



F I L E D
Superior Court of California
County of San Francisco

DEC 12 2018

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 305

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.; and BARBARA M. HAWTHORNE,
D.D.S., individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

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

Defendants.

Case No.: CGC-14-538849

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR SUPPLEMENTAL
ATTORNEYS' FEES AND COSTS

Plaintiffs California Dental Association (“CDA”), Dr. Richard W. Barnes, Dr. Robert E. Reed, Dr. Dean Schweitzer, Dr. Gerald Middleton, Dr. Whitney Johnson, Dr. Terrence Y. Lau, and Dr. Barbara M. Hawthorne (collectively, “Plaintiffs”) moved for an Order awarding supplemental attorneys’ fees and costs to be paid from the interest that has accrued on the Settlement Fund. The motion came on for hearing on November 16 and December 11, 2018, and appearances are as noted in the record.¹ No opposition or other response was filed in connection with the motion. Having considered the materials

¹ At the November 16, 2018 hearing on the motion, Plaintiffs requested to file a supplemental brief in response to the concerns expressed by the Court concerning the motion.

1 submitted in support of the motion, and the oral argument of counsel, and for the reasons set forth below,
2 the motion is granted in part and denied part.

3 By the instant motion, Class Counsel seeks an award of \$60,652.78 for costs and expenses, and
4 \$75,000 in supplemental attorneys' fees, in connection with costs incurred and work performed since the
5 Court granted final approval of the settlement in this case.² Class Counsel seeks to recover this amount
6 from the interest that has since accrued on the Settlement Fund in the amount of \$209,392.

7 With respect to Plaintiffs' request for \$60,652.78 in costs and expenses of counsel, the Court finds
8 that Class Counsel may recover this amount from the Settlement Fund. Paragraph 11 of Appendix 4 to
9 the Amended Settlement Agreement provides that "expenses and costs incurred in connection with the
10 administration...of the Settlement Fund...(including...costs and expenses of administering and
11 distributing settlement payments...)" shall be paid out of the Settlement Fund. Based on the declarations
12 submitted by Class Counsel, Class Counsel incurred \$59,184 in expert fees for work performed by
13 Litinomics, and \$1,468.78 in transcript fees and filing costs, since the Court's Final Approval Order. The
14 documents submitted by Class Counsel reveal that the work performed by Litinomics and the other costs
15 incurred by Class Counsel since the Court's Final Approval Order all relate to implementation of the
16 allocation methodology provided under the Settlement Agreement, distribution of the Settlement Fund,
17 and responding to Class Member inquiries. As such, payment of these costs from the Settlement Fund is
18 consistent with the terms of the Amended Settlement Agreement. For these reasons, Class Counsel's
19 costs and expenses in the amount of \$60,652.78 shall be paid out of the Settlement Fund pursuant to the
20 Settlement Agreement as set forth below.

21 With respect to Plaintiffs' request for supplemental attorneys' fees in the amount of \$75,000.00,
22 however, the Court finds that Class Counsel cannot recover this amount from the interest that has accrued
23 on the Settlement Fund. According to Class Counsel's declarations, the amount of supplemental fees
24 sought is to compensate them for almost 500 hours of additional legal work in connection with the
25 administration of the Settlement Fund for the time period from May to November 2018. Class Counsel's
26 declarations indicate that the additional work they performed during this time period was "unanticipated


27 _____
28 ² On December 7, 2018, Plaintiffs filed a supplemental brief, in which Plaintiffs modified their initial
request of \$200,000 in fees to \$60,652.78 in costs and expenses plus \$75,000 in attorneys' fees.

1 and substantial,” and translates to \$368,815.58 in attorneys’ fees. However, paragraph 6 of Appendix 4 to
2 the Amended Settlement Agreement specifically addresses how to distribute any accrued interest earned
3 on the Settlement Fund. It provides that “[a]ny accrued interest earned on the Settlement Fund shall
4 remain with the balance of the Settlement Fund and distributed pursuant to the Amended Plan of
5 Allocation and Distribution, and other order(s) of the Court.” The Amended Plan of Allocation and
6 Distribution simply sets forth the method for calculating settlement allocations for distribution to Class
7 Members, and says nothing about attorneys’ fees and/or expenses. Moreover, paragraph 11 of Appendix
8 4 to the Amended Settlement Agreement provides for the payment of “expenses and costs” from the
9 Settlement Fund, but not attorneys’ fees. Although the Court recognizes Class Counsel’s tremendous
10 effort in administering the highly complex settlement distribution in this case, the plain language of the
11 Settlement Agreement does not allow for payment of supplemental attorneys’ fees from the interest that
12 has accrued on the Settlement Fund. The motion is denied in this respect.

13 Based on the foregoing, Plaintiffs’ motion for supplemental fees and expenses is granted in part
14 with respect to Plaintiffs’ request for \$60,652.78 in costs and expenses of Class Counsel, and denies
15 Plaintiffs’ request for \$75,000.00 in attorneys’ fees. Because the payment for Litinomics’ expert fees is
16 tax deductible if paid by Decemer 17, 2018, thereby reducing the Settlement Fund’s tax obligations, the
17 law firm of Arnold & Porter Kaye Scholer LLP must pay any balance due to Litinomics up to \$59,184.00
18 before December 17, 2018. Upon payment of that full amount, Rust is authorized to reimburse the law
19 firm of Arnold & Porter Kaye Scholer LLP in the amount of \$59,184.00 plus the other costs as set forth
20 above in the amount of \$1,468.78, from the interest accrued on the Settlement Fund.

21 IT IS SO ORDERED.

22
23 Dated: December 12, 2018

24 
25 _____
26 Mary E. Wiss
27 Judge of the Superior Court
28

Superior Court of California
County of San Francisco

CALIFORNIA DENTAL ASSOCIATION,
et al.,

Plaintiffs,

vs.

DELTA DENTAL OF CALIFORNIA, et al.,

Defendants.

Case Number: CGC-14-538849

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, T. Michael Yuen, Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On December 12, 2018, I electronically served the ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR SUPPLEMENTAL ATTORNEYS' FEES AND COSTS via File&ServeXpress® on the recipients designated on the Transaction Receipt located on the File&ServeXpress® website.

Dated: December 12, 2018

T. Michael Yuen, Clerk

By: _____



Sean Kane, Deputy Clerk