate success achieved. Delta Dental recognized this problem and, to its credit, agreed to
3 renegotiate the cash settlement amount after additional discovery was completed. The fact remains,
4 however, that had Class Counsel not engaged in vigorous due diligence in this case, this error could
5 have gone undiscovered, and this discovery resulted in an increase of the cash component of the
6 settlement from \$34,750,000 to \$65,029,299.

7 6. The parties were required to retain and work with experts originally in connection
8 with Delta Dental's motion to dismiss the arbitration and more often in assessing INAP import and
9 damages. Class Counsel retained an actuarial expert in connection with Delta Dental's challenge to
10 CDA's associational standing. In connection with an that discovery, on that motion and earlier the
11 court trial, the parties prepared expert reports and took multiple rounds of expert depositions, and
12 presented expert testimony at court trial on associational standing. Both parties also retained
13 thereafter economic experts in connection with the recalculation of INAP impact. Class Counsel
14 worked extensively with their expert in calculating INAP import and damages claims and thereafter
15 in the formulation of the plan of allocation and distribution. This impact is still continuing. The
16 fees and costs incurred on behalf of the plaintiffs in this aspect of this litigation were reasonable,
17 appropriate and necessary.

18 7. Class Counsel also devoted a considerable amount of time and energy in preparing
19 for and appearing at the adversarial mediations that ultimately brought about the settlement of this
20 litigation. The first mediation session took place on March 30, 2016. Prior to the mediation, the
21 parties provided the mediator with extensive collection of documents and detailed mediation
22 statements. The resolution of his case required substantial effort following the initial mediation
23 session. During the course of due diligence required by this initial settlement agreement, an error in
24 the original calculation of the total INAP import was discovered. This required still more extensive
25 work in reviewing claims data and arriving at revised calculations. The parties continued to work
26 with the mediator for several months, during which proposals and counter-proposals were made. It
27 then took the parties until March, 2017, to reach agreement on all associated terms and issues. This
28 process included amount of generating additional expert reports, deposing one another's experts,

1 and ultimately a second full-day mediation in November of 2017, which finally led to the Proposed
2 Amended Settlement. Even after that, the Parties extensively negotiated the language and terms of
3 the Amended Settlement, including the provisions regarding class notice and the allocation and
4 distribution of the settlement to the class.

5 During most of this litigation, Emily Wood was his primary associate attorney on the case.
6 At one point in the case, Ms. Wood was away from the office and maternity leave, during which
7 Arnold & Porter associate Erica Connolly stepped in. Ms. Connolly's qualifications were very
8 similar to that of Ms. Wood and she was well qualified to assist. The "learning time" of Ms.
9 Connolly to become familiar with the case was not charged and does not form any part of the
10 request for fees in this case. There were some occasions of intense activity in which Ms. Wood and
11 Ms. Connolly both worked on the case at the same time, but their efforts were coordinated and not
12 duplicative. As set forth in previous declarations filed in this case, Ms. Wood was an experienced
13 attorney with background in commercial litigation, including class actions. Ms. Wood had
14 practiced law with Arnold & Porter or its predecessor for six years, and had been admitted to the
15 California bar for more than eight years. She worked on this case continuously since its beginning,
16 excepting a period of time in 2016 when she was on maternity leave. She was engaged in virtually
17 every aspect of this case and was thoroughly familiar with the law that applies to it, with the facts
18 upon which the claims in this case are based, and with the legal claims asserted. She also had
19 significant experience in class actions and has been engaged as counsel in numerous class actions
20 over the past six years. She provided high quality and valuable legal service throughout the time
21 she worked on this case. She is familiar with California and federal class action law as well.

22 8. In June, 2017, Ms. Wood left Arnold & Porter to serve as attorney for the California
23 Court of Appeal. In order to ensure continuity and to fill Ms. Wood's role, lead counsel asked
24 Arnold & Porter associate George Langendorf to step into the litigation and to serve the role
25 previously served by Ms. Wood. The learning and transition time associated with these events was
26 not billed and is not a part of Class Counsel's fee request. Mr. Langendorf is equally well qualified
27 to serve the role that Ms. Wood and Ms. Connolly had played. Mr. Langendorf has been a member
28

1 of the California bar for more than ten years, and also has extensive experience in commercial
2 litigation and class actions. Additional information regarding Mr. Langendorf's experience,
3 qualifications and the work performed by him on this matter is set forth in my declaration in support
4 of the Motion for Preliminary Approval of the Amended Class Settlement.

5 9. The majority of the legal assistant time on this case has been billed by Eric Trostad
6 and Jerome Ferrer. Eric Trostad has been a Senior Paralegal since 1999. He has assisted with the
7 representation of dozens of companies in multiple cases, including complex commercial cases and
8 class actions. He has served as the managing paralegal for three nationwide consumer class actions.
9 He was also a member of a legal team that received the State Bar of California 2007 President's Pro
10 Bono Service award, and another that received the State Bar of California Law Firm Team award
11 2015. I understand that Jerome Ferrer is a graduate of U.C. Berkeley and has been a legal assistant
12 since 1989, and that he has served as lead legal assistant in over 20 complex litigations and has
13 providing support on over 150 matters from 2011 to the present. I have worked with Mr. Trostad
14 and Mr. Ferrer on other matters and know both of them to be talented and skilled paralegals with
15 experience and knowledge of the job both appropriate and necessary to this case.

16 10. There is one further aspect of this request for fees that deserves comment. It is true
17 that the litigation did not begin as a class action but rather as or a claim in arbitration and shortly
18 thereafter as an action in state court brought by CDA on behalf of its members based on the doctrine
19 of associational standing. CDA members represent a substantial part of the total Class provisionally
20 certified by the Court, though not the entire Class. The discussions that led to the decision to seek
21 class certification for settlement purposes took place in 2016 and a class for settlement purposes
22 was provisionally certified in April, 2017. However, the litigation effort that took place from the
23 commencement of the case was essential to establishing the merits of the litigation and to producing
24 the successful settlement on behalf of the Class. It is therefore necessary and appropriate to
25 consider the attorneys' fees and costs incurred during the entire course of this litigation as the fees
26 and costs that produced the end result. The fees and costs incurred prior to the Court's initial
27 provisional certification of the case as a class action for settlement purposes contributed directly and
28 substantially to the successful result achieved on behalf of the Class.

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 San Francisco, California on February 16, 2018.
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6 Paul Alexander
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