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8 Attorneys for Plaintiffs

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

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

22 Plaintiffs,

23 vs.

24 DELTA DENTAL OF CALIFORNIA, a
25 California Corporation,

26 Defendant.

Case No.: CGC-14-538849

STATUS REPORT

Date: March 22, 2019

Time: 9:30 a.m.

Judge: Hon. Mary E. Wiss

Dept.: 305

27 **I. INTRODUCTION AND SUMMARY.**

28 More than 97% of the of \$65,020,624 (the “Settlement Fund”) ordered by the Court in its
May 2, 2018 Corrected Order Granting Plaintiffs’ Motion for Final Approval of Proposed Amended
Class Action Settlement has now been distributed to Class Members. . See Declaration of Jason
Rabe dated March 15, 2019, filed simultaneously with this Status Report (hereinafter “Rabe

1 Declaration”), paragraph 7. As of the date of this Status Report, Class Members have received and
2 cashed settlement checks totaling \$63,266,661.86. *Id.* The number and total amount of settlement
3 checks cashed increases virtually every day, since the Class Administrator Rust Consulting (“Rust”)
4 continues to issue new and replacement settlement checks and Class Members who receive these
5 checks continue to cash them. A substantial number of additional settlement checks were mailed on
6 March 15, 2019, and these will further increase the total amount of settlement checks that have been
7 cashed by Class members. By any reasonable measure, therefore, the distribution of the Settlement
8 Fund has been substantially and successfully completed.

9 There are, nonetheless, issues that remain and a relatively small but significant number of
10 absent Class Members whom neither Rust nor Class Counsel have been able to locate. The first
11 purpose of this Status Report is to describe these issues for the Court, to summarize the steps Class
12 Counsel and Rust are taking to resolve them, and to discuss with the Court whether the steps being
13 taken appear adequate and the extent to which still further steps appear needed. There are some
14 Class Members, for example, whom neither Rust nor Class Counsel have been able to locate,
15 despite significant efforts to do so. There are others whose address both Class Counsel initially
16 thought were accurate based on the initial mailing of the notices to them, but this same address was
17 later designated as undeliverable by the USPS when the settlement check was mailed. There are
18 also a significant number of settlement checks that have been mailed and presumably delivered but
19 remain uncashed. There are other similar issues that Class Counsel and Rust have encountered.
20 The Status Report that follows will summarize each of these issues and the efforts that have been
21 taken to locate and mail checks to the remaining Class Members. Class Counsel seeks to discuss
22 these situations with the Court, whether the efforts taken thus far appear to be reasonable and
23 adequate to the Court and the extent to which the Court concludes that still further efforts to locate
24 these Class Members may be required.

25 The second purpose of this Status Report is to propose to the Court a date by which
26 reasonable efforts to locate absent Class Members will be deemed complete, to set a date by which
27 any remaining checks are to be mailed, and to set a date for a hearing on a Final Report and a
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1 motion to order the payment of any undistributed funds into the *cy pres* fund identified in the
2 Amended Settlement Agreement. Class Counsel has discussed these issues with Rust Consulting
3 and with counsel for Delta Dental. Class Counsel currently believes that approximately 45
4 additional days after the March 22, 2019 will be required in order to complete the efforts that are
5 currently underway to locate absent Class Members. Based on the discussions at the Status
6 Conference, Class Counsel will request that the Court set a date for a Final Report and Final
7 Hearing, as well as a date for the filing of a motion for an order directing payment of any
8 undistributed money into the *cy pres* fund and a date for a hearing on that motion.

9 **II. THE ABSENT CLASS MEMBERS WHO HAVE NOT BEEN LOCATED OR WHO**
10 **HAVE FAILED TO CASH THE CHECKS SENT TO THEM.**

11 **A. Invalid Addresses.** There are 27 Class Members, whose allocations total \$36,977.30, for
12 whom the only address Rust could locate for the initial mailing of the written notice of allocation
13 has proven invalid. There are an additional 36 Class Members, with allocations totaling an
14 additional \$36,287.84, for whom the initial written notice was mailed and presumably received but
15 for whom the settlement checks mailed to the same address were designated by the USPS as
16 undeliverable, or Class Counsel has been able to locate is invalid and who therefore have not
17 received either the initial written notification of a settlement allocation or any settlement check.
18 The effort to locate valid, updated addresses for each of these Class Members is set forth in
19 paragraphs 10 – 13 of the Rabe Declaration. These efforts are ongoing and will be continue for the
20 45-day period following this Status Conference. Once these efforts are completed, both Rust and
21 Class Counsel believe that a comprehensive and thorough effort to locate these Class Members will
22 have been completed.

23 **B. Delivered but Uncashed Checks.** There are 522 Class Members who have been
24 mailed a settlement check that has not yet been cashed. The total dollar amount of these uncashed
25 checks is \$1,313,050.25. Rabe Declaration, paragraph 8. Some of these are checks that were issued
26 relatively recently and will presumably be cashed in the normal course very soon. Some of these
27 checks, however, were mailed as long ago as September 20, 2018. A substantial effort, including
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1 direct phone calls by both Class Counsel and Rust, has been undertaken to contact these Class
2 Members. See paragraphs 14 and 15 of the Rabe Declaration. In several cases, these efforts have
3 succeeded and as a result, the number of outstanding and uncashed checks has been substantially
4 reduced. These efforts are ongoing and will continue through the 45-day period described above in
5 this Status Report. Despite these efforts, it is possible that some number of checks will remain
6 uncashed. If that occurs, these funds may well be included in the motion for an order directing
7 payment to the *cy pres* fund.

8 **C. Unresolved Disputes Among Class Members.** There are 325 Class Members, whose
9 settlement allocations total \$262,084.656, who have unresolved disputes regarding the distribution
10 of their allocation. Rabe Declaration, paragraph 8. In most cases, these are Class Members whose
11 allocation arose while he or she was working for a group practice and both the Class Member and
12 the group practice claim the right to the allocation. Class Counsel and Rust have worked together to
13 assist Class Members and the group practices involved in resolving their disputes, which originally
14 involved a far larger number of Class Members and dollar amount. Class counsel believes that,
15 with continued effort, all or substantially all these disputes can be resolved, and settlement checks
16 issued to these Class Members. It is reasonable to conclude that all or virtually all these disputes
17 can or will be resolved within the 45-day period identified above.

18 **D. Deceased Class Members.** There are 28 Class Members, whose allocations total
19 \$97,910.62, who Class Counsel and Rust have confirmed passed away during the course of this
20 action but as to whom neither Class Counsel nor Rust have been able to locate an estate or a
21 surviving heir. Rabe Declaration, paragraph 8. Some of the deceased Class Members passed away
22 four or five years ago, or more. As to some of these, no estate has been identified and it appears
23 likely that, even if a probated estate existed, it has long since been closed. While efforts to locate an
24 appropriate estate or heir continue, it is reasonably likely that in some cases, the additional cost of
25 attempting to do so substantially outweighs the continuing effort. Class Counsel wishes to address
26 these situations with the Court and suggest criteria by which the effort to locate a surviving heir will
27 be viewed as adequate even if it does not succeed.
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2 **III. THE SCHEDULING OF A DATE FOR A FINAL REPORT, THE FILING OF A CY**
3 **PRES MOTION AND A FINAL HEARING**

4 As reflected above, a total of \$63,160,626.81 in settlement checks has been received and
5 cashed by Class Members. This amount increases essentially every day at this point, as checks that
6 have recently been mailed are cashed and as Class Counsel and Rust resolve outstanding issues
7 regarding disputes, uncashed checks and the like. A further group of settlement checks was mailed
8 as recently as March 15, 2019. These are so recent that they are not included in the totals reflected
9 in the Rabe Declaration. There remains an approximate total of \$1,859,998 (which decreases every
10 day) to be distributed and/or cashed.

11 In addition, there has been \$227,565.77 in interest earnings on the Settlement Fund,
12 \$124,152 of which has been consumed by the payment of federal and state taxes and expenses as
13 previously ordered by the Court. There will be a small amount of additional interest earnings and
14 also a small amount of tax and related expenses left to pay. In the end, the net additional cash
15 arising from this source will be approximately \$100,000. It is not possible to distribute this amount
16 to Class Members because the cost of attempting to do so would far exceed the amount to be
17 distributed. It is therefore likely that this net amount will be included in the *cy pres* motion that will
18 be filed.

19 While it is premature now to estimate the amount of money that will be the subject of the *cy*
20 *pres* motion, based on this history of the work done to date, it is reasonably possible that this
21 amount will exceed \$500,000. The exact amount and the reasons why it could not be distributed
22 will be set forth in the *cy pres* motion to be filed consistent with the Amended Settlement
23 Agreement.

24 Class Counsel proposes that a definite time be set – tentatively 45 days from the date of this
25 Status Conference – by which efforts to identify any remaining Class Members are to be completed
26 and any remaining settlement checks mailed. Thereafter, a date should be set by which a Final
27 Report will be filed with the Court, which will include any remaining settlement checks that have
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1 been sent, any additional interest earnings and any additional expenses. At the same time, a *cy pres*
2 motion will be filed seeking an order directing any unpaid money to be paid into the *cy pres* fund.
3 A hearing date for the Court's consideration of this Final Report and the *cy pres* motion should also
4 be set. The parties and the Court can discuss and hopefully agree on the timing and the dates for
5 these events at the forthcoming Status Conference.

6 Respectfully submitted,

7 Dated: March 15, 2019

8 ARNOLD & PORTER KAYE SCHOLER

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10 By: /s/ Paul Alexander

11 Paul Alexander

12 Counsel for Plaintiffs and the Class
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