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Attorneys for Plaintiffs and the Class

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 CITY AND COUNTY OF SAN FRANCISCO

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.,  
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.

No.: CGC-14-538849

**DECLARATION OF JASON RABE**

3  
4 I, Jason Rabe, hereby declare as follows:

5 1. I am a Program Manager at Rust Consulting, Inc. ("Rust"). I submit this declaration  
6 in connection with the above-captioned matter at the request of Class Counsel. I make this  
7 declaration based upon my own personal knowledge, the information generally available to me at  
8 Rust, information communicated to me by other Rust employees, and my experience in  
9 administering class action settlements. I am authorized by Rust to provide this declaration on  
10 behalf of Rust as Class Notice Administrator. If called as a witness in this action, I would be able to  
11 competently testify as to the facts set forth herein.

1 **SETTLEMENT FUND**

2 2. Class Counsel and Delta Dental Counsel negotiated and entered into a written  
3 Escrow Agreement with Rust as of July 16, 2018. The Escrow Agreement provides that Rust will  
4 take responsibility for distributing the Settlement Fund but will do so in accordance with  
5 instructions from counsel. Pursuant to the terms of that agreement, on or about August 3, 2018,  
6 Delta Dental deposited the sum of \$65,020,624.00 into an interest bearing account that was setup  
7 with Huntington National Bank.

8 3. The amount of interest earned on the Settlement Fund through February 28, 2019  
9 was \$227,565.77. Pursuant to the Order Granting in Part and Denying in Part Plaintiffs' Motion for  
10 Supplemental Attorneys' Fees and Costs, dated December 12, 2018, an amount of \$60,652.78 was  
11 transferred to Class Counsel from the interest accrued on the Settlement Fund. Rust was also  
12 responsible for causing quarterly payment of applicable State and Federal taxes in the amount of  
13 \$63,500.00<sup>1</sup> from the Settlement Fund on December 17, 2018. Below is a breakdown of the  
14 remaining balance of the Settlement Fund through March 13, 2019.

Amount	Description
\$65,020,624.00	Initial Deposit
\$227,565.77	Interest Earned (Dividends)
\$63,266,661.86	Less Cleared Settlement Checks through March 13, 2019
\$60,652.78	Less Approved Supplemental Costs
\$63,500.00	Less State and Federal Taxes
\$1,857,375.13	Account Balance

15  
16 **ALLOCATIONS**

17 4. Before any of the settlement checks could be prepared or mailed, the allocations of  
18 the Settlement Fund had to be determined and Class members and their group practices notified of  
19 these allocations. Class Counsel worked with their retained expert to develop the necessary

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<sup>1</sup> It's estimated that additional State and Federal taxes in the amount of \$20,500.00 will be paid from the Settlement Fund in 2019. The estimated tax reserve is based on final funds being disbursed within the next six (6) months. The estimated earnings are based on the current rate of return the fund is earning as of February 2019 and the estimated taxes reserved are based on the current tax rates. This reserve could fluctuate up or down based on changes in the interest rates, tax rates, or final disbursement.

1 calculations. Once this work was completed, written notices of the allocations were mailed to all  
2 Class members who were eligible for a settlement allocation and, where applicable, group practices  
3 beginning on July 18, 2018.

#### 4 **DISTRIBUTION**

5 5. Distribution of settlement checks to Class members and/or their group practices who  
6 were eligible for an allocation from the Settlement Fund has been ongoing since September 20,  
7 2018. Settlement checks that were \$100,000.00 or greater were pulled for special handling and sent  
8 by FedEx to track their delivery.

9 6. The distributions to individual practice Class members were the simplest to issue and  
10 were mailed first since no group practices were involved and no objections were received.  
11 Following that, a second mailing of checks was made to Class members and group practices for  
12 whom either no objection was received and those for whom, even though an objection or related  
13 issue had been raised, it had been resolved to the satisfaction of all concerned. A third mailing of  
14 settlement checks, and in smaller batches on later dates, included Class members and/or group  
15 practices for whom a supplemental mailing was required (because the original mailing was returned  
16 as undeliverable and an updated address was located), those whose objections or issues had been  
17 resolved by that time and to certain others. Following that, there have been several additional  
18 distributions of settlement checks, which have been made as new, valid addresses were located, as  
19 issues concerning a change in practice name were resolved, as disputes over who should receive an  
20 allocation were resolved and the like.

21 7. As of March 13, 2019, Rust has mailed 12,532 settlement checks<sup>2</sup> to Class members  
22 and/or their group practice for a total of \$64,647,114.27. A total of 11,984 settlement checks have  
23 been cashed in the amount of \$63,266,661.86 (or 97.3% of the total Settlement Fund amount to be

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<sup>2</sup> In addition to the 12,532 settlement checks that are referenced, Rust has reissued and re-mailed approximately 640 settlement checks totaling \$2,484,600.67. A settlement check may be reissued for a number of reasons, including but not limited to, if the original was returned by the United States Postal Service (“USPS”) with a forwarding address, the original was returned undeliverable without a forwarding address but an updated address was subsequently identified, a Class member and/or their group practice requested a new settlement check be issued, or matters relating to operation of law (e.g., estate and trust closing, change of practice name, etc.).

1 distributed). This amount continues to increase as Class members cash checks that have been  
2 recently mailed.

### 3 FOLLOW-UP ACTIVITIES

4 8. Rust and Class Counsel have engaged in a very considerable effort, significantly  
5 more that is required in most other class action payments of this size that we have experienced, in  
6 order to make the distribution complete. As of this date, the uncashed, undeliverable and not yet  
7 delivered (due to objections) settlement allocations are as follows:

Description	Count	Amount
Uncashed Settlement Checks	526	\$1,313,050.25
Undeliverable Settlement Checks	20	\$60,727.20
Total Outstanding	546	\$1,373,777.45

Count include 16 deceased Class members totaling \$55,096.31

Description	Count	Amount
Undeliverable Notifications	103	\$118,100.04
Objections	325	\$262,084.65
Total Undistributed	428	\$380,184.69

Count include 12 deceased Class members (76 settlement checks) totaling \$42,814.31

8  
9 9. In Rust's experience, this matter involved a very extensive research and outreach  
10 program to locate Class members and prompt the cashing of settlement checks. Specifically:

11 a. Rust completed three (3) types of address searches for undeliverable  
12 mailings. If the initial search did not locate the Class member, a second trace was done, where  
13 additional research was conducted through a different information supplier. As a result, an  
14 undeliverable may have been researched multiple times using a different source each time, if the  
15 initial search did not return an updated address. When these efforts were unsuccessful, a third type  
16 of search took place, where Rust completed internet research by viewing multiple websites (pages)  
17 to attempt to obtain information about address updates, Class member status, and where applicable,  
18 the status of their office or practice. Rust performed over 900 address searches through these  
19 processes, and it is estimated this research totaled approximately \$12,000.00 in administrative fees.

20 b. Follow up for Class members with uncashed settlement checks, which were  
21 presumed delivered, involved the mailing of reminders as well as research to obtain current

1 telephone numbers, and making outbound calls to Class members for reminders to cash their  
2 settlement checks, and to offer check reissues. The data provided to Rust did not contain phone  
3 numbers for the Class members, and as a result, a considerable amount of time and effort was  
4 required to locate this missing information before the commencement of any outreach. In many  
5 instances, the phone numbers found were no longer in service after calling them, requiring further  
6 review. Multiple phone number numbers were identified in many cases as a Class member had an  
7 office telephone number and home telephone number or more than one of each, which necessitated  
8 additional phone calls in an effort to reach them. An additional complication encountered during  
9 the outreach was that some Class members only worked on certain dates and/or their office was  
10 closed on certain dates, requiring a call back.

11 Rust made several hundred phone calls during their follow up on uncashed  
12 settlement checks. It was not uncommon to have to make three (3) to five (5) phone calls per Class  
13 member in an effort to reach them. In some instances, an alternate phone number was provided  
14 during these calls if the whereabouts of the Class member was known by the person who answered,  
15 for example if they had retired or moved. There was also a lot of back and forth phone calls where  
16 there was no answer and Rust left them a voicemail or called the number again if there was no  
17 response after a few days. The described outreach has gone on for several months and is still  
18 ongoing. It is estimated this process totaled approximately \$23,000.00 in administrative fees to  
19 date.

20 c. Additionally, Rust coordinated with Class Counsel and Defense Counsel as  
21 they assisted in research and follow-up, to locate and remind class members to cash their settlement  
22 checks. Rust is aware that Class Counsel has also engaged in substantial efforts to contact Class  
23 members whose settlement checks either had not been sent due to an address problem or whose  
24 settlement check was uncashed. Class Counsel has also taken the lead in working with Class  
25 members and group practices to resolve outstanding disputes. These efforts have enabled Rust to  
26 send a significant number of settlement checks to valid addresses, many of which have now been  
27 cashed. Class Counsel and Rust have coordinated and will continue to coordinate in this effort.

1 d. As these efforts continue, they necessarily focus increasingly on individual  
2 Class members rather than groups of Class members. As a result, the cost of attempting to locate  
3 and contact individual Class members continues to increase in relation to the allocation amount, and  
4 at some point, will exceed the amount to be distributed, particularly when the allocation amount is  
5 in the range of \$500.00 - \$1,000.00.

#### 6 **OBJECTIONS**

7 10. As provided in the Settlement Agreement, individual Class members who had been  
8 part of a group practice had the right to object to payment of the settlement allocation to the group  
9 practice rather than to them. A significant number of Class members made these objections, and  
10 while a substantial portion of these have been resolved, a number remain. Approximately 325  
11 settlement checks totaling \$262,084.65 remain undistributed as a result. In some situations, the  
12 group practices are large and in these situations, multiple objections are resolved in an extended  
13 negotiation. Others must be resolved on an individual basis, which are ongoing.

#### 14 **UNDELIVERABLE MAILINGS**

15 11. Rust was notified by the USPS that they were unable to deliver 20 settlement checks  
16 totaling \$60,727.20 that remain undeliverable. Approximately 103 written notices referenced above  
17 in paragraph 4 totaling \$118,100.04 also remain undeliverable, and as a result, their allocation from  
18 the Settlement Fund remain undistributed. A valid mailing address has not been located for these  
19 undeliverable mailings despite the numerous efforts described further below to locate them.

20 12. An address search (skip trace) was performed on these records through an  
21 information supplier to which Rust subscribes. The supplier runs the records through an automated  
22 process where last known name and address information are used to find more current address  
23 information based on an assortment of consumer footprint information. The batch trace process  
24 relies on third-party vendors to compile various data elements and deliver address and phone  
25 number data for an individual based on the best match of the data provided.

26 13. Additional research was conducted using Thomson Reuters' CLEAR search to  
27 perform manual address traces on these records. This single search product covers multiple data  
28 sources and can be used to find information, including but not limited to, addresses, phone numbers,

1 and cell phone numbers. Examples of content that is only accessible via searching CLEAR  
2 manually include: Live Credit Header Data from Experian, Real-Time Incarcerations and Arrest  
3 Records, Business Data, World Check, and Work Affiliations.

4 14. Manual online research was also conducted by Rust in an effort to obtain updated  
5 addresses for these Class members and/or their group practice. These searches often result in  
6 locating current address information that an automated batch process wouldn't otherwise find.  
7 Subtle differences and certain anomalies in data can be identified by human analysis resulting in a  
8 more comprehensive search.

9 15. The addresses for the largest remaining undeliverable checks were reviewed by  
10 Defense Counsel on March 9, 2019. Different addresses were identified for settlement checks  
11 totaling \$40,865.77. Direction was received from Class Counsel afterwards to reach out these Class  
12 members and/or their group practice, which is underway, and to reissue any settlement checks from  
13 this group where the address is confirmed.

#### 14 **UNCASHED SETTLEMENT CHECKS**

15 16. In addition to these undeliverable mailings, there are approximately 526 uncashed  
16 settlement checks totaling \$1,313,050.25 that were mailed out and not returned by the USPS, and  
17 therefore presumed to be delivered. On January 25, 2019, a reminder postcard was mailed to Class  
18 members and/or their group practices who received a settlement check that was still outstanding.  
19 These reminder postcards encouraged recipients with uncashed settlement checks to cash them or  
20 contact Rust for a reissue. A total of 557 reminder postcards were mailed and 208 settlement  
21 checks were reissued as a result (a response rate of approximately 37%).

22 17. In consultation with Class Counsel, additional efforts were undertaken on the  
23 remaining uncashed settlement checks of \$1,000.00 or greater and which had been mailed at least  
24 30 days prior to the further search. Rust attempted to contact these Class members and/or their  
25 group practices by telephone or email, where available, to advise them to cash their settlement  
26 check or to offer a check reissuance. If a phone number was not available, Rust used local and  
27 national directories as well as online research to try to locate one. As of March 13, 2019, there are  
28 approximately 60 remaining uncashed settlement checks over \$5,000.00 totaling \$816,065.72.

