

**F I L E D**  
Superior Court of California  
County of San Francisco  
MAY 02 2018  
CLERK OF THE COURT  
BY: Cary R. Blakely  
Deputy Clerk

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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

CORRECTED ORDER GRANTING  
PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF PROPOSED AMENDED  
CLASS ACTION SETTLEMENT

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, CDA and individual named plaintiffs are referred to as the "Class Representatives") and Defendant Delta Dental of California ("Delta Dental") (collectively the "Parties") have entered into a settlement subject to this Court's approval. The terms of the settlement, including releases of claims, are set forth in the parties' Amended Settlement Agreement and Release ("Amended

1 Settlement Agreement”), attached hereto as Exhibit A. Plaintiff moved for final approval of the  
2 settlement, and the motion came on for hearing on April 25, 2018. Appearances are as noted in the  
3 record.

4 On December 27, 2017, the Court issued an Order Granting Plaintiffs’ Motion for Preliminary  
5 Approval of Amended Class Action Settlement, in which the Court did the following (unless otherwise  
6 indicated, capitalized terms correspond with those set forth in the Amended Settlement Agreement):  
7 conditionally certified the Settlement Class; granted preliminary approval of the settlement; preliminarily  
8 appointed Paul Alexander and George Langendorf of the law firm of Arnold & Porter Kaye Scholer LLP  
9 as Class Counsel; preliminarily appointed CDA, Dr. Richard W. Barnes, Dr. Robert E. Reed, Dr. Dean  
10 Schweitzer, Dr. Gerald Middleton, Dr. Whitney Johnson, Dr. Terrence Y. Lau, and Dr. Barbara  
11 Hawthorne as Class Representatives for the Settlement Class; appointed Rust Consulting, Inc. (“Rust”) as  
12 the Class Notice Administrator; ordered notice of the settlement be given to the Class Members; set forth  
13 appropriate procedures and deadlines with respect to responding to the notice and obtaining final approval  
14 of the settlement; and set the final approval hearing.

15 Having considered the papers filed in support of plaintiffs’ motion for final approval and the oral  
16 arguments of counsel, good cause appearing, the Court finds and orders as follows:

- 17 1. The Court approves the settlement as fair, reasonable, and adequate.
- 18 2. The Court certifies, for settlement purposes only, a Settlement Class consisting of:

19 All California dentists who are or were signatories to, or are or were parties to or subject  
20 to, a Participating Dentist Agreement with Delta Dental of California for participation in  
its Premier network at any time from January 1, 2011, to the December 27, 2017.

21 3. For the reasons set forth in the Court’s order granting preliminary approval, the Court finds  
22 that the applicable requirements of California Code of Civil Procedure section 382 and California Rule of  
23 Court 3.769 have been satisfied for the purposes of this settlement in that common questions of law and  
24 fact predominate, the Settlement Class is so numerous that a class action is superior to other available  
25 means for the fair and efficient adjudication of the controversy, plaintiffs’ claims are typical of those in  
26 the Settlement Class, and plaintiffs have fairly and adequately represented and protected the interests of  
27 the Settlement Class.

- 28 4. The Court appoints plaintiffs CDA, Dr. Richard W. Barnes, Dr. Robert E. Reed, Dr. Dean

1 Schweitzer, Dr. Gerald Middleton, Dr. Whitney Johnson, Dr. Terrence Y. Lau, and Dr. Barbara  
2 Hawthorne as the representatives of the Settlement Class.

3 5. The Court appoints Paul Alexander and George Langendorf of the law firm of Arnold &  
4 Porter Kaye Scholer LLP as Class Counsel.

5 6. No Class Member objected to the settlement.

6 7. Seven (7) Class Members opted out of the settlement. The Court finds that (1) Dr. Tina  
7 Yunjoo Cho; (2) Dr. Teddy T. Usude; (3) Dr. Dale Stanec Jr.; (4) Dr. Kevin J. Komatsu; (5) Dr. Charina  
8 Bailon; (6) Dr. Mehran Nazar; and (7) Dr. Ahmed A. Moneim have excluded themselves from the  
9 Settlement Class and shall not be bound by the Amended Settlement Agreement or the Judgment, and any  
10 claims they may have are not released.

11 8. The manner and form of the notice as previously approved and ordered by the Court in its  
12 Order granting preliminary approval was reasonably calculated to fully and accurately inform members of  
13 the Settlement Class of all material elements of the settlement and of their opportunity to object or  
14 comment thereon or to exclude themselves from the Settlement Class, was the best notice practicable  
15 under the circumstances, was valid, due, and sufficient notice to all Class Members, and complied fully  
16 with California law and due process. A full opportunity has been afforded to all Class Members to  
17 participate in the final approval hearing. The manner of providing notice substantially complied with the  
18 Court's Order granting preliminary approval.

19 9. Defendant shall pay the sum of \$65,020,624<sup>1</sup> into a Qualified Settlement Fund ("QSF"),  
20 which will be administered by the Class Notice Administrator. The Class Notice Administrator will also  
21 serve as the Escrow Agent of the QSF. The QSF will be established and administered pursuant to the  
22 same terms described in Appendix 4 to the Amended Settlement Agreement and as set forth herein. The  
23 Class Notice Administrator, Class Counsel and counsel for Delta Dental will agree on the terms of an

24 <sup>1</sup> The Amended Settlement Agreement provides payment of up to \$65,029,299 to Settlement Class  
25 Members who were affected by Delta's application of the INAP limitation on fee increases. Under  
26 paragraph III.D.1.a of the Amended Settlement Agreement, the Amended Settlement Amount shall be  
27 reduced by the total amount that otherwise would be allocated to Class Members who opt out of the  
28 Amended Settlement Agreement, and that all amounts deducted from the Amended Settlement Amount  
due to opt outs shall remain with or revert to Delta. As set forth in the declaration of Plaintiffs' expert,  
Colin Loveness, the monetary amount allocated to the seven opt outs is \$8,675. Accordingly, the amount  
that Delta is required to pay under the Amended Settlement Agreement is reduced to \$65,020,624.

1 Escrow Agreement. The Class Notice Administrator will cause the above sum to be deposited in either an  
2 interest-bearing or a non-interest bearing account at a national bank, as approved by Class Counsel and  
3 counsel for Delta Dental. After Class Counsel determines each Settlement Class Member's allocation  
4 from the Settlement Amount, the Class Notice Administrator will issue checks from the QSF to  
5 Settlement Class Members and/or dental group practices in accordance with the same terms described in  
6 the Amended Plan of Allocation and Distribution, attached as Appendix 3 to the Settlement Agreement,  
7 and will issue a Form 1099-MISC to each recipient of a check as provided in the Amended Plan of  
8 Allocation and Distribution. Delta Dental will directly pay the Class Notice Administrator for the  
9 reasonable costs associated with the Class Notice Administrator's work set forth in this Paragraph.

10 10. Each party is to bear his or its own costs and attorneys' fees except as otherwise expressly  
11 provided in the Order Granting Motion for an Award of Attorneys' Fees and Costs.

12 11. The Court sets a Compliance Hearing for November 16, 2018 at 11:00 a.m. in Department  
13 305 of this Court. At least five court days prior to the hearing, Settlement Class Counsel and the Class  
14 Notice Administrator shall submit a summary accounting, identifying distributions made as ordered  
15 herein, the number and value of any uncashed settlement checks, the status of any unresolved issues, if  
16 any, and any other matters appropriate to bring to the Court's attention.

17 12. Notice of entry of this Corrected Final Approval Order and the Judgment shall be given to  
18 Class Members by posting a copy of the Corrected Final Approval Order and the Judgment on the  
19 settlement website, no later than five court days after it is entered by the Court.

20 13. Finally, pursuant to the parties' request, the deadline for the Class Notice Administrator to  
21 mail the allocation/distribution letters to Class Members pursuant to Paragraph 8 of Appendix 3 of the  
22 Amended Settlement Agreement is extended from twenty (20) days to forty-five days (45) days.

23 IT IS SO ORDERED.

24  
25 Dated: May 2, 2018

26   
27 \_\_\_\_\_  
28 Mary E. Wiss  
Judge of the Superior Court

# Exhibit A

**AMENDED SETTLEMENT AGREEMENT AND RELEASE**

Subject to the preliminary and final approval of the Court, and as further set forth below, this Amended Settlement Agreement<sup>1</sup> is made and entered into effective as of December 27, 2017, provided the Court grants preliminary approval of this agreement on that date. It is fully executed by all parties by and between, on the one hand, (a) Delta Dental of California (“Delta Dental”), and, on the other hand, (b) California Dental Association (“CDA”) and individual named plaintiffs 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 (the “Individual Named Plaintiffs”) (collectively, CDA and the Individual Named Plaintiffs are referred to as the “Class Representatives”), individually and on behalf of a class of all California dentists who are or were signatories to, or are or were parties to or subject to, a Participating Dentist Agreement with Delta Dental for participation in its Premier<sup>®</sup> network at any time from January 1, 2011 to the date of the Court’s Order Granting Preliminary Approval of this Amended Settlement Agreement in the action captioned *California Dental Association, et al. v. Delta Dental of California*, San Francisco Superior Court Case No. CGC-14-538849 (the “Litigation”). Delta Dental and the Class Representatives are collectively referred to as the “Settling Parties.”

**WHEREAS**, CDA and certain of the Individual Named Plaintiffs brought a claim in arbitration against Delta Dental before the American Arbitration Association captioned *California Dental Association, et al. v. Delta Dental of California*, AAA Case No. 74 187 00450 13 JENF (the “Arbitration”), which claim was deferred while the parties proceeded with the Litigation;

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<sup>1</sup> Capitalized terms are defined either in the text of this Amended Settlement Agreement or in the Definitions section below.

**WHEREAS**, dentists who wish to become Delta Dental Premier Dentists must sign a Participating Dentist Agreement (the "PDA"), which also includes the "Participating Dentist Rules" ("Rules");

**WHEREAS**, Delta Dental amended the PDA as of January 1, 2011, and thereafter announced amendments to the PDA on August 1, 2013 ("2013 Amendments"), which amendments were challenged by CDA and certain of the Individual Named Plaintiffs;

**WHEREAS**, the Class Representatives were preliminarily appointed by the Court as Class Representatives for the Class by its Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement dated April 21, 2017 (the "April 21, 2017 Preliminary Approval Order");

**WHEREAS**, the Class Representatives, on behalf of themselves and the Class, have challenged certain conduct of Delta Dental as alleged in their Second Amended Complaint filed in the Litigation on April 21, 2017, including but not limited to, that:

- (1) the 2013 Amendments were not permitted by the PDA or California law;
- (2) Delta Dental's submissions to California's Department of Managed Health Care ("DMHC") regarding the 2013 Amendments were false and misleading;
- (3) Delta Dental's August 1, 2013 notice to Premier Dentists regarding the 2013 Amendments was false and misleading;
- (4) the method Delta Dental used to determine Maximum Amounts Allowed, including reductions it considered in 2013, violated the PDA;
- (5) the method Delta Dental used to determine Premier Contracted Fees violated the PDA;

(6) Delta Dental's determination and application of the Inflation Adjustment Percentage ("INAP") to limit increases in Premier Contracted Fees violated the PDA;

(7) Delta Dental's 2013 Amendment to the PDA's dispute resolution provision violated the PDA;

(8) Delta Dental enjoys market power such that Premier Dentists were compelled to accept the 2013 Amendments;

(9) Delta Dental's conduct, acts and omissions constitute a breach of contract, a breach of the covenant of good faith and fair dealing, and a violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and

(10) Premier Dentists are entitled to all appropriate declaratory, injunctive, and monetary relief caused by the alleged wrongful conduct of Delta Dental;

**WHEREAS**, Delta Dental has denied and continues to deny the allegations made by the Class Representatives in both the Litigation and the Arbitration, that it engaged in any wrongdoing of any kind, or that it violated or breached the PDA or any law, regulation or duty owed to any Individual Named Plaintiff or Class Member, and further denies that it is liable to, or owes any form of compensation or damages to, anyone with respect to the alleged facts or causes of action asserted in the Litigation or the Arbitration;

**WHEREAS**, the Settling Parties have engaged in more than four years of hard-fought and costly litigation and arbitration, engaged in extensive motion practice, conducted discovery, engaged experts, and contested major factual and legal contentions in the Litigation and Arbitration;

**WHEREAS**, the Settling Parties thereafter engaged in lengthy arm's-length negotiations with the assistance of a neutral mediator, Professor Eric D. Green of Resolutions, LLC, in an



effort to resolve the Litigation and the Arbitration, during which the terms of an initial Settlement Agreement were extensively debated and negotiated, and the Settling Parties reached an agreement to resolve all such claims (the "Mediation");

**WHEREAS**, in November 2016, Delta Dental submitted revisions to the Rules section of the PDA to the DMHC in compliance with California's Knox-Keene Health Care Service Plan Act of 1975 (the "Knox-Keene Act"), and the DMHC concluded its review without disapproving or changing the proposed revisions;

**WHEREAS**, on or about April 7, 2017, the Settling Parties entered into the initial Settlement Agreement by which they proposed to resolve the claims asserted in the Litigation and the Arbitration;

**WHEREAS**, on April 21, 2017, the Court issued its April 21, 2017 Preliminary Approval Order and on May 12, 2017 the initial Class Notice was sent to the Class;

**WHEREAS**, after the April 21, 2017 Preliminary Order and after the initial Class Notice was provided to the Class, the Settling Parties discovered what they regarded as a significant miscalculation of the financial impact of the INAP on Premier Dentists, which was material to the initial Settlement Agreement and thereafter promptly brought this issue to the attention of the Court;

**WHEREAS**, on June 8, 2017 the Court issued its Order Vacating Dates and Deadlines Contained in Preliminary Approval Order and Setting Case Management Conference;

**WHEREAS** the Settling Parties thereafter engaged in additional discovery and further mediation before Professor Eric D. Green regarding the financial impact of the INAP on Premier Dentists and have engaged in further negotiation regarding changes that they mutually agree are required to the initial Settlement Agreement previously approved by the Court;

**WHEREAS**, following the further discovery and mediation engaged in by the Settling Parties in accordance with the Court's June 8, 2017 Order, the parties have agreed to this Amended Settlement Agreement, which supersedes the initial Settlement Agreement in its entirety;

**WHEREAS**, based on their analysis of the merits of the claims and the impact of the Amended Settlement Agreement on Class Members, including but not limited to the issues that were the subject of the further mediation described above, and an evaluation of a number of factors including the substantial risks of continued litigation and/or arbitration and the possibility that if not settled now the Litigation and/or Arbitration might result in no relief to the Class whatsoever or might result in a recovery that is less favorable than this Amended Settlement Agreement, the Class Representatives and Class Counsel believe that it is in the interest of all Premier Dentists who are members of the Class to resolve finally and completely the potential claims they may have against Delta Dental based on, arising from, or relating directly to the facts alleged in the Second Amended Complaint and/or the Amended Statement of Claim for Arbitration, and that the terms of the Amended Settlement Agreement are in the best interests of the Class and are fair, reasonable, and adequate to all Class Members;

**WHEREAS**, Delta Dental is entering into this Amended Settlement Agreement on the terms set forth herein in recognition of and to avoid the risks, burdens, distractions, expense, uncertainties and diversion of resources arising from the Litigation and Arbitration, and to resolve and put to final rest claims based on, arising from, or relating directly to the facts alleged in the Litigation and/or the Arbitration without any admission of liability or wrongdoing whatsoever;

**WHEREAS**, the Settling Parties have agreed upon; (1) the Second Amended Complaint; (2) the form of a proposed long-form Amended Class Notice (Appendix 1); (3) the form of a proposed short-form Amended Class Notice (Appendix 2); (4) a proposed Amended Plan of Allocation and Distribution (Appendix 3); and, if necessary, (5) the establishment of a qualified settlement fund (Appendix 4).

**NOW, THEREFORE**, in consideration of the promises, agreements, covenants, representations, and warranties set forth herein, and other good and valuable consideration provided for herein, the Settling Parties agree to a full, final and complete settlement of the Litigation and the Arbitration on the following terms and conditions.

**I. DEFINITIONS**

For purposes of this Amended Settlement Agreement, in addition to terms identified and defined elsewhere in this Amended Settlement Agreement, the following terms shall have the meanings set forth below.

1. "Amended Class Notice" means the Notice of Amended Class Action Settlement Agreement and Final Approval Hearing. The proposed long-form Amended Class Notice, which is attached as Appendix 1, shall be mailed to Class Members, and the proposed short-form Amended Class Notice, which is attached as Appendix 2, shall be published on the settlement website as approved by the Court as set forth in Section II.C below.

2. "Amended PDA" means the PDA as amended to make changes to the Participating Dentist Rules section of the PDA as required by Section III.B.1 of this Amended Settlement Agreement. The Amended PDA also includes additional changes to the Participating Dentist Rules section of the PDA made by Delta Dental that are not required by this Amended Settlement Agreement, including the INAP Amendment defined in Section I.28 below. All of the changes reflected in the Amended PDA have been filed with and approved by the DMHC. A

copy of the Amended PDA redlining all of the changes (other than the previously-adopted INAP Amendment) is attached hereto as Appendix 5.

3. "Amended PDA Effective Date" or "Effective Date of the Amended PDA" means the first date after which both of the following has occurred: (1) the Court has entered the Final Approval Order and Judgment, and (2) the Amended PDA has gone into effect following a minimum of 120 calendar days' notice to Premier Dentists.

4. "Amended Plan of Allocation and Distribution" means Class Counsel's proposed procedure and mechanism by which payments from the Amended Settlement Amount will be allocated and distributed, as provided in Appendix 3, subject to the Court's approval.

5. "Amended Preliminary Approval Order" means an order granting the Court's preliminary approval of this Amended Settlement Agreement.

6. "Amended Settlement Agreement," "Amended Settlement" and "Amended Agreement" refer to this Amended Settlement Agreement and its Appendices.

7. "Amended Settlement Agreement Effective Date" means 61 days after notice of judgment has been provided pursuant to California Rule of Court 3.771. If a notice of appeal is timely filed, the Amended Settlement Agreement Effective Date shall be the date that the Final Approval Order and Judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review.

8. "Amended Settlement Amount" means a maximum total amount of sixty-five million, twenty-nine thousand, and two hundred ninety-nine dollars (\$65,029,299), less all allocations of the Amended Settlement Amount to Class Members who opt out, that Delta Dental shall pay to settle the Litigation and Arbitration as described in Section III.D of this Amended

Agreement, and which shall be administered and distributed pursuant to this Amended Settlement Agreement, the Amended Plan of Allocation and Distribution set forth in Appendix 3, as approved by the Court, and any other applicable orders of the Court. Allocations of the Amended Settlement Amount that are made to those who opt out of the Amended Settlement in a timely and valid manner will not be distributed but shall be retained by Delta Dental.

9. "Amended Supplemental Agreement" means the Settling Parties' Amended Supplemental Agreement regarding Opt-Out Thresholds to be filed under seal in order for the Court to consider extending its prior Order Sealing the Supplemental Agreement to the Amended Supplemental Agreement.

10. "Attorney's Fees and Expenses" means Class Counsel's attorney's fees, expenses, costs, expert fees and costs, and other expenses incurred in connection with the Litigation as described in Section VI.

11. "CDA" means California Dental Association, a California non-profit corporation with its principal place of business in Sacramento, California, on its own behalf and on behalf of any person or entity who claims to possess, or who asserts or attempts to assert in a direct, indirect, derivative or representative capacity any of CDA's Released Claims.

12. "Class" means "All California dentists who are or were signatories to, or are or were parties to or subject to, a Participating Dentist Agreement with Delta Dental of California for participation in its Premier network at any time from January 1, 2011, to the date the Court enters the Amended Preliminary Approval Order."

13. "Class Counsel" means Paul Alexander and George Langendorf of the law firm of Arnold & Porter Kaye Scholer LLP.

14. "Class Member" means any person who is a member of the Class.

15. "Class Notice Administrator" means Rust Consulting, which the Settling Parties selected to provide and administer the Amended Class Notice, objections and opt-out requests, and which the Court appointed in its April 21, 2017 Preliminary Approval Order.

16. "Class Notice Plan" means the plan for sending Amended Class Notices to Class Members, as well as follow up efforts for long-form Amended Class Notices that are returned as undeliverable, including publication notice of the Amended Settlement Agreement, as approved by the Court.

17. "Class Period" means the period from and including January 1, 2011, to and including the date the Court enters the Amended Preliminary Approval Order.

18. "Contracted Fee" means the fee for each single procedure that a participating dentist has contractually agreed with Delta Dental to accept as payment in full for treating eligible patients, based on the eligible patient's dental program (e.g., "Premier Contracted Fee," "PPO Contracted Fee"), as defined and described in the PDA.

19. "Court" means the Complex Civil Litigation Department of the Superior Court of California, County of San Francisco.

20. "Days" means calendar days unless otherwise provided.

21. "Delta Dental" means Delta Dental of California and its past and present direct and indirect parents, subsidiaries, divisions, affiliates, members, officers, directors, partners, insurers, employees, agents, attorneys, accountants, all other persons, partnerships or corporations with which any of the former have been, or are now, affiliated and any of the legal representatives of the foregoing (and the predecessors, successors, purchasers, and assigns of each of the foregoing).

22. "Delta Dental's Counsel" means the law firm of Orrick, Herrington & Sutcliffe

LLP.

23. "Department of Managed Health Care" or "DMHC" means the California Department of Managed Health Care.

24. "Final Approval" means the occurrence of all of the following events:

a. This Amended Settlement Agreement is finally approved in all respects by the Court;

b. The Court enters a Final Approval Order and Judgment; and

c. The clerk of the Court enters the judgment and a notice of entry of judgment is provided pursuant to California Rule of Court 3.771.

25. "Final Approval Hearing" means the hearing at which the Court will consider the motion for Final Approval of the Amended Settlement Agreement and Judgment.

26. "Final Approval Order and Judgment" means an order granting Final Approval of the Amended Settlement Agreement and entering Judgment.

27. "Inflation Adjustment Percentage" or "INAP" means, for any resubmitted fee, the limit on the amount of any requested increase in the Premier Contracted Fee when the requested fee is below the Maximum Amount Allowed.

28. "INAP Amendment" means the amendment to the definition of Contracted Fee in the Participating Dentist Rules that became effective on September 15, 2017, and that provides as follows:

A participating dentist may, no more frequently than once every 12 months, resubmit to Delta Dental his/her schedule of proposed fees regularly charged for the purpose of requesting adjustments by Delta Dental to his/her Premier Contracted Fees. In the case of a resubmitted fee, the Premier Contracted Fee is subject to an Inflation Adjustment Percentage (INAP), which may limit the amount of any increase even if the resubmitted fee is below the maximum amount allowed.

29. "Maximum Amount Allowed" means the maximum Premier Contracted Fee

permitted for a single procedure as determined by Delta Dental for the eligible patient's dental program, as well as the network, specialty and location in which the Premier Dentist participates.

30. "Objection and Opt-Out Deadline" means the date by which a Class Member must submit to the Class Notice Administrator any (i) objection to this Amended Settlement Agreement or (ii) request for exclusion from this Amended Settlement, which shall be a period of 45 days after the date Amended Class Notice is mailed or such other time as may be set and approved by the Court.

31. "Opt-Out Thresholds" means the thresholds at which Delta Dental may exercise its right to terminate this Amended Settlement Agreement, as set forth in the Settling Parties' Amended Supplemental Agreement, pursuant to Section I.E.7 of this Agreement.

32. "Participating Dentist Agreement" or "PDA" means the Delta Dental contract that a dentist signs to become a Premier Dentist with Delta Dental, which includes the Participating Dentist Rules.

33. "Participating Dentist Rules" or "Rules" means the section of the Participating Dentist Agreement that is entitled "Participating Dentist Rules," which establishes certain rules for all Premier Dentists.

34. "Premier Dentist" means a California dentist who is or was a signatory to, or is or was a party to or subject to, a Participating Dentist Agreement with Delta Dental for participation in the Delta Dental Premier network.

35. "Premier Fee Reimbursement Limits" means (i) Maximum Amounts Allowed or (ii) levels or amounts of fee reimbursement generally applicable to Premier Dentists.

36. "Released Claims" means those claims specified in Section IV of this Amended Settlement Agreement.



37. "Releasees" and "Released Parties" means Delta Dental and its past and present direct and indirect parents, subsidiaries, divisions, affiliates, members, officers, directors, partners, insurers, employees, agents, attorneys, accountants, all other persons, partnerships or corporations with which the former have been, or are now, affiliated and any of the legal representatives of the foregoing (and the predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the foregoing). The term "Releasees" and "Released Parties" includes each individual Releasee or Released Party.

38. "Second Amended Complaint" means the Second Amended Complaint filed in the Litigation on April 21, 2017.

39. "Settlement Class" means Class Members who do not opt out of this Amended Settlement Agreement in a timely and valid manner, as provided in Section II.E of this Amended Settlement Agreement.

40. "Settlement Class Member" means each member of the Settlement Class on his or her own behalf and on behalf of any person or entity who claims to possess, or who asserts or attempts to assert in a direct, indirect, derivative or representative capacity any of the Settlement Class Member's Released Claims.

## II. COURT APPROVAL OF AMENDED SETTLEMENT AGREEMENT AND CLASS NOTICE

### A. Confirmation of Certification of the Provisional Class and Appointment of the Class Representatives, Class Counsel and the Class Notice Administrator

1. In its April 21, 2017 Preliminary Approval Order, the Court provisionally certified, for settlement purposes only, pursuant to California Code of Civil Procedure section 382 and California Rule of Court 3.769(d), a class defined as: "All California dentists who are or were signatories to, or are or were parties to or subject to, a Participating Dentist Agreement with Delta Dental of California for participation in its Premier network at any time from January 1,

2011, to the date the Court enters the Preliminary Approval Order.” The Settling Parties agree to seek confirmation of this definition of the Class through the date of the Amended Preliminary Approval Order.

2. In its April 21, 2017 Preliminary Approval Order, the Court appointed 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 as Class Representatives. The Settling Parties agree to seek confirmation of the appointment of the Class Representatives in the Amended Preliminary Approval Order.

3. In its April 21, 2017 Preliminary Approval Order, the Court appointed Paul Alexander and Emily Wood of the firm of Arnold & Porter Kaye Scholer LLP (“APKS”) as Class Counsel. The Settling Parties agree to seek an order confirming the appointment of Paul Alexander and also appointing George Langendorf in the place of Emily Wood, who is no longer with APKS, as Class Counsel in the Amended Preliminary Approval Order.

4. In its April 21, 2017 Preliminary Approval Order, the Court appointed Rust Consulting as the Class Notice Administrator to assist Class Counsel in implementing and administering the Class Notice Plan and the process for objections to the Settlement and opt outs from the Settlement. The Settling Parties agree to seek confirmation of the appointment of Rust Consulting as the Class Notice Administrator in the Amended Preliminary Approval Order.

**B. Renewed Motion for Preliminary Approval**

1. The Settling Parties, Class Counsel and Delta Dental’s Counsel agree to use reasonable and good faith efforts to seek and obtain the Court’s preliminary approval of this Amended Settlement Agreement, including filing necessary motion papers and scheduling any necessary hearings for a date and time that are convenient for the Court.

2. A Renewed Motion for Preliminary Approval of this Amended Settlement

Agreement shall be filed, pursuant to California Rule of Court 3.769(c), as soon as reasonably possible after this Amended Settlement Agreement is signed by each of the Settling Parties. The Motion shall be filed with this Amended Settlement Agreement (including its Appendices), together with such other materials as may be requested by the Court in connection with its decision regarding preliminary approval of this Amended Settlement Agreement.

3. The Renewed Motion for Preliminary Approval will request that the Court enter an Amended Preliminary Approval Order that will:

a. Preliminarily approve this Amended Settlement Agreement as being within the range of possible final approval, and consistent with due process;

b. Confirm the definition of the Class and the appointments of the Class Representatives, Class Counsel and the Class Notice Administrator as provided in Section II.A above;

c. Confirm the provisional certification of the Class for settlement purposes only pursuant to California Rule of Court 3.769(d), and declare that in the event of termination of this Amended Settlement Agreement, certification of the Class shall be automatically vacated and Delta Dental and any Released Party may fully contest certification of any litigation class as though no Class had been certified, and the case shall be restored on the Court's docket in the same procedural and substantive posture that existed immediately preceding the filing of the initial Motion for Preliminary Approval, including without limitation the Court's Amended Proposed Statement of Decision re California Dental Association's Associational Standing, filed March 22, 2016;

d. Approve the method of notice to be provided to the Class in substantially the form described in the Amended Class Notice Plan, including using the long-form Amended

Class Notice and the short-form Amended Class Notice in substantially the forms attached as Appendices 1 and 2;

e. Approve the procedures in substantially the form described in the Class Notice Plan and below for Class Members to object to or to opt out of this Amended Settlement Agreement;

f. Approve the Amended Plan of Allocation and Distribution of the Amended Settlement Amount (Appendix 3);

g. Schedule a Final Approval Hearing, in accordance with California Rules of Court 3.769(e)-(g), for a time and date convenient for the Court, at which the Court will conduct an inquiry into the fairness, reasonableness and adequacy of this Amended Settlement Agreement and consider and address any objections to it, and determine whether this Amended Settlement Agreement and the Amended Plan of Allocation and Distribution should be finally approved, whether to approve the Class Representatives' and Class Counsel's request for Attorney's Fees and Expenses pursuant to Section VI, and whether to approve the Individual Named Plaintiffs' request for service awards; and

h. Stay all further proceedings in the Litigation.

**C. Class Notice**

1. If the Court preliminarily approves this Amended Settlement Agreement, the Class Notice Administrator shall undertake to send the Amended Class Notice to Class Members in accordance with California Rules of Court 3.766(d) and 3.769(f) and as ordered by the Court. Rust Consulting shall be responsible for sending, tracking and administering the Amended Class Notice pursuant to the Class Notice Plan approved by the Court. Rust Consulting has created a mailing list of Class Members, which it used to mail previous notices to Class Members. The Settling Parties, by and through counsel, agree to cooperate reasonably to update this mailing list

to include dentists who may have become Class Members since the date of the previous mailing and to correct any addresses that are found to be incorrect. Unless otherwise ordered by the Court, the Class Notice Administrator shall send the long-form Amended Class Notice (Appendix 1) by U.S. first class mail, using the updated mailing list described in this paragraph, no later than twenty-one (21) calendar days after the Court enters the Amended Preliminary Approval Order. The long-form Amended Class Notice (Appendix 1) shall be mailed by first class mail, and the short-form Amended Class Notice (Appendix 2) shall be published on the settlement website, at least 45 calendar days before the Objection and Opt-Out Deadline set by the Court. Thereafter, the Class Notice Administrator shall follow the procedures outlined in the Class Notice Plan approved by the Court. If a long-form Amended Class Notice sent to a Class Member is returned as undeliverable, the Class Notice Administrator shall promptly take additional and reasonable steps to determine whether a valid current address for such Class Member exists and complete any mailing to that address by first class mail no later than thirty (30) days after the initial mailing.

2. The Class Notice Administrator shall maintain through at least the Amended Settlement Agreement Effective Date a website, a post office box, and a toll-free telephone line for providing notice and information to Class Members, and also for purposes of administering the Amended Class Notice as well as any objections and/or opt out requests that may be received. The short-form Amended Class Notice and the long-form Amended Class Notice shall be available on the settlement website. All Amended Class Notices shall reference the website, the post office box and the toll-free telephone number. The website shall post substantive pleadings and documents pertaining to this Amended Settlement Agreement, including, in addition to those pleadings and documents already available on that website, this Amended

Settlement Agreement and its Appendices, the Renewed Motion for Preliminary Approval, the Amended Preliminary Approval Order, the court-approved short-form Amended Class Notice, the court-approved long-form Amended Class Notice, other documents that Class Counsel and Delta Dental's Counsel agree to post on the website, and any documents or notices that the Court orders to be posted on the website. The Class Notice Administrator shall provide Class Counsel and Delta Dental's Counsel a copy of any material to be posted on the website at least five (5) calendar days before the date it is posted.

3. The Class Notice Administrator will perform the steps required in the Amended Plan of Allocation and Distribution and will cooperate reasonably with Class Counsel and Delta Dental's Counsel to ensure that distributions of the Amended Settlement Amount are made in the manner provided by this Amended Settlement Agreement.

4. The Class Notice Administrator has signed and agreed to be bound by the Protective Order entered in the Litigation, shall treat information it receives or generates in connection with the Amended Class Notice as confidential, and shall use such information solely for the purposes of sending, tracking, administering and providing reports regarding the Amended Class Notice, objections, and opt outs except as otherwise ordered by the Court.

5. Delta Dental shall pay the reasonable fees and expenses of the Class Notice Administrator relating to this Amended Settlement Agreement (other than fees and expenses incurred in connection with a Qualified Settlement Fund (Appendix 4), if required, which shall be paid from that fund), and neither Class Counsel nor the Class Representatives shall have any responsibility for those fees and expenses.

**D. Objections**

1. Any Class Member may object to this Amended Settlement Agreement by submitting to the Class Notice Administrator a written objection that is delivered to the Class

Notice Administrator at the address indicated in the Amended Class Notice or mailed and postmarked no later than the Objection and Opt-Out Deadline. Instructions for sending an objection will be provided in the Amended Class Notice. The Class Notice Administrator shall provide a copy of each objection to Class Counsel and Delta Dental's Counsel within five (5) calendar days of receipt of the objection. For an objection to be considered by the Court, the written objection submitted to the Class Notice Administrator must include the following:

- a. the name of this Litigation;
  - b. the Class Member's full name, address, telephone number and Dental Board of California license number;
  - c. the time period during which the Class Member believes he or she was a Premier Dentist with Delta Dental pursuant to a PDA based on available records or, if records are not available, to the best of his or her recollection;
  - d. a description of the nature of the objection and the grounds for the objection, accompanied by any legal or factual support for the objection known to the Class Member or his or her counsel if represented by counsel;
  - e. the identity of counsel who represent the Class Member in connection with the Litigation; and
  - f. the Class Member's signature or the Class Member's counsel's signature, if represented by counsel, and the date of the signature.
2. The right to object must be exercised by a Class Member personally pursuant to the procedure set forth above.
  3. Class Representatives, Class Counsel, Delta Dental, and Delta Dental's Counsel shall not solicit or encourage any Class Member to object to this Amended Settlement.

**E. Requests to Opt Out or to Be Excluded From this Amended Settlement**

1. Any Class Member may opt out of this Amended Settlement Agreement by submitting to the Class Notice Administrator a written request to opt out that is delivered to the Class Notice Administrator at the address indicated in the Amended Class Notice or mailed and postmarked no later than the Objection and Opt-Out Deadline. To be effective, the written opt-out request submitted to the Class Notice Administrator must:

- a. state the name of the Litigation;
- b. state the Class Member's full legal name, address, telephone number and Dental Board of California license number;
- c. state the time period during which the Class Member believes he or she was a Premier Dentist with Delta Dental pursuant to a PDA based on available records or, if records are not available, to the best of his or her recollection;
- d. state that the Class Member opts out of this Amended Settlement Agreement; and
- e. be signed and dated by the Class Member or his or her counsel if represented by counsel.

2. The Class Notice Administrator shall provide to Class Counsel and Delta Dental's Counsel a copy of each opt-out request within five (5) calendar days of receiving the request.

3. The right to opt out must be exercised by a Class Member personally pursuant to the procedure set forth above.

4. Class Counsel will contact Class Members who have previously filed a valid request to opt out of the initial Settlement Agreement to determine whether they wish to rescind their prior opt out request or continue to opt out of the Amended Settlement Agreement. These Class Members will be entitled to rescind their previous request to opt out and remain members



of the Settlement Class, in which case they shall have the same rights and responsibilities as any other member of the Settlement Class. If these Class Members desire to continue to opt out of the Amended Settlement Agreement, they shall not be required to file a further request to opt out of the Settlement Class and their initial opt-out request shall be deemed to be valid and timely.

5. Within ten (10) calendar days after the Objection and Opt-Out Deadline, the Class Notice Administrator shall provide to Class Counsel and Delta Dental's Counsel all opt-out requests (as well as all objections) that it has received, a list of Class Members who opted out, and a summary of the opt-out requests suitable for filing with the Court. Class Members who validly and timely opt out are not entitled to any payment or other benefits provided in this Amended Settlement Agreement.

6. Within five (5) calendar days after receiving the information specified in Section II.E.5 above, Class Counsel will file with the Court all opt-out requests (as well as all objections) received from the Class Notice Administrator.

7. Delta Dental, in its sole discretion, may terminate this Amended Settlement Agreement if either of the Opt-Out Thresholds set forth in the Settling Parties' Amended Supplemental Agreement is exceeded. Within five (5) calendar days after receiving the information specified in Section II.E.5 above, Delta Dental's counsel and Class Counsel will cooperate in good faith to determine whether either or both of these thresholds have been exceeded. If Delta Dental wishes to terminate the Amended Settlement pursuant to this Section, it shall do so by giving written notice setting forth the basis for its decision to Class Counsel within fifteen (15) calendar days after the Objection and Opt-Out Deadline. The Settling Parties previously filed the Supplemental Agreement under seal for consideration by the Court. On April 21, 2017, the Court issued an Order Sealing the Supplemental Agreement. Subject to the

Court's approval, the Settling Parties agree to provide the Court, subject to the existing Order Sealing the Supplemental Agreement, an Amended Supplemental Agreement reflecting the new Amended Settlement Amount. The Settling Parties shall keep the Amended Supplemental Agreement and Opt-Out Thresholds confidential pursuant to the terms of the Order Sealing the Supplemental Agreement.

8. The Class Representatives, Class Counsel, Delta Dental, and Delta Dental's Counsel shall not solicit, advise or encourage any Class Member to opt out of this Amended Settlement Agreement.

**F. Appearance at Final Approval Hearing**

1. Any Settlement Class Member who does not opt out or request exclusion, as provided in Section II.E above, may address the Court at the Final Approval Hearing. If a Settlement Class Member seeks to make a substantive objection to the Amended Settlement Agreement or any portion of it at the Final Approval Hearing, he or she must submit a written objection as set forth in Section II.D above.

**G. Motion for Final Approval and Judgment**

1. Upon the Court's entry of the Amended Preliminary Approval Order, the Settling Parties, Class Counsel, and Delta Dental's Counsel agree to use reasonable and good faith efforts to obtain the Court's Final Approval Order and Judgment, including filing the necessary motion papers and scheduling any necessary hearings for a date and time that are convenient for the Court.

2. Within thirty (30) calendar days after the Objection and Opt-Out Deadline, Class Counsel shall file with the Court a motion for a Final Approval Order and Judgment that, among other things, will:

a. Determine that the Court has jurisdiction over the Class Representatives

and the Settlement Class;

b. Determine that the Amended Settlement Agreement and its terms are fair, reasonable and adequate and satisfy the requirements of California Code of Civil Procedure Section 382, California Rule of Court 3.769(g), the Local Rules of the Superior Court for the County of San Francisco; and any other rules that may be applicable;

c. Determine that the Amended Class Notice (a) constituted reasonable and the best practicable notice; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of this action, the terms of this Amended Settlement Agreement including revisions to the PDA, the right to object to this Amended Settlement Agreement, the right to appear at the Final Approval Hearing, and the right to opt out of this Amended Settlement Agreement; (c) constituted due, adequate and sufficient notice to all persons entitled to receive such notice; and (d) met the requirements of due process, the California Code of Civil Procedure, the California Rules of Court, and any other applicable law or rules of court;

d. Incorporate the Amended Settlement Agreement;

e. Set forth the method for allocating and distributing the Amended Settlement Amount as provided in the Amended Plan of Allocation and Distribution approved by the Court;

f. Direct payment of Attorney's Fees and Expenses as provided in Section VI;

g. Direct the payment of service awards to the Individual Named Plaintiffs as provided in Section III.D.1.b;

h. Incorporate the release of the Released Claims as binding and effective as to the Class Representatives and all Settlement Class Members, permanently enjoining the Class

Representatives and all Settlement Class Members from asserting any of the Released Claims, and forever discharging the Released Parties from the Released Claims;

i. State that as a result of this Amended Settlement Agreement, Delta Dental did not submit objections to the Court's Amended Proposed Statement of Decision re California Dental Association's Associational Standing, filed March 22, 2016 ("Proposed Decision"), the Court did not complete the process for receiving and considering objections to the Proposed Decision, and the Proposed Decision was not adopted as a final Court order;

j. Reserve for the Court exclusive and continuing jurisdiction over the administration, consummation and enforcement of this Amended Settlement Agreement, including all proceedings both before and after the Amended Settlement Agreement Effective Date, pursuant to California Rule of Court 3.769(h); and

k. Direct that the Final Approval Order and Judgment be entered.

3. If the Court executes a Final Approval Order and Judgment, the Settling Parties will take all necessary steps to ensure that notice of judgment is provided as ordered by the Court pursuant to California Rule of Court 3.771.

4. Upon entry of judgment, the Individual Named Plaintiffs who also are claimants in the Arbitration will dismiss with prejudice the Arbitration against Delta Dental, with each party to bear its own attorneys' fees and costs.

5. The Settling Parties may, but are not required to, accept revisions to this Amended Settlement Agreement required by the Court in order to obtain Final Approval of the Amended Settlement.

6. The Class Notice Administrator's affidavit of compliance with the Class Notice Plan shall be filed with the motion seeking entry of the Final Approval Order and Judgment.

### **III. CONSIDERATION FOR SETTLEMENT**

#### **A. Consideration for Release**

1. As consideration for this Amended Settlement Agreement, and in full, complete and final settlement of all Released Claims against Delta Dental and the other Released Parties, Delta Dental agrees to provide the consideration set forth in Sections III.B, III.C and III.D below.

#### **B. Amendments to the Participating Dentist Agreement**

1. Delta Dental shall make the following amendments to the PDA which may not be amended or removed from the PDA absent an appropriate Order of the Court:

a. The PDA shall be amended to include the following in the definition of "Contracted Fee" in the Rules:

"In the event of a decrease in Premier Contracted Fee maximum amounts allowed or levels or amounts of fee reimbursement generally applicable to Premier dentists (other than a decrease resulting solely from changes to the Code on Dental Procedures and Nomenclature ("CDT codes")), Delta Dental will provide participating dentists with 120 calendar days' notice. Such notice will provide each affected Premier dentist (1) his/her updated Contracted Fees affected by the reduction(s) and (2) the potential financial impact of the reduction(s) on his/her Contracted Fee reimbursements from Delta Dental, based upon the Premier dentist's submissions for procedures to Delta Dental over the twelve (12) month period ending on the most recent complete calendar quarter preceding the notice and the assumption that the participating dentist will perform the same set of procedures during the twelve (12) months following the reduction(s). If the dentist does not wish to accept the new Premier Contracted Fees, the dentist shall

so advise Delta Dental and terminate his/her participating dentist agreement within the 120 calendar day notice period. Nothing herein requires Delta Dental to provide any notice of any INAP limit or any change in the INAP limit (including the amount, rate or percentage) or any specific maximum amounts allowed for specific CDT codes.”

- b. The PDA shall be amended to include the following in Section 13 of the

Rules:

“Any material amendment(s) made as provided [in this Section 13] is/are binding upon Delta Dental participating dentists and effective 120 calendar days from the time Delta Dental mails complete and accurate notice to the participating dentist of the amendment(s), which notice will include a link to an online site which provides a redline identifying all changes. If the dentist declines to be bound by the amendment(s), the dentist shall so advise Delta Dental and terminate his/her participating dentist agreement within the 120 calendar day notice period.”

2. Other than the amendments described in Section III.B.1 above, Delta Dental has the right to determine unilaterally the provisions of the PDA (including the Rules), including without limitation any provisions relating to fee reimbursement; levels or amounts of fee reimbursement; methods, procedures or formulas for determining fee reimbursement; dispute resolution; and Delta Dental’s right to amend the PDA (including the Rules), provided that nothing contained herein shall be construed to constitute an agreement that Delta Dental may violate any statutory or common law right by future conduct.

C. Notice to CDA of Future Material Changes to the PDA or Fee Reductions

1. Delta Dental agrees to provide to CDA, for the benefit of all Premier Dentists,

including those who are not members of CDA as well as those who are members of CDA, the written notices described in Section III.B.1 above no less than twelve (12) calendar days before providing that notice to Premier Dentists in order for CDA to understand the material contract change(s), and/or reductions in Premier Contracted Fee Maximum Amounts Allowed or levels or amounts of fee reimbursements generally applicable to Premier Dentists, if applicable, and to be prepared to describe them to all Premier Dentists and respond adequately to inquiries pursuant to the procedures described in this Section. Delta Dental will respond to any reasonable questions that CDA may have in order to understand the nature and purpose of the material contract change(s), including fee reductions as described above. Class Counsel and CDA agree that the information that Delta Dental provides to CDA pursuant to this Section will be held in strict confidence and not published, released or disseminated directly or indirectly (including to Premier Dentists) until three (3) days after Delta Dental sends notice to Premier Dentists, in order that Delta Dental may announce any such change(s) in the manner it deems appropriate before CDA makes any communication concerning the change(s). After that time, CDA will be free to communicate publicly or with Premier Dentists, whether or not members of CDA, regarding its analysis of any aspect of the change(s). If CDA plans to make an announcement to Premier Dentists, whether or not members of CDA, regarding the change(s), it will provide that announcement to Delta Dental no less than two (2) business days before issuing the statement. Notwithstanding the above, upon issuance of the notice to Premier Dentists, CDA will be free to respond to individual inquiries from Premier Dentists, whether or not members of CDA, regarding the change(s).

2. Following entry of an Amended Preliminary Approval Order, Delta Dental will provide Class Members at least 120 calendar days' notice of the Amended PDA at or about the

same time the Amended Class Notice is provided to Class Members.

**D. Monetary Relief**

**1. Settlement Payments**

The Amended Settlement Amount to be allocated as set forth in this Amended Settlement Agreement is sixty-five million, twenty-nine thousand and two hundred ninety-nine dollars (\$65,029,299). The Amended Settlement Amount will be allocated and distributed in accordance with the the Amended Plan of Allocation and Distribution attached to this Amended Settlement Agreement as Appendix 3.

a. Delta Dental shall make payments totaling in the aggregate no more than the Amended Settlement Amount pursuant to the Amended Plan of Allocation and Distribution approved by the Court, which amount shall be reduced by the total amount that otherwise would be allocated to Class Members who opt out of this Amended Settlement Agreement and accordingly are not Settlement Class Members. All amounts deducted from the Amended Settlement Amount due to opt outs shall remain with or revert to Delta Dental.

b. Delta Dental shall pay a service award to each Individual Named Plaintiff in an amount to be determined by the Court, but in no event greater than three thousand five hundred dollars (\$3,500) per each Individual Named Plaintiff.

c. Other than Attorney's Fees and Expenses, as provided in Section VI, under no circumstances shall Class Counsel, the Class Representatives or any Settlement Class Member be permitted to seek any payments from Delta Dental or any Released Party in excess of the amounts provided in Section III.D.1, and under no circumstances shall Delta Dental or any Released Party be required to pay more than the amounts provided in Section III.D.1, for any reason under this Amended Settlement Agreement, including without limitation the operation and administration of a Qualified Settlement Fund, if required (Appendix 4).



2. Allocation of the Amended Settlement Amount to Class Members

a. Class Counsel, working with Class Counsel's experts, shall determine the allocation of the Amended Settlement Amount to Class Members and the manner in which it will be distributed pursuant to the Amended Plan of Allocation and Distribution contained in Appendix 3. Preliminary calculations of the allocation of the Amended Settlement Amount using the procedure set forth in Amended Plan of Allocation and Distribution (Appendix 3) will be made within twenty (20) days after entry of the Amended Preliminary Approval Order, and counsel for the Settling Parties will confer in good faith to confirm the accuracy of these calculations.

3. Distribution of the Amended Settlement Amount

a. Distribution of the Amended Settlement Amount shall be made pursuant to the Amended Plan of Allocation and Distribution (Appendix 3).

b. Class Members who opt out of the Amended Settlement shall not receive any distribution from the Amended Settlement Amount, and the amounts allocated to those Class Members shall remain with or revert to Delta Dental.

c. Delta Dental may make the Settlement payments in the form of cash payments or payments in conjunction with the monthly claim statements of Settlement Class Members who have continuing contracts with Delta Dental, or in such other manner as the Settling Parties may mutually agree (e.g., check, direct deposit, credit). Distributions shall be completed within 120 calendar days after the Amended Settlement Agreement Effective Date unless the Settling Parties otherwise agree or the Court so orders upon good cause shown.

d. The Settling Parties agree that they and their counsel have not provided any guidance, advice or opinion regarding the taxability of payments made pursuant to this

Amended Settlement Agreement and the Amended Plan of Allocation and Distribution approved by the Court. Neither Delta Dental nor any other Released Party shall have any liability, obligation or responsibility to pay any taxes owed by Settlement Class Members for amounts received pursuant to this Amended Settlement Agreement and the Amended Plan of Allocation and Distribution approved by the Court.

e. Delta Dental's payments pursuant to this Amended Settlement Agreement and the Amended Plan of Allocation and Distribution shall constitute full and complete satisfaction of its obligations under Section III.D.1 to make payments to Settlement Class Members. Settlement Class Members shall not under any circumstances be entitled to any further payment from Delta Dental or any Released Party with respect to any Released Claims.

4. Amended Settlement Amount *Cy Pres* Distribution

a. Any payment from the Amended Settlement Amount that is returned as undeliverable, or which is not cashed or redeemed within 90 days of the date of the payment, shall be treated as a residual of the Amended Settlement Amount. A stop payment order shall be issued for all such checks, and the funds associated with each such check shall be paid to CDA Foundation as a *cy pres* distribution to be used solely for use in the CDA Foundation Student Loan Repayment Program. Membership in CDA is not a criterion to receive an award of the Student Loan Repayment Grants and is not considered by CDA Foundation in determining the recipients of these Grants. The payment of the *cy pres* award to the CDA Foundation Student Loan Repayment Program shall not be restricted to CDA members but shall be made available to and awarded to eligible California dentists regardless of whether they are or become members of CDA. The payment of the *cy pres* award is not intended to replace or reduce the amount that CDA otherwise would give to the CDA Foundation. The payment of the *cy pres* award shall be

made as soon as reasonably practicable after Delta Dental makes final payments to Settlement Class Members and the Court orders the payment of the *cy pres* award to be made.

5. Administration Fees and Expenses

a. Delta Dental shall be responsible for the payment of fees and expenses relating to administration of the Amended Settlement Amount, unless a Qualified Settlement Fund is established pursuant to Section V of this Amended Settlement Agreement. As provided in Section V below, in the event of an appeal, Delta Dental shall establish a Qualified Settlement Fund, as provided in Appendix 4, into which the Amended Settlement Amount and any award of Attorney's Fees and Expenses and service awards shall be deposited. If a Qualified Settlement Fund is established, as provided in Appendix 4, all fees and expenses relating to the operation and administration of the Qualified Settlement Fund (including but not limited to fees and expenses for any claims administrator and fees and expenses relating to the distribution of the Amended Settlement Amount), currently estimated to be less than \$100,000, shall be paid from the Qualified Settlement Fund and neither Delta Dental, Delta Dental's Counsel, the Class Representatives, nor Class Counsel shall have any responsibility for those fees and expenses.

IV. RELEASE

1. In addition to and not in lieu of the effect of any final judgment entered in accordance with the Amended Settlement Agreement, and in consideration of Delta Dental's agreement to pay the Amended Settlement Amount and for other valuable consideration provided by the Amended Settlement Agreement, each Settlement Class Member and CDA hereby expressly and irrevocably waives, and fully, finally, and forever settles, discharges, and releases the Released Parties, from any and all manner of claims, demands, actions, suits, and causes of action, whether individual, class, derivative, representative, or otherwise in nature, for damages (whether compensatory, consequential, special, statutory or punitive), interest, costs,

expenses, attorneys' fees, fines, civil or other penalties, or other payment of money, or for injunctive, declaratory, or other equitable relief, whether directly, indirectly, derivatively, or otherwise, whether known or unknown, suspected or unsuspected, in law or in equity, that are based on, arise from or relate directly to Delta Dental's conduct, acts or omissions alleged in the Second Amended Complaint including without limitation the determination or application of Premier Fee Reimbursement Limits and/or Contracted Fees for Premier Dentists prior to the Effective Date of the Amended PDA, Delta Dental's determination or application of INAP, Delta Dental's amendments to the PDA announced on November 17, 2010, Delta Dental's amendments to the PDA announced on August 1, 2013, and/or Delta Dental's notice to dentists of those amendments, and/or the claim that the terms of the current or any prior version of the PDA, the covenant of good faith and fair dealing implied in the current or any prior version of the PDA, or any other law applicable to the current or prior versions of the PDA preclude the amendments proposed by Delta Dental to the PDA, regardless of when such claims accrue or accrued, for the period through the Effective Date of the Amended PDA (the "Release Date") as provided herein (the "Released Claims"). Settlement Class Members and CDA shall not, after the Release Date, seek to establish liability against the Released Parties based on, arising from or relating directly to the conduct, acts or omissions asserted in the Second Amended Complaint. Settlement Class Members, CDA and the Released Parties agree that the Amended Settlement Agreement may be pleaded as a bar to a lawsuit, arbitration demand or administrative claim, and an injunction may be obtained, preventing any action from being initiated or maintained in any lawsuit, arbitration or administrative proceeding sought to be prosecuted by or on behalf of Settlement Class Members or CDA with respect to the Released Claims.

2. In addition to the provisions of Section IV.1, above, each Settlement Class

Member and CDA expressly agrees that, upon the Release Date, he, she or it waives and forever releases with respect to the Released Claims any and all provisions, rights and benefits conferred by either (a) section 1542 of the California Civil Code, which reads:

**Section 1542. General release; extent.**

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

or (b) any law of the United States or any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to section 1542 of the California Civil Code. Each Settlement Class Member and CDA acknowledges that he, she or it may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the Released Claims, but each Settlement Class Member and CDA hereby expressly waives and fully, finally, and forever settles and releases, upon the Release Date, any known or unknown, suspected or unsuspected, contingent or non-contingent claim based on, arising from or relating directly to the conduct, acts or omissions alleged in the Second Amended Complaint, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

**V. APPEALS**

1. If a valid notice of appeal of the Court's Final Approval Order and Judgment is timely filed, Delta Dental shall establish a Qualified Settlement Fund into which it shall deposit the Amended Settlement Amount, any award of Attorney's Fees and Expenses, and any service awards. The procedures to establish any such Qualified Settlement Fund are provided in Appendix 4, subject to the approval of the Court. Delta Dental in its sole discretion may implement the Amended PDA prior to the Amended Settlement Agreement Effective Date.

**VI. ATTORNEY'S FEES AND EXPENSES**

1. Class Counsel and the Class Representatives will, no later than fourteen (14) calendar days before the Objection and Opt-Out Deadline, file a motion seeking the Court's approval of an award of Attorney's Fees and Expenses to Class Counsel in the amount of two million three hundred and fifty thousand dollars (\$2,350,000) to be paid by Delta Dental and not from the Amended Settlement Amount. Delta Dental agrees not to oppose and to pay an award of Attorney's Fees and Expenses up to two million three hundred and fifty thousand dollars (\$2,350,000), separate and apart from Delta Dental's payment of the Amended Settlement Amount. Class Counsel, the Class Representatives, and Settlement Class Members agree that the Court's award of Attorney's Fees and Expenses, regardless of the amount awarded, fully satisfies any and all claims for attorney's fees and expenses (including for experts) against Delta Dental or any Released Party, and that they will not seek attorney's fees and expenses (including for experts) in excess of this amount, subject to their right, if any, to challenge on appeal an award of less than the requested amount. Delta Dental also agrees to pay any award of Attorney's Fees and Expenses within sixty (60) days after the Amended Settlement Agreement Effective Date.

2. Upon payment of the Attorney's Fees and Expenses, Class Counsel, the Class Representatives, and Settlement Class Members hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against Delta Dental or any Released Party for attorney's fees and expenses (including for experts) associated with the Litigation or Class Counsel's representation of Class Representatives and/or the Class.

**VII. TERMINATION OF THIS AMENDED SETTLEMENT AGREEMENT**

1. This Amended Settlement Agreement may be terminated by either Delta Dental or Class Counsel by serving on counsel for the opposing party and filing with the Court a written notice of termination within fourteen (14) days after any of the following occurrences:

- a. The Court requires a modification, amendment or revision to the Amended Settlement;
- b. the Court declines to preliminarily or finally approve the Amended Settlement;
- c. an appellate court reverses the Amended Preliminary Approval Order or the Final Approval Order and Judgment, and the Amended Settlement is not reinstated without a modification, amendment or revision by the Court on remand;
- d. any court incorporates into, or deletes or strikes from, or modifies, amends, or revises, the Amended Preliminary Approval Order, the Final Approval Order and Judgment, or the Amended Settlement in any way;
- e. the Amended Settlement Agreement Effective Date does not occur; or
- f. any other ground for termination provided for elsewhere in this Amended Settlement Agreement arises.

2. If this Amended Settlement Agreement does not become effective for any reason, then (a) this Amended Settlement Agreement shall be null and void and of no force and effect (other than the "No Waiver" provision in Section VIII.C, the "Reservation of Rights" provision in Section VIII.E, and the "No Admission" provision in Section VIII.P); (b) Delta Dental shall be relieved of making any payments to the Class Representatives, Settlement Class Members and Class Counsel; (c) if Delta Dental has transferred any funds into the Qualified Settlement Fund those funds shall be returned to Delta Dental with any accrued interest less expenses paid; and (d) any release in this Amended Settlement Agreement shall be of no force or effect. The Litigation will proceed as if no settlement has been attempted, and the Settling Parties shall be returned to their respective procedural postures, *i.e.*, the posture that existed immediately

preceding the filing of the initial Motion for Preliminary Approval, including without limitation the Court's Amended Proposed Statement of Decision re California Dental Association's Associational Standing, filed March 22, 2016; and the Litigation and Arbitration may proceed as though the parties had not entered into settlement discussions. In such circumstances, Delta Dental expressly retains the right to contest whether the Litigation or Arbitration can or should be maintained as a class action, collective action or representative action, and to contest the merits of claims that have been or may be asserted, but the Court's Amended Proposed Statement of Decision re California Dental Association's Associational Standing, filed March 22, 2016, shall remain in place, as well as Delta Dental's right to object to or challenge that Amended Proposed Statement of Decision.

#### **VIII. MISCELLANEOUS**

##### **A. Reasonable Efforts**

1. The Settling Parties, Class Counsel and Delta Dental's Counsel shall undertake reasonable efforts to timely obtain any required approvals or consents to execute and proceed with this Amended Settlement Agreement, and shall execute all documents and perform any additional acts reasonably necessary and proper to effectuate the terms of this Amended Settlement Agreement.

##### **B. Public Statements**

1. The Settling Parties will agree on a joint statement concerning the Litigation, the Arbitration and the Amended Settlement to be issued when the Renewed Motion for Preliminary Approval is filed unless they agree to a different date. The Settling Parties, Class Counsel and Delta Dental's Counsel retain their right to comment on the Litigation and Arbitration and/or respond to inquiries regarding the Litigation and Arbitration, but agree to support the Amended Settlement in all public statements, including all statements in court and all statements to the



news media.

**C. No Waiver**

1. Nothing in this Amended Settlement Agreement is intended to waive any right to assert that any information or material is protected from discovery by reason of any individual or common interest privilege, attorney-client privilege, work product protection, or other privilege, protection, or immunity, or is intended to waive any right to contest any such claim of privilege, protection, or immunity.

2. This Section VIII.C shall survive the termination of this Amended Settlement Agreement.

**D. Stay of Proceedings**

1. The Settling Parties will seek a stay of the Litigation and a stay of the Arbitration while seeking preliminary and final approval of this Amended Settlement Agreement.

**E. Reservation of Rights**

1. The Settling Parties expressly reserve all of their rights, claims and defenses if this Amended Settlement Agreement does not become final and effective in accordance with the terms of this Amended Settlement Agreement.

2. The Settling Parties, Class Counsel and Delta Dental's Counsel agree that this Amended Settlement Agreement, whether or not it shall become effective, and any and all negotiations, documents and discussions associated with it shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Delta Dental or any Released Party, or of the truth of any of the claims or allegations contained in the complaints in the Litigation or the Arbitration, or any pleading or document; and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Litigation, the Arbitration, or any other action or proceeding. The Settling Parties, Class

Counsel and Delta Dental's Counsel further acknowledge and agree that this Amended Settlement Agreement supersedes any and all negotiations and discussions that led to this Amended Settlement Agreement, including but not limited to the initial Settlement Agreement which this Amended Settlement Agreement supersedes, and that all such negotiations and discussions are inadmissible in any proceeding, and are fully protected from disclosure by the Settling Parties' agreement governing the Mediation, California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other comparable statute, law, regulation or local rule of court.

3. Class Counsel, the Class Representatives, Class Members, Delta Dental, and Delta Dental's Counsel agree not to cite, in connection with any motion or argument for or against certification of a litigation class or in support of any other representative action against any Released Party, or any other proceedings in this case other than an action to enforce this Amended Settlement Agreement, materials generated or provided in connection with the Mediation or this Amended Settlement Agreement and its Appendices. Each Settling Party, Released Party and Class Member expressly preserves and does not waive any of its, his or her rights or arguments to oppose or support certification of a class or arguments about the ability of CDA or any other association or organization to prosecute a representative action in connection with the Litigation, the Arbitration or any other action, and nothing in this Amended Settlement Agreement shall be construed otherwise.

4. This section VIII.E shall survive any termination of this Amended Settlement Agreement.

F. **No Assignment**

1. Class Counsel, the Class Representatives, and each Settlement Class Member represents and warrants that they have not assigned or transferred, or purported to assign or

transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, the Arbitration or other action.

**G. Binding Effect**

1. This Amended Settlement Agreement shall be binding upon, and inure to the benefit of, the Settling Parties, each Settlement Class Member and each Released Party. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Class Representatives and Class Counsel shall be binding upon all Settlement Class Members.

**H. Advice of Counsel**

1. The Settling Parties and Settlement Class Members represent and warrant that they have not relied upon or been induced by any representation, statement or disclosure of the other Settling Parties or their attorneys or agents, but have relied upon their own knowledge and judgment and upon the advice and representation of their own counsel in entering into this Amended Agreement. Each Settling Party and Settlement Class Member warrants that it/he/she has carefully read this Amended Settlement Agreement, knows its contents, and has freely entered into it. Each Settling Party, by execution of this Amended Agreement, represents that it/he/she has been represented by independent counsel of its/his/her choice throughout all negotiations preceding the execution of this Amended Settlement Agreement.

**I. Integrated Agreement**

1. This Amended Settlement Agreement, its Appendices and the Amended Supplemental Agreement contain the entire, complete, and integrated agreement, and contain each and every term and provision of the Amended Settlement, between and among the Class Representatives and Settlement Class Members, and Delta Dental and the Released Parties. All of the Appendices to this Amended Settlement Agreement and the Amended Supplemental Agreement are material and integral parts of it and are incorporated by reference as if fully set

forth herein. This Amended Settlement Agreement shall not be modified or amended except by a writing signed by the Class Representatives and Delta Dental and approved by the Court.

**J. Headings**

1. The headings used in this Amended Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Amended Settlement Agreement.

**K. No Drafting Presumption**

1. Class Counsel and Delta Dental's Counsel have materially participated in the drafting of this Amended Settlement Agreement. No Settling Party shall be considered to be the drafter of this Amended Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

**L. Choice of Law**

1. All terms of this Amended Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of California without regard to its choice of law or conflict of laws principles.

**M. Consent to Jurisdiction and Choice of Exclusive Forum**

1. Any and all disputes arising from or related to the Amended Settlement, the Amended Settlement Agreement, or claims administration, including Attorneys' Fees and Expenses, must be brought exclusively in the Civil Division of the Superior Court of California, County of San Francisco (the "Civil Division"). Delta Dental, Class Representatives and each Settlement Class Member hereby irrevocably submits to the exclusive and continuing jurisdiction of the Civil Division for any suit, action, proceeding or dispute arising out of or relating to this Amended Settlement Agreement or the applicability or interpretation of this

Amended Settlement Agreement, including, without limitation any suit, action, proceeding or dispute relating to the release provisions herein, except that this paragraph shall not prohibit (a) any Released Party from asserting in the forum in which a claim is brought that the release herein is a defense, in whole or in part, to such claim, or (b) in the event that such a defense is asserted in that forum and the Civil Division determines that it cannot bar the claim, the determination of the merits of the defense in that forum.

**N. Enforcement of Settlement**

1. Nothing in this Amended Settlement Agreement prevents Delta Dental or any Released Party from enforcing or asserting any release in the Amended Settlement Agreement. Notwithstanding any other provision of this Amended Settlement Agreement, this Amended Settlement Agreement and the releases contained herein may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted by or on behalf of any Class Representative or other Settlement Class Member with respect to any Released Claims and may be filed, offered and received into evidence and otherwise used for such defense. In any action to enforce this Amended Settlement Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and expenses.

**O. Severability**

1. The terms of this Amended Settlement Agreement are not severable, but are interdependent and have been agreed to only as a whole by the Settling Parties, Class Counsel, and Delta Dental's Counsel. If one or more of the provisions of this Amended Settlement Agreement shall for any reason be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall terminate the Amended Settlement Agreement unless the Settling Parties mutually agree in writing to proceed as if such illegal, invalid, or unenforceable provision had never been included in the Amended Settlement Agreement, or the

Settling Parties mutually agree to modify or amend the Amended Settlement Agreement as provided in Section VIII.I above.

**P. No Admission**

1. Nothing in this Amended Settlement Agreement shall be construed as an admission in any action or proceeding of any kind whatsoever, whether civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority, at any time, by Delta Dental, any Released Party, Class Representatives, or Class Members, including without limitation that Delta Dental or any Released Party has engaged in any conduct or practices that violate any state or federal statute or other law. Delta Dental denied and continues to deny all allegations in the Litigation and the Arbitration that it engaged in any wrongdoing of any kind, or that it violated or breached any law, regulation or duty owed to any Class Representative or Class Member, and further denies that it is liable to, or owes any form of compensation or damages to, anyone with respect to the alleged facts or causes of action asserted in the Litigation or the Arbitration.

2. This section VIII.P shall survive any termination of this Amended Settlement Agreement.

**Q. Execution in Counterparts**

1. This Amended Settlement Agreement may be executed in counterparts. Facsimile or PDF signatures shall be considered as valid signatures as of the date hereof.

**R. Notice**

1. Any notice, request, instruction or other document to be given under this Amended Settlement Agreement shall be in writing and (a) shall be delivered personally or (b) sent by overnight delivery and email to the following or their designee:

**Individual Named Plaintiffs:**

Paul Alexander, Esq.  
George Langendorf, Esq.  
Arnold & Porter Kaye Scholer LLP  
10<sup>th</sup> Floor  
Three Embarcadero Center  
San Francisco, CA 94111-4024  
415-471-3122  
[Paul.alexander@apks.com](mailto:Paul.alexander@apks.com)  
[George.langendorf@apks.com](mailto:George.langendorf@apks.com)

**California Dental Association:**

Alison Sandman, Esq.  
Chief Legal Officer  
California Dental Association  
1201 K Street Mall, 14<sup>th</sup> Floor  
P.O. Box 13749  
Sacramento, CA 95814  
916-554-4910  
[Alison.Sandman@cda.org](mailto:Alison.Sandman@cda.org)

**Class Counsel:**

Paul Alexander, Esq.  
George Langendorf, Esq.  
Arnold & Porter Kaye Scholer LLP  
10<sup>th</sup> Floor  
Three Embarcadero Center  
San Francisco, CA 94111-4024  
415-471-3122  
[Paul.alexander@apks.com](mailto:Paul.alexander@apks.com)  
[George.Langendorf.apks.com](mailto:George.Langendorf.apks.com)

**Delta Dental of California:**

Michael Hankinson, Esq.  
Melissa Gee, Esq.  
Delta Dental  
100 First Street  
San Francisco, CA 94105  
(415) 972-8300  
[mhankinson@delta.org](mailto:mhankinson@delta.org)  
[mgee@delta.org](mailto:mgee@delta.org)

**Delta Dental's Counsel:**

Robert Rosenfeld, Esq.  
David M. Goldstein, Esq.  
Howard Ullman, Esq.  
Ellen Shulock Caro, Esq.  
Orrick Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, CA 94105  
(415) 773-5700  
[rosenfeld@orrick.com](mailto:rosenfeld@orrick.com)  
[dgoldstein@orrick.com](mailto:dgoldstein@orrick.com)  
[hullman@orrick.com](mailto:hullman@orrick.com)  
[ecaro@orrick.com](mailto:ecaro@orrick.com)

IN WITNESS WHEREOF, the Settling Parties hereto have agreed to this Amended Settlement Agreement on the date first herein above written.

**ACCEPTED AND AGREED:**

Dated: December 13, 2017

California Dental Association

By: Charles D. Ehrlert  
Charles Ehrlert, D.D.S., M.S., President

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Richard W. Barnes, D.D.S

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Robert E. Reed, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Dean Schweitzer, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Gerald Middleton, D.D.S.



**Delta Dental's Counsel:**

Robert Rosenfeld, Esq.  
David M. Goldstein, Esq.  
Howard Ullman, Esq.  
Ellen Shulock Caro, Esq.  
Orrick Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, CA 94105  
(415) 773-5700  
[rosenfeld@orrick.com](mailto:rosenfeld@orrick.com)  
[dgoldstein@orrick.com](mailto:dgoldstein@orrick.com)  
[hullman@orrick.com](mailto:hullman@orrick.com)  
[ecaro@orrick.com](mailto:ecaro@orrick.com)

IN WITNESS WHEREOF, the Settling Parties hereto have agreed to this Amended Settlement Agreement on the date first herein above written.

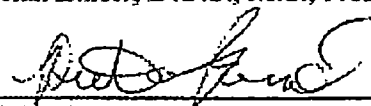
**ACCEPTED AND AGREED:**

Dated: December \_\_, 2017

California Dental Association

By: \_\_\_\_\_  
Clelan Ehrler, D.D.S., M.S., President

Dated: December \_\_, 2017

By:  \_\_\_\_\_  
Richard W. Barnes, D.D.S

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Robert E. Reed, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Dean Schweitzer, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Gerald Middleton, D.D.S

**Delta Dental's Counsel:**

Robert Rosenfeld, Esq.  
David M. Goldstein, Esq.  
Howard Ullman, Esq.  
Ellen Shulock Caro, Esq.  
Orrick Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, CA 94105  
(415) 773-5700  
[rosenfeld@orrick.com](mailto:rosenfeld@orrick.com)  
[dgoldstein@orrick.com](mailto:dgoldstein@orrick.com)  
[hullman@orrick.com](mailto:hullman@orrick.com)  
[ecaro@orrick.com](mailto:ecaro@orrick.com)

IN WITNESS WHEREOF, the Settling Parties hereto have agreed to this Amended Settlement Agreement on the date first herein above written.

**ACCEPTED AND AGREED:**

Dated: December \_\_, 2017

California Dental Association

By: \_\_\_\_\_  
Clelan Ehrler, D.D.S., M.S., President

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Richard W. Barnes, D.D.S

Dated: December \_\_, 2017

By:   
Robert E. Reed, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Dean Schweitzer, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Gerald Middleton, D.D.S

**Delta Dental's Counsel:**

Robert Rosenfeld, Esq.  
David M. Goldstein, Esq.  
Howard Ullman, Esq.  
Ellen Shulock Caro, Esq.  
Orrick Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, CA 94105  
(415) 773-5700  
[rosenfeld@orrick.com](mailto:rosenfeld@orrick.com)  
[dgoldstein@orrick.com](mailto:dgoldstein@orrick.com)  
[hullman@orrick.com](mailto:hullman@orrick.com)  
[ecaro@orrick.com](mailto:ecaro@orrick.com)

IN WITNESS WHEREOF, the Settling Parties hereto have agreed to this Amended Settlement Agreement on the date first herein above written.

**ACCEPTED AND AGREED:**

Dated: December \_\_, 2017

California Dental Association

By: \_\_\_\_\_  
Clelan Ehrler, D.D.S., M.S., President

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Richard W. Barnes, D.D.S

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Robert E. Reed, D.D.S.

Dated: December 12, 2017

By: \_\_\_\_\_  
  
Dean Schweitzer, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Gerald Middleton, D,D.S

**Delta Dental's Counsel:**

Robert Rosenfeld, Esq.  
David M. Goldstein, Esq.  
Howard Ullman, Esq.  
Ellen Shulock Caro, Esq.  
Orrick Herrington & Sutcliffe LLP  
405 Howard Street  
San Francisco, CA 94105  
(415) 773-5700  
[rosenfeld@orrick.com](mailto:rosenfeld@orrick.com)  
[dgoldstein@orrick.com](mailto:dgoldstein@orrick.com)  
[hullman@orrick.com](mailto:hullman@orrick.com)  
[ecaro@orrick.com](mailto:ecaro@orrick.com)

IN WITNESS WHEREOF, the Settling Parties hereto have agreed to this Amended Settlement Agreement on the date first herein above written.

**ACCEPTED AND AGREED:**

Dated: December \_\_, 2017

California Dental Association

By: \_\_\_\_\_  
Clelan Ehrler, D.D.S., M.S., President

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Richard W. Barnes, D.D.S

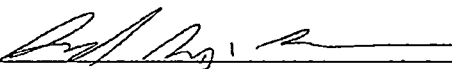
Dated: December \_\_, 2017

By: \_\_\_\_\_  
Robert E. Reed, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Dean Schweitzer, D.D.S.

Dated: December 2, 2017

By:   
Gerald Middleton, D.D.S

Dated: December 14, 2017

By: [Signature]  
Whitney Johnson, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Terrence Y. Lau, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Barbara M Hawthorne D.D.S.

Dated: December \_\_, 2017

ARNOLD & PORTER KAYE SCHOLER LLP

By: \_\_\_\_\_  
Paul Alexander  
Attorneys for the Plaintiff Class and for  
California Dental Association, 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 as Class Representatives

Dated: December \_\_, 2017

Delta Dental of California

By: \_\_\_\_\_  
Anthony S. Barth, President and Chief  
Executive Officer

Dated: December \_\_, 2017

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: \_\_\_\_\_  
Robert A. Rosenfeld  
Attorneys for Defendant  
Delta Dental of California

Model Resolutions 1981

By: Shirley J. Wilson, D.D.

Model Resolutions 1982

By: Kayanna J. Langford, S.

Model Resolutions 1983

By: James Earl Shaw, D.D., Ph.D.

Model Resolutions 1984

By: Donald A. Lindner, D.V.M., Ph.D., D.D.

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Model Res. 1981-1984 by: Shirley J. Wilson, D.D.  
Model Res. 1985-1987 by: James Earl Shaw, D.D., Ph.D.  
Model Res. 1988-1990 by: Donald A. Lindner, D.V.M., Ph.D., D.D.  
and a final Resolution

Model Resolutions 1985

By: John W. Adams, D.D.

ADDITIONAL PARAGRAPH AND MODEL  
RESOLUTIONS 1985

Model Resolutions 1986

By: William R. Parsons, M.D., D.D., Ph.D.

RESOLUTIONS FOR DELEGATES  
TO THE GENERAL CONFERENCE

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Whitney Johnson, D.D.S.

Dated: December 13, 2017

By: \_\_\_\_\_  
Terrence Y. Lau, D.D.S.

Dated: December 13, 2017

By: Barbara M. Hawthorne D.D.S.  
Barbara M. Hawthorne, D.D.S.

Dated: December \_\_, 2017

ARNOLD & PORTER KAYE SCHOLER LLP

By: \_\_\_\_\_  
Paul Alexander  
Attorneys for the Plaintiff Class and for  
California Dental Association, 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 as Class Representatives

Dated: December \_\_, 2017

Delta Dental of California  
By: \_\_\_\_\_  
Anthony S. Barth, President and Chief  
Executive Officer

Dated: December \_\_, 2017

ORRICK, HERRINGTON & SUTCLIFFE LLP  
By: \_\_\_\_\_  
Robert A. Rosenfeld  
Attorneys for Defendant  
Delta Dental of California

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Whitney Johnson, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Terrence Y. Lau, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Barbara M. Hawthorne, D.D.S.

Dated: December 14, 2017

ARNOLD & PORTER KAYE SCHOLER LLP

By: Paul Alexander  
Paul Alexander  
Attorneys for the Plaintiff Class and for  
California Dental Association; Richard W.  
Barrés, 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 as Class Representatives

Dated: December \_\_, 2017

Delta Dental of California  
By: \_\_\_\_\_  
Anthony S. Barth, President and Chief  
Executive Officer

Dated: December \_\_, 2017

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: \_\_\_\_\_  
Robert A. Rosenfeld  
Attorneys for Defendant  
Delta Dental of California



Dated: December \_\_, 2017

By: \_\_\_\_\_  
Whitney Johnson, D.D.S.

Dated: December \_\_, 2017

By: \_\_\_\_\_  
Terrence Y. Lau, D.D.S.

Dated: December \_\_, 2017

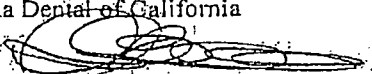
By: \_\_\_\_\_  
Barbara M. Hawthorne, D.D.S.

Dated: December \_\_, 2017

ARNOLD & PORTER KAYE SCHOLER LLP

By: \_\_\_\_\_  
Paul Alexander  
Attorneys for the Plaintiff Class and for  
California Dental Association, 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 as Class Representatives

Dated: December 14, 2017

Delta Dental of California  
By:   
Anthony S. Barth, President and Chief  
Executive Officer

Dated: December 14, 2017

ORRICK, HERRINGTON & SUTCLIFFE LLP  
By: Robert Rosenfeld / by Howard  
Robert A. Rosenfeld  
Attorneys for Defendant  
Delta Dental of California

APPENDIX 1  
TO THE AMENDED SETTLEMENT  
AGREEMENT

LONG FORM AMENDED NOTICE

**Appendix 1 to Amended Settlement Agreement – Long Form Amended Notice**

**Notice of Amended Class Action Settlement Agreement and Final Approval Hearing**

*California Dental Association, et al. v. Delta Dental of California,*  
San Francisco County Superior Court, No. CGC-14-538849

c/o Rust Consulting  
Class Notice Administrator - 5492  
PO Box 2563  
Faribault, MN 55021-9563

Superior Court for the City and County of San Francisco

**Important Information – Read Carefully**

**IF YOU HAVE BEEN A PARTY TO A PARTICIPATING DENTIST AGREEMENT IN CALIFORNIA FOR PARTICIPATION IN THE DELTA DENTAL PREMIER® NETWORK AT ANY TIME FROM JANUARY 1, 2011 TO DECEMBER \_\_, 2017, PLEASE READ THIS NOTICE CAREFULLY.**

**THE SAN FRANCISCO COUNTY SUPERIOR COURT HAS DIRECTED THAT THIS NOTICE BE SENT TO YOU. THIS IS NOT A SOLICITATION FROM A LAWYER.**

The San Francisco County Superior Court has preliminarily approved a proposed Amended Settlement Agreement (“Proposed Amended Settlement”) of a class action lawsuit brought on behalf of California dentists who had a Participating Dentist Agreement (“PDA”) with Delta Dental of California (“Delta Dental”) for participation in its Premier network (“Premier Dentists”) (the “Class”) at any time during the period January 1, 2011 through December \_\_, 2017 (the “Class Period”). The Proposed Amended Settlement resolves the claims asserted against Delta Dental in a lawsuit entitled *California Dental Association, et al. v. Delta Dental of California*, San Francisco County Superior Court Action No. CGC-14-538849 (the “Lawsuit”).

The Proposed Amended Settlement takes the place of and supersedes a previous proposed settlement between the parties, as to which the Superior Court previously granted preliminary approval on April 21, 2017. That previous settlement agreement was the subject of a previous Notice similar to this one that was mailed on May 11, 2017, and which you may have received. This Notice takes the place of and supersedes that previous Notice.

## Appendix 1 to Amended Settlement Agreement – Long Form Amended Notice

The purpose of this Notice is to inform you of the terms of the Proposed Amended Settlement, and to advise you of your legal rights and options with respect to it and the deadline by which they must be exercised.

*Please read this Notice carefully.*

### SUMMARY OF THE PROPOSED AMENDED SETTLEMENT

- The Lawsuit was brought by class representatives the 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. The Lawsuit challenges certain conduct of Delta Dental and certain amendments to the PDA that Delta Dental announced in August 2013 as well as Delta Dental’s calculation of fee reimbursements to Premier Dentists beginning January 1, 2011.
- As a part of the Proposed Amended Settlement, Delta Dental is amending the PDA to provide that if Delta Dental makes reductions in maximum amounts allowed for Contracted Fees or reductions in fee reimbursements generally applicable to Premier Dentists, Delta Dental will be required to provide at least 120 calendar days’ advance notice of any such reductions. The notice will identify the Current Dental Terminology Codes (“CDT”) being affected. In addition, Delta Dental must provide each affected Premier Dentist with an individualized calculation of the potential financial impact of such reductions on his/her practice, based upon claims submitted to Delta Dental during a recent 12-month period. The Amended PDA also provides that Delta Dental must provide 120 calendar days’ notice of any future material change it makes to the PDA, rather than the 45 business days’ notice now required by the current PDA and California law. Provided the Court grants its final approval to the Proposed Amended Settlement Agreement, these amendments will go into effect 120 calendar days after Delta Dental mails a Knox-Keene Act notice regarding the amendments. If you signed a PDA with Delta Dental on or after May 15, 2017, your PDA already contains these amendments.
- Delta Dental will pay up to a total of \$65,029,299 (the “Amended Settlement Amount”) to Settlement Class Members whose valid requests for fee increases to Delta Dental from January 1, 2011 to September 14, 2017 were limited by Delta Dental’s application of an inflation adjustment percentage (“INAP”) and resulted in reduced fee payments for procedures performed during that period.
- **Class Members do not need to file a proof of claim or present records of fee payments in order to be allocated a portion of the Amended Settlement Amount.** Class Counsel and experts working for the Class will determine the allocation of the Amended Settlement Amount among Class Members based on Delta Dental’s available records of actual fee and claim submissions for services performed from January 1, 2011 to September 14, 2017. In general, the amount allocated to each Class Member will be a share of the Amended Settlement

### **Appendix 1 to Amended Settlement Agreement – Long Form Amended Notice**

Amount that will be proportionate to the INAP impact on the Class Member based upon determinations using the available data when compared to the total INAP impact on the entire Class. Allocations will be made based on the best data available. There will be a minimum allocation of \$500 to any Class Member whose fee reimbursements were reduced by application of the INAP. There will be no allocation of the Amended Settlement Amount to Class Members whose fee reimbursements were not reduced by application of the INAP or distributions from the Amended Settlement Amount to Class Members who opt out of the Proposed Amended Settlement.

- The distribution of the allocations of the Amended Settlement Amount will be made in accordance with the process described in Section II.2 of this Notice. Allocations not relating to a Settlement Class Member's fee payments from Delta Dental directed to a group practice will be distributed directly to the Settlement Class Member. In connection with allocations relating to a Settlement Class Member's fee payments to a group practice in the normal course of business, the Class Member and the group practice will receive a notice informing them that unless either party objects the distribution will be made to the group practice. If either party objects, the payment will be held until the disagreement is resolved by agreement or a court order. Once the allocations and distributions have been determined, they will be deemed final and not subject to legal challenge.
- In addition to the Amended Settlement Amount, Delta Dental has agreed to pay an award of attorney's fees and expenses to Class Counsel up to \$2,350,000, which will be subject to approval by the Court. Delta Dental has also agreed to pay up to \$3,500 to each of the individual named plaintiffs for their service as class representatives. Neither the attorney's fees and expenses nor the service awards will be taken from or reduce the Amended Settlement Amount to be paid to Settlement Class Members, but will be in addition to the Amended Settlement Amount. A motion seeking approval of the attorney's fees and service awards will be filed no later than two weeks before the Objection and Opt-Out Deadline.
- If approved by the Court, the Proposed Amended Settlement will be a legally binding resolution of known and unknown claims based on, arising from, or relating directly to the conduct, acts and omissions alleged in the Second Amended Complaint up to and including the effective date of Delta Dental's Amended PDA. Individual disputes with Delta Dental concerning fee reimbursements or other matters that are not based on conduct, acts or omissions alleged in the Lawsuit will not be released. In addition, no claim based on conduct, acts or omissions of Delta Dental after the effective date of the Amended PDA will be released by the Proposed Amended Settlement.
- The Proposed Amended Settlement will become effective only after the Court enters a Final Approval Order and Judgment of the Proposed Amended Settlement following a public hearing to determine the fairness of the Proposed Amended Settlement, and, if necessary, the resolution of any appeal should anyone seek to challenge the Court's Final Approval Order and Judgment.
- The Amended PDA will not affect your current status as a Delta Dental Premier Dentist. You will not be required to sign a new PDA with Delta Dental as a result of the Proposed Amended

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Settlement. The contractual and statutory rights of any Premier Dentist to terminate the Amended PDA will remain unchanged.

- In addition to the amendments to the PDA required by the Proposed Amended Settlement, Delta Dental is making certain other amendments to the PDA that are not required by the Proposed Amended Settlement and are not subject to Court approval. A redlined version of the Amended PDA Rules which shows all of the amendments Delta Dental is making to the PDA is included with this Notice. The amendments required by the Proposed Amended Settlement are those that are shaded in the enclosed redlined version of the Rules.
- All of the amendments to the PDA's Rules have received clearance from California's Department of Managed Health Care.

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<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>
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Please review this Notice in its entirety. You have the following legal rights and options, which must be exercised in the manner described in this Notice within 45 days from the date of this Notice. The deadline by which you must act is \_\_\_\_\_.

<b>Participate in this Proposed Amended Settlement</b>	If you wish to participate in the Proposed Amended Settlement, you do not need to do anything. If the Court determines that the Proposed Amended Settlement is fair, adequate and reasonable, you will be entitled to the benefits of and be bound by the Proposed Amended Settlement. You may be eligible to receive a payment from the Amended Settlement Amount pursuant to the terms of the Proposed Amended Settlement. No claim form will be required for you to receive a payment. You will release certain claims against Delta Dental as described in the Proposed Amended Settlement.
<b>Exclude Yourself (or "Opt Out") from the Proposed Amended Settlement</b>	If you do not wish to participate in this Proposed Amended Settlement, you must "opt out" or exclude yourself from it. If you opt out, you will not be considered a party to the Lawsuit and you will relinquish any eligibility to receive a payment from the Amended Settlement Amount. You will, however, retain your current status as a Premier Dentist subject to the Amended PDA, including your contractual and statutory rights to terminate the Amended PDA. You will not release any claims you may have against Delta Dental. You will not be represented by Class Counsel after you submit a timely and valid request to opt out of the Proposed Amended Settlement. To exclude yourself or opt out of the Proposed Amended Settlement, you must submit a written Request for Exclusion as provided in section III.2 of this Notice, postmarked or delivered to the Class Notice Administrator no later than _____.
<b>Object to the Proposed Amended Settlement</b>	If you wish to participate in the Proposed Amended Settlement but have an objection to one or more aspects of it, you may submit a written objection to the Proposed Amended Settlement as provided in section III.3 of this Notice, postmarked or delivered to the Class Notice Administrator no later than _____.
<b>Go to the Final Approval Hearing to State Your Views</b>	The Court will hold a public hearing to determine whether the Proposed Amended Settlement is fair, reasonable and adequate to the Class (the "Final Approval Hearing") in San Francisco Superior Court, Department 305, on _____ at _____. Anyone can attend the Final Approval Hearing, but if you wish to address the Court at this hearing, you must not have opted out of the Proposed Amended Settlement. It is possible the hearing date will change, so please check the website for this Lawsuit and Proposed Amended Settlement, <a href="http://www.DeltaDentalofCaliforniaSettlement.com">www.DeltaDentalofCaliforniaSettlement.com</a> , to confirm the date of the Final Approval Hearing.

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Appendix I to Amended Settlement Agreement – Long Form Amended Notice

I. BASIC INFORMATION

1. Why did I get this Notice?

The Proposed Amended Settlement resolves claims in the Lawsuit, *California Dental Association, et al. v. Delta Dental of California*, San Francisco Superior Court Action No. CGC-14-538849. The Superior Court has provisionally approved a Class for settlement purposes only described as follows:

“All California dentists who are or were signatories to, or are or were parties to or subject to, a Participating Dentist Agreement with Delta Dental of California for participation in its Premier network at any time from January 1, 2011, to December \_\_, 2017.”

You are receiving this Notice because Delta Dental’s records indicate that you meet this definition and, therefore, are a Class Member. As a Class Member, your rights may be affected by, and you may receive a payment under, the Proposed Amended Settlement if you do not opt out.

2. Why is the settlement called a “Proposed Amended Settlement” and what is the relationship between this Proposed Amended Settlement and the previous proposed settlement in this case?

In April, 2017, the parties reached a prior proposed settlement of this litigation, which was contained in a written Settlement Agreement. That prior settlement, which provided for a Settlement Amount of \$34,750,000, was preliminarily approved by the Court on April 21, 2017, but that approval required verification of the allocations of the Settlement Amount to be made to Class Members. In the course of that verification process, it was determined that the previous calculations of the financial impact of the INAP on Class Members were significantly in error. The parties apprised the Court of these events and on June 8, 2017, the Court vacated the date for the final approval hearing then scheduled for August 31, 2017 and all other dates, and directed the parties to determine whether changes to the prior settlement were necessary. The parties conducted that investigation, engaged in further mediation, and determined that changes to the prior settlement agreement were required, which resulted in the “Proposed Amended Settlement Agreement.” Among other changes, the Amended Settlement Amount in the Proposed Amended Settlement has been increased to \$65,029,299.

3. Who are the class representatives?

The class representatives are the 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. CDA is serving as a class representative because many Class Members are members of CDA. Each of the individual class representatives is a Class Member because he or she was party to a PDA with Delta Dental for participation in its Premier Network during at least some portion of the Class Period.

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**4. What is the Lawsuit about and what claims are being asserted on behalf of Class Members?**

The Lawsuit asserts claims for breach of contract, breach of the covenant of good faith and fair dealing, violations of California Business and Professions Code sections 17200, *et seq.*, and declaratory relief based on the conduct, acts or omissions alleged in the Second Amended Complaint. The Lawsuit challenges, among other things, (1) Delta Dental's amendments to the PDA announced on August 1, 2013; (2) the adequacy of Delta Dental's notice regarding those amendments; (3) Delta Dental's determination of maximum amounts allowed for fees; (4) Delta Dental's determination of Contracted Fees; (5) Delta Dental's determination and application of the INAP to limit requested increases in fees since January 1, 2011; and (6) Delta Dental's limitation on the types of disputes that are subject to binding arbitration before the American Arbitration Association. The claims are contained in the Second Amended Complaint filed in the case, which is available for review at [www.DeltaDentalofCaliforniaSettlement.com](http://www.DeltaDentalofCaliforniaSettlement.com).

**5. What are Delta Dental's responses to the claims being asserted?**

Delta Dental denies each and every claim asserted against it. Delta Dental contends, among other things, that (1) the PDA itself and California's Knox-Keene Act expressly permit Delta Dental to amend the PDA; (2) the August 1, 2013 notice of amendments to the PDA was fair, accurate and reasonable, and satisfied all contractual and statutory requirements; (3) Delta Dental has properly determined maximum amounts allowed for fees; (4) Delta Dental has properly determined Contracted Fees; and (5) Delta Dental's determination and application of the INAP has been allowed under the PDA. Delta Dental asserts that any limits on fee increases, or reductions in fees, are a response to competitive and market conditions and are intended to maximize the number of patients who are covered by a Delta Dental plan, which thus benefits Premier Dentists. Delta Dental also denies that there is anything unlawful or improper about its amendment to the PDA's dispute resolution provision. Delta Dental's agreement to settle the Lawsuit is not an admission of liability or that it engaged in any wrongdoing or unlawful conduct of any kind.

**6. Has the Court decided who is right?**

The Court has issued no decision on the merits of the Lawsuit and has not decided who is right or wrong.

**7. Why is this Lawsuit a class action and who is included in the Class?**

CDA initially filed this Lawsuit on behalf of its members who are or have been Premier Dentists with Delta Dental. After extensive litigation regarding initial challenges to the Lawsuit, the Court suggested that the parties engage in mediation to determine whether the claims could be resolved by a settlement. In response, the parties agreed to engage a professional mediator with a national reputation, Eric Green of Resolutions, LLC. The mediation began in February, 2016, and in November, 2016, the parties reached an agreement in principle. During the course of the mediation, the parties agreed that to achieve finality, any proposed settlement should not be limited only to CDA members but

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should include all Delta Dental Premier Dentists who have or had a PDA with Delta Dental at any time from January 1, 2011 through the date the settlement is preliminarily approved by the Court. To accomplish that end, a Second Amended Complaint was filed to assert the claims made in the Lawsuit on behalf of all such dentists. The Court provisionally certified the Class for settlement purposes only and preliminarily approved the initial settlement and ordered that Notice of the initial settlement be sent to the Class. Following the recalculation of the INAP impact as described above in section I.2, this Notice is being sent to Class Members pursuant to the Court's Order to advise you of the Proposed Amended Settlement and the Final Approval Hearing at which the Court will consider whether to grant final approval of it.

### **8. Why is there a Proposed Amended Settlement?**

As described above in section I.4, this Lawsuit challenges, among other things, Delta Dental's amendments to the PDA, the adequacy of its notice of those amendments in 2013, Delta Dental's determination of maximum amounts allowed for Contracted Fees, and Delta Dental's application of the INAP since January 1, 2011. There are many complex issues that are raised by all of these claims, as well as disputes over the relevant facts. While Class Counsel believes that the claims have merit, Delta Dental believes that it will prevail on all claims. Litigation is inherently unpredictable and there is no guarantee that either party will ultimately prevail or that any monetary damages will be awarded. It would likely take years to resolve the issues raised in the Lawsuit, including any appeals, and there can be no certainty of the outcome. It would be several years, therefore, before any relief could be granted, if Class Members are entitled to any relief.

In an attempt to resolve their differences, Class Counsel and Delta Dental's Counsel engaged in the lengthy mediation before a professional mediator, and thereafter a further mediation pertaining primarily to the Amended Settlement Amount, both of which are described above in section I.7. Those mediations, coupled with the additional negotiations of the parties, resulted in the Proposed Amended Settlement. While there were many factors that led to the Proposed Amended Settlement, some of the most significant were:

- During the pendency of this Lawsuit and a preceding arbitration, Delta Dental has refrained from reducing maximum amounts allowed for Contracted Fees for what will be more than five years. As a result, Premier Dentists collectively have received many millions of dollars more than they otherwise would have received had Delta Dental reduced the maximum amounts allowed for Contracted Fees under the PDA in 2013. However, there was a substantial possibility that plaintiffs could not forever prevent amendments to the PDA or potential future reductions to the maximum amounts allowed.
- The provisions in the Amended PDA requiring 120 calendar days' notice and, in particular, requiring an individualized financial calculation for each Premier Dentist of the impact of any future reduction in maximum amounts allowed, are significant long-term and permanent benefits to Premier Dentists. Delta Dental's provision of information about which CDT codes are affected by a reduction, as well as the significantly longer notice period for future reductions

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and material changes to the PDA, are important benefits that enhance Premier Dentists' ability to engage in meaningful long-term planning for their practices.

- The Amended Settlement Amount of up to \$65,029,299 to be paid to eligible Settlement Class Members, which is in addition to the benefits to Premier Dentists from the delay in reductions in maximum amounts allowed described above, will provide monetary compensation within a reasonable time for Premier Dentists who were affected by Delta Dental's application of the INAP. This monetary relief could not have been obtained except through subsequent litigation, because as an association CDA (which brought the initial complaint in this case) does not have standing to seek individual damages for dentists, even for its members. The law requires that damages be sought either by individual actions or a class action.
- CDA and the individual class representatives were legally constrained by applicable federal and state antitrust laws in their ability to collectively negotiate with Delta Dental regarding specific fees, fee levels, fee-setting provisions or fee-setting limitations. In addition, Delta Dental contends that the Knox-Keene Act permits a health care service plan like Delta Dental to make material changes to its provider agreements, including a change to the plan that affects rates and fees paid to providers.
- The outcome of continued litigation was uncertain and not knowable. It was possible that, absent a settlement, plaintiffs might not obtain any relief whatsoever after years of expensive litigation. Moreover, years of continued litigation in an effort to block Delta Dental from adjusting fees in response to competitive market conditions posed a potential threat to the long-term viability of Delta Dental plans that treat Premier Dentists as in-network providers.
- The Settling Parties recognized that the only mechanism to reach a settlement that would provide relief to all Premier Dentists and provide closure on the disputed issues is through a class action, which subjects the Proposed Amended Settlement to the Court's review to ensure that it is fair, reasonable and adequate for Class Members and also affords Class Members the opportunity to object to, or opt out of, the Proposed Amended Settlement.

Considering the benefits that will accrue under the Proposed Amended Settlement and all of the risks, time and expense that would be required for continued litigation, Class Counsel and the class representatives have concluded that the Proposed Amended Settlement is fair, reasonable and adequate.

### 9. Can I participate in the Proposed Amended Settlement, and if I do how are my rights affected?

The Class Period is from January 1, 2011 to December \_\_, 2017. If you were a Delta Dental Premier Dentist pursuant to a PDA at any time during this period, you are a Class Member. Unless you decide to opt out of the Proposed Amended Settlement in accordance with the instructions contained in this Notice, you will receive benefits under

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the Proposed Amended Settlement on the same basis as other Delta Dental Premier Dentists who are Class Members and also do not opt out, and you will be bound by the terms of the Proposed Amended Settlement, including the release of claims.

### II. THE PROPOSED AMENDED SETTLEMENT'S BENEFITS

#### 1. What amendments to the PDA are required by the Proposed Amended Settlement?

A full description of the amendments to the PDA being made as a part of this Proposed Amended Settlement is set forth in section III.B of the Proposed Amended Settlement Agreement, which is available at [www.DeltaDentalofCaliforniaSettlement.com](http://www.DeltaDentalofCaliforniaSettlement.com). The shaded sections of the attached, redlined version of the PDA's Rules show the amendments to the PDA that the Class is agreeing to:

a. The Amended PDA amends the definition of "Contracted Fee" in the Rules section to provide:

"In the event of a decrease in Premier Contracted Fee maximum amounts allowed or levels or amounts of fee reimbursement generally applicable to Premier dentists (other than a decrease resulting solely from changes to the Code on Dental Procedures and Nomenclature (CDT codes)), Delta Dental will provide participating dentists with 120 calendar days' notice. Such notice will provide each affected Premier dentist (1) his/her Contracted Fees affected by the reduction(s) and (2) the potential financial impact of the reduction(s) on his/her Contracted Fee reimbursements from Delta Dental based upon the Premier dentist's submissions for procedures to Delta Dental over the twelve (12) month period ending on the most recent complete calendar quarter preceding the notice and the assumption that the participating dentist will perform the same set of procedures during the twelve (12) months following the reduction(s). If the dentist does not wish to accept the new Premier Contracted Fees, the dentist shall so advise Delta Dental and terminate his/her participating dentist agreement within the 120 calendar day notice period. Nothing herein requires Delta Dental to provide any notice of any INAP limit or any change in the INAP limit (including the amount, rate or percentage) or any specific maximum amounts allowed for specific CDT codes."

b. The Amended PDA is also being amended to include the following in Section 13 of the Rules:

"Any material amendment(s) made as provided [in this Section 13] is/are binding upon Delta Dental participating dentists and effective 120 calendar days from the time Delta Dental mails complete and accurate notice to the participating dentist of the amendment(s), which notice will include a link to an online site which provides a redline identifying all changes. If the dentist declines to be bound by the amendment(s), the dentist shall so advise

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Delta Dental and terminate his/her participating dentist agreement within the 120 calendar day notice period.”

c. Delta Dental will provide the notices described above in Sections II.1.a and II.1.b to CDA for the benefit of all Premier Dentists no less than 12 calendar days before providing the notice to Premier Dentists. After Delta Dental provides notice to Premier Dentists, CDA will be free to communicate with Premier Dentists (whether or not members of CDA) regarding its analysis of the nature and effect of the amendments.

d. Other than the amendments described above, Delta Dental has the right to determine unilaterally the provisions of the PDA (including the Rules), including without limitation any provisions relating to fee reimbursement; levels or amounts of fee reimbursement; methods, procedures or formulas for determining fee reimbursement; dispute resolution; and Delta Dental’s right to amend the PDA (including the Rules), provided that nothing in the Proposed Amended Settlement is an agreement that Delta Dental may violate any statutory or common law right by future amendment or other conduct.

e. Delta Dental has made certain other amendments to the PDA that are not required by this Proposed Amended Settlement and are not subject to Court approval. Those amendments are redlined (but not shaded) in the attached redlined version of the PDA’s Rules, which is also available to you on the official website for this Amended Settlement: [www.DeltaDentalofCaliforniaSettlement.com](http://www.DeltaDentalofCaliforniaSettlement.com) and on Delta Dental’s website at [www.deltadentalins.com/dentists/](http://www.deltadentalins.com/dentists/). If you signed a PDA with Delta Dental on or after May 15, 2017, your PDA already contains these amendments.

### 2. Am I entitled to receive money under this Proposed Amended Settlement and if so, how will the amount be determined?

The Plan of Allocation and Distribution of the Amended Settlement Amount is set forth in Appendix 3 to the Proposed Amended Settlement Agreement, which is available at [www.DeltaDentalofCaliforniaSettlement.com](http://www.DeltaDentalofCaliforniaSettlement.com). In summary, if you do not opt out of the Proposed Amended Settlement, you will be a Settlement Class Member and you may be allocated and entitled to receive a portion of the Amended Settlement Amount. Class Counsel and experts working for the Class will determine the allocation of the Amended Settlement Amount among Class Members based on Delta Dental’s available records of actual fee and claim submissions for services performed from January 1, 2011 to September 14, 2017. In general, the amount allocated to each Class Member will be a share of the Amended Settlement Amount that is proportionate to the INAP impact on the Class Member based on determinations using available data, when compared to the total INAP impact on the entire Class. Allocations will be made based on the best data available. There will be no allocation or distribution to Class Members whose fee payments were not limited by the INAP and no distribution to Class Members who opt out of the Proposed Amended Settlement. Once the allocations have been determined, they will be deemed final and not subject to legal challenge.

Distributions will be made pursuant to the Amended Plan of Allocation and Distribution, which is Appendix 3 to the Amended Settlement Agreement. In sum,

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allocations not relating to a Settlement Class Member's fee payments from Delta Dental directed to a group practice will be distributed directly to the Settlement Class Member. In connection with allocations relating to a Settlement Class Member's fee payments from Delta Dental to a group practice in the normal course of business, within 20 days after Final Approval the Settlement Class Member and the group practice will be told the amount of the Settlement Class Member's allocation associated with the group practice and that the distribution will be made to the group practice unless an objection is made within 30 days after the notice is sent. If no written objection is received within 30 days, then the distribution will be made to the group practice. If an objection is made, the distribution will be held for a maximum of 60 days to allow the Settlement Class Member and the group practice to reach an agreement. If no agreement is reached within that period, the distribution shall be deposited in a Qualified Settlement Fund established pursuant to the Amended Settlement Agreement (Appendix 4), and thereafter paid either in accordance with instructions agreed upon by the the Settlement Class Member and the group practice or a final, non-appealable court order directing how payment shall be made. Once the distribution has been determined, it will be deemed final and not subject to legal challenge. To the extent feasible, recipients of a distribution from the Amended Settlement Amount will receive a Form 1099-MISC.

### **3. What is the range of recovery for Settlement Class Members?**

Based on current calculations and available data, it is currently estimated that approximately 14,300 Class Members will be allocated a portion of the Amended Settlement Amount. Of these, approximately 6,300 are estimated to be allocated the minimum of \$500.00 and approximately 8,000 are estimated to be allocated amounts ranging from \$500.00 to approximately \$465,000.00. The average allocation from the Amended Settlement Amount is currently estimated to be approximately \$4,500.00.

### **4. Am I required to file a claim form or any documentation in order to be allocated money under this Proposed Amended Settlement?**

No. It will not be necessary for you to file a claim form in order to be allocated and entitled to receive a portion of the Amended Settlement Amount, and your eligibility for a payment does not depend on your ability to document fee submissions that you have made. Delta Dental maintains databases that will be used to make the calculations for allocations and payments under the Proposed Amended Settlement. The allocations and payments will be based on Delta Dental's record of requests for fee increases submitted to Delta Dental, any application of the INAP to those requested fee increases, and claims history for services performed during the period January 1, 2011 to September 14, 2017, determined in the manner described above. It is anticipated that all payments from the Amended Settlement Amount will be completed within 120 calendar days after the Proposed Amended Settlement Agreement becomes effective. Any payments from the Amended Settlement Amount that remain outstanding (i.e., checks that are issued but are returned as undeliverable, or which are not cashed or redeemed within 90 days after being mailed) will be paid to the CDA Foundation Student Loan Repayment Program. Those funds will be made available to and awarded to California dentists regardless of whether they are or become members of CDA.



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**5. What is the effect of the Proposed Amended Settlement on my rights if I do not opt out?**

If you decide to remain a Class Member and do not opt out of the Proposed Amended Settlement, you will receive its benefits as described in this Notice and it will be binding on you. You will also be bound by the “Release of Claims” included in the Proposed Amended Settlement Agreement, which provides as follows:

“[1] In addition to and not in lieu of the effect of any final judgment entered in accordance with the Amended Settlement Agreement, and in consideration of Delta Dental’s agreement to pay the Amended Settlement Amount and for other valuable consideration provided by the Amended Settlement Agreement, each Settlement Class Member and CDA hereby expressly and irrevocably waives, and fully, finally, and forever settles, discharges, and releases the Released Parties, from any and all manner of claims, demands, actions, suits, and causes of action, whether individual, class, derivative, representative, or otherwise in nature, for damages (whether compensatory, consequential, special, statutory or punitive), interest, costs, expenses, attorneys’ fees, fines, civil or other penalties, or other payment of money, or for injunctive, declaratory, or other equitable relief, whether directly, indirectly, derivatively, or otherwise, whether known or unknown, suspected or unsuspected, in law or in equity, that are based on, arise from or relate directly to Delta Dental’s conduct, acts or omissions alleged in the Second Amended Complaint including without limitation the determination or application of Fee Reimbursement Limits, and/or Contracted Fees for Premier Dentists prior to the Effective Date of the Amended PDA, Delta Dental’s determination or application of INAP, Delta Dental’s amendments to the PDA announced on November 17, 2010, Delta Dental’s amendments to the PDA announced on August 1, 2013, and/or Delta Dental’s notice to dentists of those amendments, and/or the claim that the terms of the current or any prior version of the PDA, the covenant of good faith and fair dealing implied in the current or any prior version of the PDA, or any other law applicable to the current or prior versions of the PDA preclude the amendment proposed by Delta Dental to the Amended PDA, regardless of when such claims accrue or accrued, for the period through the Effective Date of the Amended PDA (the “Release Date”) as provided herein (the “Released Claims”). Settlement Class Members and CDA shall not, after the Release Date, seek to establish liability against the Released Parties based on, arising from or relating directly to the conduct, acts or omissions asserted in the Second Amended Complaint. Settlement Class Members, CDA and the Released Parties agree that the Amended Settlement Agreement may be pleaded as a bar to a lawsuit, arbitration demand or administrative claim, and an injunction may be obtained, preventing any action from being initiated or maintained in any lawsuit, arbitration or administrative proceeding sought to be prosecuted by or on behalf of Settlement Class Members or CDA with respect to the Released Claims.

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[2] In addition to the provisions of Section [1] above, each Settlement Class Member and CDA expressly agrees that, upon the Release Date, he, she or it waives and forever releases with respect to the Released Claims any and all provisions, rights and benefits conferred by either (a) section 1542 of the California Civil Code, which reads:

### **Section 1542. General release; extent.**

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

or (b) any law of the United States or any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to section 1542 of the California Civil Code. Each Settlement Class Member and CDA acknowledges that he, she or it may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the Released Claims, but each Settlement Class Member and CDA hereby expressly waives and fully, finally, and forever settles and releases, upon the Release Date, any known or unknown, suspected or unsuspected, contingent or non-contingent claim based on, arising from or relating directly to the conduct, acts or omissions alleged in the Second Amended Complaint, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.”

### **6. Who is paying the costs associated with the Proposed Amended Settlement?**

Delta Dental will bear the costs of administering the Amended Settlement Amount. However, under certain circumstances, Delta Dental will establish a Qualified Settlement Fund (“QSF”) as provided in the Proposed Amended Settlement Agreement, into which the Amended Settlement Amount, or a portion of it, and any award of attorney’s fees and expenses and service awards shall be deposited. In that event, the costs and expenses for the operation and administration of the QSF, if one is established, including but not limited to fees and expenses for any claims administrator fees and expenses relating to the distribution of the Amended Settlement Amount, which are currently estimated to be less than \$100,000, will be paid out of the QSF.

## **III. WHAT ARE MY OPTIONS?**

### **1. What should I do if I want to be part of the Proposed Amended Settlement?**

If you want to participate in the Proposed Amended Settlement, you do not need to do anything. You automatically will be included in the Settlement Class, may be eligible to receive a payment from the Amended Settlement Amount, and will be bound by the terms of the Proposed Amended Settlement, including the release of claims as provided in the Proposed Amended Settlement Agreement. You do not need to file a claim form or take

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any other action. The Class Notice Administrator will provide notice through the settlement website if the Court enters an order granting final approval of the Proposed Amended Settlement and a judgment. Any payment will be made within 120 calendar days after the effective date of the Proposed Amended Settlement Agreement, unless otherwise ordered by the Court. It is possible that this date may be postponed if there is any appeal of the Court's order. In that case, payments will be made after all appeals have been resolved and the Proposed Amended Settlement is upheld on appeal.

**2. What should I do if I want to opt out or exclude myself from the Proposed Amended Settlement, and what are the consequences of opting out?**

You have the right to be excluded from this Proposed Amended Settlement, which is also referred to as "opting out". If you want to opt out of the Proposed Amended Settlement, you must do so on your own behalf. To opt out of the Proposed Amended Settlement, you must submit to the Class Notice Administrator a written request to opt out of the Proposed Amended Settlement that is delivered to the Class Notice Administrator or postmarked no later than \_\_\_\_\_. The Class Notice Administrator's address is provided below in section VI.

To be effective, your opt-out request must:

(1) state the name of this Lawsuit, *California Dental Association, et al. v. Delta Dental of California*, San Francisco County Superior Court Action No. CGC-14-538849;

(2) state your full legal name, address, telephone number and Dental Board of California license number;

(3) state the time period during which you believe that you have been a Premier Dentist with Delta Dental pursuant to a PDA based on available records or, if records are not available, to the best of your recollection;

(4) state that you are opting out of the Proposed Amended Settlement; and

(5) be signed and dated by you or your counsel if you are represented by counsel.

Opt-out requests that are not postmarked or received by the Class Notice Administrator by \_\_\_\_\_, or which fail to include the information outlined above, will be of no force or effect. Delta Dental has an option to terminate the Proposed Amended Settlement if total opt outs exceed certain thresholds.

If you decide to opt out of the Proposed Amended Settlement, you will not be eligible to receive any payment from the Amended Settlement Amount, you will not release any claim you may have against Delta Dental, and you will no longer be represented by Class Counsel. You will be subject to the Amended PDA, and you will be free to pursue any claim you believe you may have against Delta Dental on your own.

**Appendix 1 to Amended Settlement Agreement – Long Form Amended Notice**

**3. What should I do if I object to the Proposed Amended Settlement, and is objecting the same as “opting out”?**

If you decide to participate in and do not opt out of the Proposed Amended Settlement, you still have the right to object in writing to all or any part of it should you wish to do so. If you want to object to any aspect of the Proposed Amended Settlement, you must do so on your own behalf. To object to the Proposed Amended Settlement or any part of it, you must submit a written objection to the Class Notice Administrator that is delivered or postmarked no later than \_\_\_\_\_. The Class Notice Administrator’s address is provided below in section VI. For an objection to be considered by the Court, the objection must include:

(1) the name of this Lawsuit, *California Dental Association, et al. v. Delta Dental of California*, San Francisco County Superior Court Action No. CGC-14-538849;

(2) your full name, address, telephone number and Dental Board of California license number;

(3) the time period during which you believe you have been a Premier Dentist with Delta Dental pursuant to a PDA based on available records or, if records are not available, to the best of your recollection;

(4) a description of the nature of your objection and the grounds for your objection, accompanied by any legal or factual support for the objection known to your or your counsel if you are represented by counsel;

(5) the identity of counsel who represent you in connection with this matter; and

(6) your signature or your counsel’s signature, if you are represented by counsel, and the date of the signature.

Objections that are not postmarked or received by the Class Notice Administrator by \_\_\_\_\_, or which fail to include the information outlined above, will not be considered by the Court.

Objecting to the Proposed Amended Settlement is not the same as opting out of the Proposed Amended Settlement. You may object to the Proposed Amended Settlement and still participate in it if you don’t opt out. If you opt out of the Proposed Amended Settlement, however, you will have no right to object to it or to speak at the Final Approval Hearing because it will no longer affect your rights.

**IV. THE COURT’S FINAL APPROVAL HEARING**

**1. When and where will the Court decide whether to finally approve the Proposed Amended Settlement?**

Under California law, the Court, after considering any valid objections to the Proposed Amended Settlement, must make a final determination as to whether it is fair, adequate and reasonable for Class Members. A formal “Final Approval Hearing” is

## Appendix 1 to Amended Settlement Agreement – Long Form Amended Notice

conducted by the Court in order to determine whether the Proposed Amended Settlement is fair, adequate and reasonable.

The Final Approval Hearing is currently scheduled for \_\_\_\_\_, at \_\_\_\_\_ in Courtroom 305, San Francisco County Superior Court, 400 McAllister Street, San Francisco, California 94102. It is possible that the date and time of this hearing will be postponed if the Court determines this is necessary. If this occurs, the revised date and time for this hearing will be posted on the website for this Proposed Amended Settlement, [www.DeltaDentalofCaliforniaSettlement.com](http://www.DeltaDentalofCaliforniaSettlement.com). A separate written notice of the rescheduled hearing date will not be mailed to Class Members. If you wish to attend the Final Approval Hearing, therefore, please consult this website to confirm the date and time for the hearing.

### 2. Do I have to attend the Final Approval Hearing to participate in the Proposed Amended Settlement?

No, attendance is not required and whether you do or do not attend will not affect your right to participate in the Proposed Amended Settlement. Attendance at the Final Approval Hearing is entirely optional.

### 3. Do I have the right to speak at the Final Approval Hearing?

You may attend the Final Approval Hearing regardless of whether you objected to the Proposed Amended Settlement. If you do not opt out or request exclusion, as provided in Section III.2 above, you may address the Court at the Final Approval Hearing. If you want to make a substantive objection to the Proposed Amended Settlement or any portion of it at the Final Approval Hearing, you must submit a written objection as set forth in Section III.3 above.

## V. THE LAWYERS FOR THE CLASS

### 1. Who represents me?

The Class is represented by attorneys at the firm of Arnold & Porter Kaye Scholer LLP at the address below:

Arnold & Porter Kaye Scholer, LLP  
Attn: Paul Alexander  
George Langendorf  
Paul.Alexander@APKS.com  
George.Langendorf@APKS.com  
3 Embarcadero Center, 10th Floor  
San Francisco, CA 94111-4204

### 2. How will Class Counsel be paid?

Pursuant to the Proposed Amended Settlement and subject to Court approval, Delta Dental will pay Class Counsel up to \$2,350,000 in attorney's fees and expenses. Class

## Appendix 1 to Amended Settlement Agreement – Long Form Amended Notice

Counsel will file a motion for approval of this payment, which will be decided by the Court at the Final Approval Hearing. In addition, if approved by the Court, each individual class representative will receive a service award of up to \$3,500 to reimburse him or her for the time and effort he or she has devoted to this case as a class representative. The basis for this award will be included in the motion for attorney's fees and service awards and considered at the Final Approval Hearing. These service awards, if approved by the Court, will also be paid by Delta Dental. No part of the attorney's fees and expenses, or the service awards, will reduce the Amended Settlement Amount. These are separate and additional payments made by Delta Dental.

Class Counsel's motion for approval of attorney's fees and service awards will be filed no later than \_\_\_\_\_, or at least two weeks before the Objection and Opt-Out Deadline set by the Court. If you wish to object to the motion for approval of attorney's fees and service awards, you must submit your written objection to the Class Notice Administrator, which must be delivered or postmarked no later than \_\_\_\_\_.

### VI. GETTING MORE INFORMATION

#### 1. Can I get more information from the Class Notice Administrator?

If you desire more information regarding this Notice, the Proposed Amended Settlement, or the Lawsuit, please visit the website that the Class Notice Administrator has established: [www.DeltaDentalofCaliforniaSettlement.com](http://www.DeltaDentalofCaliforniaSettlement.com)

All significant pleadings, notices and documents, including a copy of the Proposed Amended Settlement, are available on the website. Notice of hearings and any changes in hearing dates, including for the Final Approval Hearing, also will be posted at this website.

If you still have any questions regarding the information provided in the Proposed Amended Settlement or this Notice, including the amount you may be eligible to receive under the Proposed Amended Settlement (subject to appropriate confidentiality limitations), you may contact the Class Notice Administrator at the following:

**California Dental Association, et al. v. Delta Dental of California  
c/o Rust Consulting, Inc.  
Class Notice Administrator - 5492  
PO Box 2563  
Faribault, MN 55021-9563**

**1- 866-431-8455**

If you still have questions that you believe have not been adequately answered by the Class Notice Administrator, you may contact Class Counsel at the address provided above in section V.

**Appendix 1 to Amended Settlement Agreement – Long Form Amended Notice**

**PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK'S OFFICE  
TO INQUIRE ABOUT THIS PROPOSED AMENDED SETTLEMENT OR THE  
BENEFITS AVAILABLE UNDER IT.**

APPENDIX 2  
TO THE AMENDED SETTLEMENT  
AGREEMENT

SHORT FORM AMENDED NOTICE



**Appendix 2 to Amended Settlement Agreement – Short Form Amended Notice**

**Notice of Amended Class Action Settlement Agreement and Final Approval Hearing**

*California Dental Association, et al. v. Delta Dental of California,*  
San Francisco County Superior Court, No. CGC-14-538849

**If You Were a Dentist in the Delta Dental Premier® Network  
in California from January 1, 2011 to \_\_\_\_\_  
You May Be Eligible for Benefits from a Class Action Lawsuit**

A Proposed Amended Settlement has been reached in a class action lawsuit brought on behalf of Delta Dental Premier dentists against Delta Dental of California ("Delta Dental"). The lawsuit claims that Delta Dental breached the terms of dentists' Participating Dentist Agreements ("PDA") with Delta Dental for participation in its Premier network ("Premier Dentists") in determining fees and fee limits, and in amending the PDA and how it communicated those amendments to Premier Dentists. Delta Dental denies all wrongdoing.

The Proposed Amended Settlement takes the place of and supersedes a previous proposed settlement between the parties, as to which the Superior Court previously granted preliminary approval on April 21, 2017. That previous settlement agreement was the subject of a previous Notice similar to this one that was published in the California edition of USA Today on May 12, 2017. This Notice takes the place of and supersedes that previous Notice.

**Who are the Class Representatives?**

The lawsuit was brought by the following class representatives: 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. Each of the individual representatives is a member of the Class. CDA is serving as a class representative because many Class Members are members of CDA.

**Am I included in the Proposed Amended Settlement?**

If you were a Delta Dental Premier Dentist who had a PDA with Delta Dental anytime from January 1, 2011 through \_\_\_\_\_, you are a member of the Class. The lawsuit does not involve, and the Class does not include, patients who are or were enrollees in dental plans offered by Delta Dental of California.

**Why is there a Proposed Amended Settlement?**

The Court preliminarily approved the initial Settlement on April 21, 2017. After the initial Class Notice was issued, the parties discovered a miscalculation in the amount at issue, which they brought to the Court's attention. On June 8, 2017, the Court ordered the parties to determine the correct amount at issue, and if necessary to determine an Amended Settlement Amount. The parties did so and now are seeking preliminary approval of the Proposed Amended Settlement.

## Appendix 2 to Amended Settlement Agreement – Short Form Amended Notice

### **What does the Proposed Amended Settlement provide?**

The Proposed Amended Settlement requires Delta Dental to provide 120 calendar days' notice if it makes reductions in maximum amounts allowed for Contracted Fees or reductions in fee reimbursements generally applicable to Premier Dentists, to identify the Current Dental Terminology Codes ("CDT") being affected, and to provide each affected Premier Dentist with an individualized calculation of the potential financial impact of such reductions on his/her practice. Please note that if you signed a PDA with Delta Dental on or after May 15, 2017, your PDA already contains these amendments.

In addition, Delta Dental will pay up to a total of \$65,029,299 (the "Amended Settlement Amount"), rather than the initial settlement amount of \$34,750,000, to Premier Dentists who do not opt out of the Proposed Amended Settlement and who received reduced payments for dental services performed during the period from January 1, 2011 through September 14, 2017, because Delta Dental applied an inflation adjustment percentage ("INAP") to limit their requests for fee increases during that period. Class Members whose payments were not limited by the INAP or who elect to opt out of the Proposed Amended Settlement will not receive any portion of the Amended Settlement Amount.

### **How will the Amended Settlement Amount be allocated among Class Members?**

Class Counsel and experts working for the Class have developed a methodology for allocating the Amended Settlement Amount among Class Members using Delta Dental's available records. In general, the amount allocated to each Class Member will be a share of the Amended Settlement Amount that is proportionate to the INAP impact on the Class Member, based on determinations using available data, when compared to the total INAP impact on the entire Class. Once determined, the allocations will be deemed final and not subject to legal challenge.

Based on current calculations and available data, it is currently estimated that approximately 14,300 Class Members will be allocated a portion of the Amended Settlement Amount. Of these, approximately 6,300 are estimated to be allocated the minimum of \$500.00 and approximately 8,000 are estimated to be allocated amounts ranging from \$500.00 to approximately \$465,000.00. The average allocation from the Amended Settlement Amount is currently estimated to be approximately \$4,500.00. Recipients of distributions from the Amended Settlement Amount will be sent a Form 1099-MISC.

Allocations not relating to a Settlement Class Member's fee payments from Delta Dental directed to a group practice will be distributed directly to the Settlement Class Member. In connection with allocations relating to a Settlement Class Member's fee payments to a group practice in the normal course of business, the Class Member and the group practice will receive a notice informing them that unless either party objects the distribution will be made to the group practice. If either party objects, the payment will be held until the disagreement is resolved by agreement or a court order. Once the allocations and distributions have been determined, they will be deemed final and not subject to legal challenge.

## Appendix 2 to Amended Settlement Agreement – Short Form Amended Notice

Distributions from the Amended Settlement Amount will be made within 120 calendar days from the date that the Proposed Amended Settlement becomes effective. Any distributions from the Amended Settlement Amount that remain outstanding (e.g., checks that are uncashed) for more than 90 days after being mailed will be paid to the CDA Foundation Student Loan Repayment Program. Those funds will be made available to and awarded to California dentists regardless of whether they are members of CDA.

Also, in addition to the Amended Settlement Amount, Delta Dental will separately pay an award of attorney's fees and expenses to Class Counsel up to \$2,350,000 and service awards of up to \$3,500 to each of the Class Representatives, subject to Court approval. Class Counsel will file a motion for approval of the attorney's fees and expenses and service awards no later than \_\_\_\_\_.

Delta Dental will bear the costs of administering the Amended Settlement Amount. However, under certain circumstances, Delta Dental will establish a Qualified Settlement Fund ("QSF") as provided in the Proposed Amended Settlement, into which the Amended Settlement Amount, or a portion of it, and any award of attorney's fees and expenses and service awards shall be deposited. Costs and expenses for the operation and administration of the QSF, if one is established, including but not limited to fees and expenses for any claims administrator fees and expenses relating to the distribution of the Amended Settlement Amount, which are currently estimated to be less than \$100,000, will be paid out of the QSF.

### **How do I get benefits?**

You do **not** need to file a claim to participate in the Proposed Amended Settlement. The Amended Settlement Amount will be allocated and distributed in the manner described above, using the fee and claims information that is available in Delta Dental's records.

### **What are my other rights?**

Remain in the Proposed Amended Settlement: If you do nothing, you will remain in the Proposed Amended Settlement. You will be bound by the terms of the Proposed Amended Settlement and give up your right to sue Delta Dental about the claims in this case. You may be eligible to receive a distribution or benefits as described in this Notice.

Object to the Proposed Amended Settlement: If you stay in the Proposed Amended Settlement but still wish to object to it, you must submit a written objection by \_\_\_\_\_. The Court will consider only written objections.

Opt Out of the Proposed Amended Settlement: If you do not want to be legally bound by the Proposed Amended Settlement and want to retain your right to sue, you must exclude yourself by \_\_\_\_\_. If you opt out, you will not receive any distribution from the Amended Settlement Amount, and will not be represented by Class Counsel. However, your status as a Delta Dental Premier Dentist will not be affected.

**Appendix 2 to Amended Settlement Agreement – Short Form Amended Notice**

Attend the Hearing: The Court will hold a hearing on \_\_\_\_\_ at 1:30 p.m. to determine whether to grant final approval to the Proposed Amended Settlement. The Court will also consider the application for attorney's fees and service awards at this hearing. Anyone can attend this hearing and any Class Member who has not opted out may address the Court at the Final Approval Hearing. Substantive objections must be submitted in writing to the Class Notice Administrator by \_\_\_\_\_.

**The complete Proposed Amended Settlement Agreement, long-form Amended Class Notice, and other documents pertinent to the Proposed Amended Settlement can be accessed at [www.DeltaDentalofCaliforniaSettlement.com](http://www.DeltaDentalofCaliforniaSettlement.com) or by contacting Rust Consulting at**

**California Dental Association, *et al.* v. Delta Dental of California  
c/o Rust Consulting, Inc.  
Class Notice Administrator - 5492  
PO Box 2563  
Faribault, MN 55021-9563**

**1-866-431-8455**

APPENDIX 3  
TO THE AMENDED SETTLEMENT  
AGREEMENT

AMENDED PLAN OF ALLOCATION  
AND DISTRIBUTION

## Appendix 3 to Amended Settlement Agreement

### Amended Plan of Allocation and Distribution of Amended Settlement Amount

Allocation of the Amended Settlement Amount to Class Members pursuant to the Amended Settlement Agreement Section III.D.2 and distribution of the Amended Settlement Amount to Settlement Class Members pursuant to the Amended Settlement Agreement Section III.D.3 will be made as follows:

#### Allocation

1. The allocation of the Amended Settlement Amount will be determined according to the financial effect of the application of the INAP to each Class Member ("INAP Impact") as set forth below.
2. INAP Impact will be determined by first identifying, to the maximum extent that the data will permit, each Class Member's request(s) for fee increases during the period from January 1, 2011 through September 14, 2017, that were limited by application of the INAP, and second, then determining, to the maximum extent that the available data will permit, the amount by which a Class Member's fee payments were limited as a result of Delta Dental's application of the INAP for services performed during that period. To the extent possible, INAP Impact determinations will be made for claims for services performed during the period from January 1, 2011 through September 14, 2017, and which have been submitted to Delta Dental and processed through December 31, 2017.
3. Each Class Member's *pro rata* share of the Amended Settlement Amount will initially be determined based on the proportion of his/her INAP Impact to the total Class INAP Impact, using the data described in Section 2. In some cases, the available data require judgments to be made by Class Counsel, working with experts retained on behalf of the Class, as to the amount of the INAP Impact, which will be made consistently in an effort to make the most accurate allocations possible. If a Class Member practiced in more than one office or location and/or with more than one Tax Identification Number, his or her INAP Impact will be aggregated into a single INAP Impact attributable to that Class Member.
4. If a Class Member's INAP Impact is determined to be zero, then he/she will not be allocated any portion of the Amended Settlement Amount and will receive no payment under the Amended Settlement Agreement. If the Class Member's *pro rata* share is determined to be greater than zero but less than or equal to \$500, then the Class Member will be allocated the minimum allocation of \$500. If the *pro rata* share of the Amended Settlement Amount exceeds \$500 determined as set forth in Section 3, then his/her allocation will be determined according to Section 5 below.

### Appendix 3 to Amended Settlement Agreement

5. The allocation to Class Members for whom the Section 3 *pro rata* share of the Amended Settlement Amount exceeds \$500 (the "Remaining Class Members") will be determined as follows: First the total amount of the minimum \$500 allocations to Class Members determined as described in Section 4 will be deducted from the Amended Settlement Amount, resulting in the "Remaining Amended Settlement Amount." Each Remaining Class Member will then be allocated a share of the Remaining Amended Settlement Amount. To calculate this share, the INAP Impact on the Remaining Class Member will be the numerator and the total INAP Impact of all Remaining Class Members will be the denominator. The resulting percentage will be applied to the Remaining Amended Settlement Amount to determine the amount of the Remaining Amended Settlement Amount to be allocated to the Remaining Class Member. This methodology will be applied uniformly for all Remaining Class Members. The total of the \$500 minimum allocations and the allocations to the Remaining Class Members will equal the Amended Settlement Amount.
6. In situations in which INAP Impact cannot be associated with any individual Class Member, no share of that INAP Impact will be allocated to any Class Member.

#### Distribution

7. Distribution of the Amended Settlement Amount to Settlement Class Members shall be made pursuant to the allocation plan set forth above and be completed within the time period set forth in Section III.D.3.c of the Amended Settlement Agreement, subject to the provisions of Section V.1 of the Amended Settlement Agreement and Sections 8 - 13 below.
8. In situations in which a Settlement Class Member's fee payments during any portion of the Class Period were made by Delta Dental to a group practice in the normal course of business, then no later than twenty (20) days after the Court enters an order granting Final Approval of the Amended Settlement Agreement a written notice will be mailed by the Class Notice Administrator to the Settlement Class Member and the group practice informing both (i) of the amount of the Settlement Class Member's allocation associated with claims submitted by or on behalf of, or paid to, the group practice in the normal course of business and (ii) that the distribution of the settlement allocation so associated will be made to the group practice absent written objection received pursuant to the procedure below. The group practice will thereafter be responsible for determining any further distribution of the settlement allocation, subject to the following:
  - a. If a Settlement Class Member or a group practice submits an objection in writing to the Class Notice Administrator within 30 days of the date the above

### Appendix 3 to Amended Settlement Agreement

information is mailed, distribution of that Settlement Class Member's allocation will not be made to the group practice but will be deferred for a maximum of 60 days after the date the above information is mailed to allow the group practice and the Settlement Class Member to come to an agreement on how the payment should be made. If no agreement is reached within that period, allocations subject to unresolved objections shall be deposited in a Qualified Settlement Fund established pursuant to the Amended Settlement Agreement (Appendix 4), and thereafter paid either in accordance with instructions agreed upon by the group practice and the Settlement Class Member or a final, non-appealable court order directing how payment shall be made. Reasonable additional costs incurred by the Class Notice Administrator in making the payment in this manner may be deducted from the payment, provided that any interest that is earned on the funds while in the QSF will be added to the payment. Once funds are deposited in the Qualified Settlement Fund, the Settling Parties, Delta Dental's Counsel and Class Counsel shall have no further obligation or responsibility with respect to the allocation or distribution of such funds.

- b. If no written objection is received within 30 days of the date the above information is mailed, then the distribution of the Settlement Class Member's allocation associated with claims submitted by or on behalf of, or paid to, the group practice will be made to the identified group practice.
  - c. Nothing contained herein is intended to affect the legal rights of either a Settlement Class Member or a group practice with respect to such payments. In following the provisions of this Amended Plan of Allocation and Distribution, the Class Representatives, Class Counsel, Delta Dental, Delta Dental's counsel, and the Class Notice Administrator shall have no responsibility or liability for any allocation or distribution of payments between or among a dental group practice and/or the group's members.
9. If it is determined that a Settlement Class Member who is entitled to an allocation of the Amended Settlement Amount has passed away, that distribution shall be held while the Class Notice Administrator makes a reasonable effort to contact the personal representative of decedent's estate or the trustees of decedent's trust, if any, or if none, the Class Member's successor in interest. If any dispute arises regarding the payment of this allocation, Delta Dental shall deposit the allocation into a Qualified Settlement Fund established pursuant to this Amended Settlement Agreement (Appendix 4), and payment shall thereafter be made either in accordance with instructions agreed upon by the personal representative of decedent's estate or the trustees of decedent's trust, if any, or if none, the Class Member's successor in interest, or a final, non-appealable court order



### Appendix 3 to Amended Settlement Agreement

directing how payment shall be made. Reasonable additional costs incurred by the Class Notice Administrator in making the payment in this manner may be deducted from the payment, provided that any interest that is earned on the funds while in the QSF will be added to the payment. Once funds are deposited in the Qualified Settlement Fund, the Settling Parties, Delta Dental's Counsel and Class Counsel shall have no further obligation or responsibility with respect to the allocation or distribution of such funds.

10. To the maximum extent feasible and consistent with tax law and regulation, Delta Dental will send a Form 1099-MISC to either Settlement Class Members or group practices who receive a distribution from the Amended Settlement Amount. No Form 1099-MISC will be sent with respect to funds deposited into a Qualified Settlement Fund. Neither the Settling Parties, Delta Dental's Counsel nor Class Counsel shall have any further obligation or responsibility with respect to the allocation or distribution of funds deposited into the Qualified Settlement Fund.

#### General

11. In order to avoid the need for the filing of claims and/or substantiating documentation by Class Members, to make allocation and distribution of the Amended Settlement Amount in a reasonably prompt manner, and to treat each Class Member in a fair and equal manner, the allocation and distribution determinations made pursuant to this Amended Plan of Allocation and Distribution shall be final and conclusive for all purposes, including the making of the payments called for under the Amended Settlement Agreement. In no event shall the Class Notice Administrator, the Settling Parties or counsel for the Settling Parties have any liability for a payment or lack of a payment made pursuant to this Amended Plan of Allocation and Distribution.
12. Class Members who make a timely and valid election to opt out of the Amended Settlement Agreement will not receive a distribution from the Amended Settlement Amount. The portion of the Amended Settlement Amount that would have been allocated to a Class Member who opts out of the Amended Settlement Agreement determined pursuant to this Amended Plan of Allocation and Distribution will be retained by Delta Dental and not distributed to any Class Member.
13. The amounts allocated and/or paid to Class Members shall, to the extent consistent with law, be maintained as confidential and not disclosed publicly. Notwithstanding the foregoing, if an issue arises as to whether an allocation should be distributed to an individual Settlement Class Member or to a group practice of which he or she was or is a member, the amount(s) at issue will be disclosed to the Settlement Class Member and relevant group practice.

APPENDIX 4  
TO THE AMENDED SETTLEMENT  
AGREEMENT

QUALIFIED SETTLEMENT FUND

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## Appendix 4 to Amended Settlement Agreement

### QUALIFIED SETTLEMENT FUND

1. As provided in Section V of the Amended Settlement Agreement, if a valid notice of appeal of the Court's Final Approval Order or Judgment is timely filed, Delta Dental shall establish an escrow account into which it shall deposit the Amended Settlement Amount, the total amount of any Service Awards, and the amount of any award of Attorney's Fees and Expenses (collectively, the "Settlement Fund"), to be administered in accordance with the provisions herein (the "Escrow Account"). The Settling Parties will cooperate to execute an appropriate escrow agreement within thirty (30) days after a valid notice of appeal is timely filed. Alternatively, if the conditions precedent to the establishment of a Qualified Settlement Fund as set forth in the Amended Plan of Allocation and Distribution (Appendix 3) are satisfied, then the Settlement Fund shall consist of those amounts specified in the Amended Plan of Allocation and Distribution.

2. The Escrow Account shall be established at a bank or such other financial institution agreed upon by the Settling Parties, with such bank, other institution or other entity serving as the Escrow Agent ("Escrow Agent") subject to escrow instructions mutually acceptable to Class Counsel and Delta Dental's counsel. The Escrow Account shall be administered under the Court's continuing supervision and control.

3. Delta Dental's transfer of the Settlement Fund to the Escrow Agent shall constitute full and complete satisfaction of its obligations relating to the payment of the Amended Settlement Amount pursuant to Section III.D.1 and III.D.1.a of the Amended Settlement Agreement, the payment of Service Awards pursuant to Section III.D.1.b of the Amended Settlement Agreement, and the payment of Attorney's Fees and Expenses pursuant to Section VI of the Amended Settlement Agreement.

4. The Escrow Agent shall cause the Settlement Fund deposited in the Escrow

#### Appendix 4 to Amended Settlement Agreement

Account to be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or money market funds invested substantially in such instruments, and shall reinvest any income from these instruments and proceeds from these instruments as they mature in similar instruments at their then current market rates.

5. The Settlement Fund and any interest thereon held in the Escrow Account shall be deemed and considered to be in legal custody of the Court, and shall remain subject to the jurisdiction of the Court, until the Fund is distributed pursuant to the Amended Settlement Agreement, the Amended Plan of Allocation and Distribution, and/or further order(s) of the Court.

6. Any accrued interest earned on the Settlement Fund shall remain with the balance of the Settlement Fund and distributed pursuant to the Amended Plan of Allocation and Distribution, and other order(s) of the Court.

7. Releasers shall look solely to the Settlement Fund for settlement and satisfaction against Delta Dental and other Releasees of all the Released Claims and shall have no recovery of damages, Attorney's Fees and Expenses, costs or other relief except as expressly provided in the Amended Settlement Agreement.

8. In the event any Settlement Funds remain as residue in the Escrow Account following all distribution efforts approved by the Court, Class Counsel shall seek from the Court an order disposing of all such Settlement Funds in the form of a *cy pres* distribution pursuant to Section III.D.4 of the Amended Settlement Agreement.

9. For the purposes of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder ("Section 468B"), the Settling Parties agree to treat

#### Appendix 4 to Amended Settlement Agreement

the Settlement Fund in the Escrow Account as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1 and to refrain from taking any action inconsistent with such treatment. The "administrator" within the meaning of Treas. Reg. § 1.468B-2(k)(3) shall be the Escrow Agent who shall promptly take all steps necessary so that the Settlement Fund qualifies as a "qualified settlement fund." In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions herein, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)(1)). Such returns shall be consistent with treatment of the Settlement Fund as a qualified settlement fund, and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Escrow Agent shall have the responsibility to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

10. For the purposes of Section 468B, Delta Dental shall be the "transferor" to the qualified settlement fund within the meaning of Treas. Reg. § 1.468B-1(d)(1) with respect to the Amended Settlement Amount or any other funds transferred to the qualified settlement fund pursuant to the Amended Settlement Agreement.

11. All of the following shall be paid out of the Settlement Fund: (i) taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the

#### Appendix 4 to Amended Settlement Agreement

Settlement Fund, including any taxes or tax detriments that may be imposed upon Delta Dental with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a qualified settlement fund for federal or state income tax purposes ("Taxes"); and (ii) expenses and costs incurred in connection with the administration, operation and implementation of the Settlement Fund and Escrow Account (including, without limitation, fees of the Escrow Agent, costs and expenses of administering and distributing settlement payments, expenses of attorneys and/or accountants, and mailing and distribution costs and expenses relating to filing (or failing to file) tax returns) ("QSF Expenses").

12. Neither Delta Dental nor any other Releasee nor their respective counsel shall have any liability or responsibility for any Taxes or QSF Expenses associated with the Settlement Fund or Escrow Account, nor for maintaining or securing any desired tax status for the Settlement Fund or Escrow Account, nor for any negligence, fraud, or malfeasance regarding the Settlement Fund or Escrow Account. Further, Taxes and QSF Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund, and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and QSF Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(f)(2)). The Settling Parties agree to cooperate with the Escrow Agent, each other, and their attorneys and accountants to the extent reasonably necessary to carry out the provisions relating to the Settlement Fund and the Escrow Account.

13. The Settling Parties, Class Counsel and Delta Dental's Counsel shall have no

#### Appendix 4 to Amended Settlement Agreement

liability, obligation or responsibility with respect to the investment, disbursements, settlement payment distributions, or other administration or oversight of the Settlement Fund or Escrow Account and shall have no liability, obligation or responsibility with respect to any liability, obligation or responsibility of the Settlement Fund or Escrow Account.

14. Prior to the Escrow Agent's distribution of settlement payments from the Escrow Account, Class Counsel and Delta Dental's Counsel shall meet and confer to determine whether any adjustments are required in light of any increase or decrease in the Settlement Fund due to the accrual of interest or distributions from the Settlement Fund such as, for example, Taxes, QSF Expenses, or other fees or costs incurred in connection with the administration or operation of the Escrow Account.

15. If the Amended Settlement Agreement does not receive the Court's final approval as described in the Amended Settlement Agreement or the Court's Final Approval Order or Judgment is reversed or vacated on appeal, the Settlement Fund (less Taxes, QSF Expenses and other fees or costs expended) shall be promptly returned to Delta Dental from the Escrow Account by the Escrow Agent along with any interest accrued thereon.

APPENDIX 5  
TO THE AMENDED SETTLEMENT  
AGREEMENT

REDLINE OF PDA RULES



## PARTICIPATING DENTIST RULES

1. **Accuracy and Completeness of Information.** A participating dentist shall be responsible for the accuracy and completeness of all information provided to Delta Dental on his-or-/her behalf upon which Delta Dental will rely in determining benefits, performing credentialing activities, assessing quality, verifying the dentist's submitted fees and determining the dentist's "Contracted Fees",\* and establishing the dentist's adherence to all the obligations-of requirements for membership and participation.

A participating dentist shall also be responsible for the accuracy and completeness of all information related to Attending Dentist's Statements submitted to Delta Dental on his-or-/her behalf, in any format or in any medium, whether or not the information is signed by the dentist or the eligible patient.\* Among other things, Attending Dentist's Statements submitted to Delta Dental shall accurately report all services rendered to an eligible patient\* whether or not such services are covered by Delta Dental group dental care-agreements programs, or whether or not a patient's annual maximum has been reached under such an agreement. A participating dentist will cooperate with Delta Dental by following the guidelines set forth in the Dentist's Handbook for the completion and submission of Attending Dentist's Statements. All Attending Dentist's Statements shall state the fee actually charged to Delta Dental and the patient; the actual date each service is completed (or is in progress with respect to cast or prosthodontic services or orthodontic treatment); the existence of any other coverage; the patient's actual address; and in a manner designated by Delta Dental, the location of the dental facility at which treatment has been, or will be, provided.

2. **Basis of Fees.** A participating dentist will accept the lesser of his-or-/her "Contracted Fees"\* fees with Delta Dental, or the fee submitted on his/her Attending Dentist's Statement, as full payment for services provided to any eligible patient.\* If the participating dentist does not have a Contracted Fee for a Premier program ("Premier Contracted Fee") with Delta Dental for a particular procedure submitted on an Attending Dentist's Statement, payment will be based on a maximum amount as determined by the applicable Delta Dental applying the same factors used for Contracted Fees PPO fee schedule(s).

3. **Amount Payable by Patient.** A participating dentist shall not make any charge to an eligible patient\* before or after treatment is provided other than the amount payable by the patient under the terms of the applicable patient's dental care contract program. Delta Dental shall advise the participating dentist of the amount payable by the patient at or before the time of making payment to the dentist of its Delta Dental's obligation for covered services. The dentist shall be bound by Delta Dental's determination of the amount payable by the patient, unless he-or-/she notifies Delta Dental in writing of such his/her disagreement with such determination within 30 days after the receipt of notice pursuant to Section 12 of these Rules. The dentist shall not charge the eligible patient\* for the amount in disagreement until the disagreement dispute is resolved.

A participating dentist shall not charge an eligible patient\*, and an eligible patient\* shall not be liable for, any amount payable by Delta Dental under the terms of the applicable patient's dental care contract program, whether or not payment is made by Delta Dental.

Whenever Delta Dental receives notice of any charge to an eligible patient\* not permitted by these Rules, it shall take appropriate action, including but not limited to recouping the appropriate amounts from future payments to the dentist, or termination of the dentist's Participating Dentist Agreement.

4. **Collection of Patient Copayment and Deductible.** A participating dentist shall charge and make reasonable efforts to collect from an eligible patient\* the entire amount payable by the patient under the terms of the applicable dental care contract patient's dental program, and will not waive, reduce or rebate any portion of the amount that Delta Dental determines is payable by an eligible patient\* under the patient's dental program.

5. **Disallowance of Charges.** Delta Dental may deny payment of an Attending Dentist's Statement which is submitted more than twelve months after the date the services were provided, or which is submitted without prior authorization, if prior authorization is required. A participating dentist shall make no charge to an eligible patient\* for any amount payable by Delta Dental, or which

\*See Definitions at conclusion of Rules

## PARTICIPATING DENTIST RULES

(continued)

would have been payable by Delta Dental if a timely claim had been submitted to Delta Dental, whether or not payment is made by Delta Dental, unless an exception is justified the charge is permitted for a reason stated in the Dentist's Handbook. A participating dentist subject to required prior authorization who fails to obtain the required prior authorization, shall make no charge to an eligible patient\* for services disallowed by Delta Dental.

6. **Claims Submitted for Other Dentists.** A participating dentist shall not submit an Attending Dentist's Statement for services performed in a dental practice or facility in which another dentist having an interest in the dental practice or facility, such as an owner, partner, shareholder or manager, is any of the following: (a) a participating dentist who is subject to mandatory prior authorization; or whose list of Contracted Fees has been modified by Delta Dental because of failure to collect patient copayments; or (b) a participating dentist who does not comply with any portion of these Rules, including but not limited to a failure to collect patient copayments; or (c) a non-participating dentist whose billing practices or policies would violate any portion of these Rules if he or she were a participating dentist.

7. **Assignment of Payments.** A participating dentist may assign amounts due from Delta Dental to a professional corporation, partnership or association in which the participating dentist practices. Assignment of amounts due from Delta Dental to any other entity, such as factoring under an accounts receivable factoring arrangement, shall be grounds for terminating the Participating Dentist Agreement.

8. **Set-Off of Amounts Owed.** Delta Dental may recover amounts owed to Delta Dental or an eligible patient\* by a participating dentist or by a professional corporation, partnership or other entity in which the participating dentist practices or has an interest, by deducting such amounts from subsequent amounts otherwise payable to the dentist by Delta Dental.

9. **Standards of Care and Credentialing.** A participating dentist shall schedule and provide all dental treatment for eligible patients\* in accordance with the rules for conduct of dentist members set

forth in the Bylaws, as well as with the regulations promulgated for the profession by supervising regulatory agencies. A participating dentist shall not refuse treatment to an eligible patient\* because of his or her coverage under a Delta Dental dental program to which the Participating Dentist Agreement applies. A participating dentist shall at all times satisfy the credentialing criteria as may be required by Delta Dental, including but not limited to the maintenance of professional liability (errors and omissions) insurance, as well as commercial general liability (personal injury and property) insurance on the dentist's office premises, in at least the minimum amounts stipulated from time to time in the Dentist's Handbook. A participating dentist shall notify Delta Dental immediately of any insurance coverage cancellation or other failure to maintain any credentialing requirement. A participating dentist shall notify Delta Dental of any language assistance capability of the participating dentist or the office staff, and any changes in such capability. A participating dentist shall contact Delta Dental if an enrollee requests or evidently requires interpretation services in any language, and Delta Dental will immediately arrange for such services at no cost to the enrollee or the participating dentist.

A participating dentist shall make known to current and prospective eligible patients\* the hours of operation and the provisions for after-hour emergency services in all facility locations in which the participating dentist or personnel working under his/ her supervision are providing services. A participating dentist shall ensure that all patients of record have access to emergency services twenty-four hours a day, seven days a week, by means including, but not limited to, a telephone number or referral service that patients who may require emergency services can use after normal business hours.

10. **Quality Assessment and Utilization Review.** A participating dentist is subject to procedures adopted by Delta Dental to assess the quality and appropriateness of care provided to eligible patients,\* including but not limited to, furnishing to Delta Dental in a timely manner copies of treatment records, radiographs, and other requested documents; ensuring that services are provided at a level of care which meets professionally recognized standards of practice and

\*See Definitions at conclusion of Rules

## PARTICIPATING DENTIST RULES

(continued)

that all services be readily available at reasonable times to each enrollee consistent with good professional practice; permitting patients with their consent to be examined by regional consultant members of Delta Dental's Quality Review Committee; allowing on-site quality of care assessments to be conducted at the dental office by Delta Dental representatives; submitting treatment plans for prior authorization as required by Delta Dental; and complying with any other procedures as referenced in the Dentist's Handbook. Delta Dental shall have no obligation to pay for services which are of unsatisfactory quality or are inappropriate care.

**11. Records and Availability for Inspection.** A participating dentist shall keep accurate and complete financial and patient schedule records, in a manner that meets generally accepted financial practices to permit determination of amounts charged to and collected from eligible patients,\* and records of treatment of all eligible patients\* for a minimum of five years or longer as required by state or federal law, and shall maintain such records at the dental office for at least three years. The dentist shall provide such information to Delta Dental ~~or, the California Commissioner of the State Department of Managed Health Care at the dentist's office premises~~ Health and Human Services, or any other government agency having jurisdiction as may be necessary for compliance by Delta Dental with ~~provisions of state and federal law and regulations, such as~~ the Knox-Keene Health Care Service Plan Act of 1975. Delta Dental shall have access at reasonable times upon request to inspect and make copies of the books, records and papers of a participating dentist, in the dentist's office, relating to the dentist's ~~Contracted Fees~~ charged to all his ~~or~~ /her patients, to health care services provided to eligible patients\*, to the cost thereof to the patient, and to payments received by the dentist from such eligible patients\* (or from others on their behalf). A participating dentist shall provide Delta Dental timely clarification of issues raised in connection with a review of treatment and/or financial records. Such obligations are not terminated upon termination of a ~~participating~~ Dentist Agreement.

**12. Dispute Resolution.** A participating dentist may submit inquiries, complaints and requests for reevaluation to Delta Dental as set forth in the Dentist's Handbook.

Those actions subject to the Membership Action Policies and Procedures or the Medical Disciplinary Hearing Procedures are described in the Dentist's Handbook. Any other controversy or claim arising out of or relating to any obligation under these Participating Dentist Rules, any participating dentist agreement, the Dentist's Handbook, or the breach thereof, or any Delta Dental dental care program, ~~or the breach thereof~~, including but not limited to the amount determined by Delta Dental to be payable by Delta Dental and/or an eligible patient\* to the dentist for services rendered, or the amount determined by Delta Dental to be refunded by the dentist to Delta Dental and/or to an eligible patient,\* may be filed as a provider dispute.

A provider dispute must be filed with Delta Dental ~~not less than~~ within 365 calendar days of Delta Dental's action or in the case of Delta Dental's inaction, within 365 calendar days after the time that Delta Dental has for contesting or denying a claim under California law and regulations. The dispute must be submitted in writing, on a Provider Dispute Form, and must contain a clear identification of the disputed item. If the dispute does not involve a claim, there must be a clear explanation of the issue, and why the action, or inaction, by Delta Dental is questioned. Delta Dental will acknowledge a provider dispute within fifteen (15) working business days of the date of receipt of the dispute and will issue a written determination within forty-five (45) working business days after the date of receipt of the dispute.

Upon conclusion of the provider dispute resolution mechanism described above, a participating dentist has the right to submit to individual binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") only ~~at his/her~~ at the participating dentist's dispute arising from: (i) the processing by Delta Dental of at the participating dentist's dental claim paid or denied in whole or in part (not including Delta Dental's determination of maximum amounts allowed, INAP, or other network amounts, limits, rules, policies or procedures); or (ii) a request by Delta Dental for

\*See Definitions at conclusion of Rules

## PARTICIPATING DENTIST RULES

(continued)

reimbursement by the participating dentist because of an overpayment of a dental claim; or (iii) a request for a refund because services by the participating dentist are deemed by Delta Dental to be of unsatisfactory quality or inappropriate care. Arbitration must be on an individual basis, which means that a participating dentist may not join or consolidate claims in arbitration by or against other participating dentists, or arbitrate a participating dentist's claim(s) as a representative, including as a class representative or member. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. The initiating party shall give written notice to each other party of its demand to arbitrate on a form provided by the AAA, which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, and the remedy sought, and shall file at any regional office of the AAA three copies of the notice and three copies of this Rule 12, together with the appropriate filing fee required by the AAA. Arbitration hearings shall be held only in Los Angeles, Sacramento, San Diego, San Francisco, or such other locale as agreed upon between Delta Dental and the participating dentist. Such obligations are not terminated upon termination of a Participating Dentist Agreement by rescission or otherwise. No other provider disputes shall be subject to arbitration unless by mutual agreement of Delta Dental and a participating dentist.

If a participating dentist, an eligible patient\* and Delta Dental agree to submit a dispute involving the quality of treatment to a peer review committee of a component society of the California Dental Association (CDA), and such review is accepted for peer review, then such review shall be in lieu of any arbitration before the AAA, and the resolution shall be binding on the participating dentist and Delta Dental.

Unless otherwise specified by Delta Dental in a notice to the dentist, any demand for arbitration or request for peer review shall be submitted within six months/ninety (90) calendar days from the date of the action which is the subject of the arbitration or peer review Delta Dental's written determination regarding the provider dispute.

**13. Notice of Rules, Procedures and Policies.** Any Delta Dental has the right to make amendments to these Rules adopted by the Delta Dental Board of Directors participating dentist agreements, including these Participating Dentist Rules, and any other rules, policies, or procedures or amendments thereof that are applicable to participating dentists and adopted by the Board of Directors of Delta Dental pursuant to the Bylaws of these Rules, including the Membership Action Policies and Procedures (MAPP), the Medical Disciplinary Hearing Procedures (MDHP), and the Dentist's Handbook. Any material amendment(s) made as provided above is/are binding upon Delta Dental participating dentists and effective 45 business/20 calendar days from the time Delta Dental mails complete and accurate notice to the participating dentist of the rule, policy, procedure or amendment(s) which notice will include a link to an online site which provides a redline identifying all changes. If the dentist does not wish to decline to be bound by the rule, policy, procedure or amendment(s), the dentist shall so advise Delta Dental and terminate his or her Participating Dentist Agreement/her participating dentist agreement within the 45 business/20 calendar day notice period. Any non-material amendment(s) to the above is/are binding upon Delta Dental participating dentists and effective immediately. A participating dentist shall also comply with the requirements for dentist membership and rules for conduct of dentist members contained in Sections 6 and 7 of Article II of the Bylaws of Delta Dental, whether or not the dentist is a dentist member of Delta Dental.

**14. Priority of Rules.** In the event of any inconsistency between these Participating Dentist Rules, or any amendments thereto, and any participating dentist agreement, the Dentist's Handbook, or any Delta Dental form (including Premier fee filing forms), these Rules shall control.

### \*DEFINITIONS

"Eligible patient" means any patient eligible for care under a dental program which is administered by Delta Dental of California or another entity that has an agreement with Delta Dental of California making these rules applicable to such program, including but not limited to programs offered by California

\*See Definitions at conclusion of Rules

## PARTICIPATING DENTIST RULES

(continued)

Dental Service, Delta Dental Insurance Company, and Delta Dental Plans outside of California.

"Contracted Fee" means the fee for each single procedure that a participating dentist has contractually agreed with Delta Dental to accept as payment in full for treating Enrollees, eligible patients\*, based on the eligible patient's\* dental program (e.g., "Premier Contracted Fee," "PPO Contracted Fee"). The "Contracted Fee" will be subject to and cannot exceed a maximum amount allowed as determined by Delta Dental for the eligible patient's\* dental program, as well as the network, specialty and location in which the dentist participates. The maximum amount is based on an actuarial calculation, and taking into account filed fees, general inflation rates, health care inflation rates, market pricing by competitors, and acceptability by customers.

A participating dentist may, no more frequently than once every 12 months, resubmit to Delta Dental his/her schedule of proposed fees regularly charged for the purpose of requesting adjustments by Delta Dental to his/her Premier Contracted Fees. In the case of a resubmitted fee, the Premier Contracted Fee is subject to an Inflation Adjustment Percentage (INAP), which may limit the amount of any increase even if the resubmitted fee is below the maximum amount allowed.

In determining the maximum amounts allowed for Contracted Fees\* (e.g., Premier and PPO) and INAP (and any INAP adjustments), Delta Dental may take into account, among other things, market and competitive conditions.

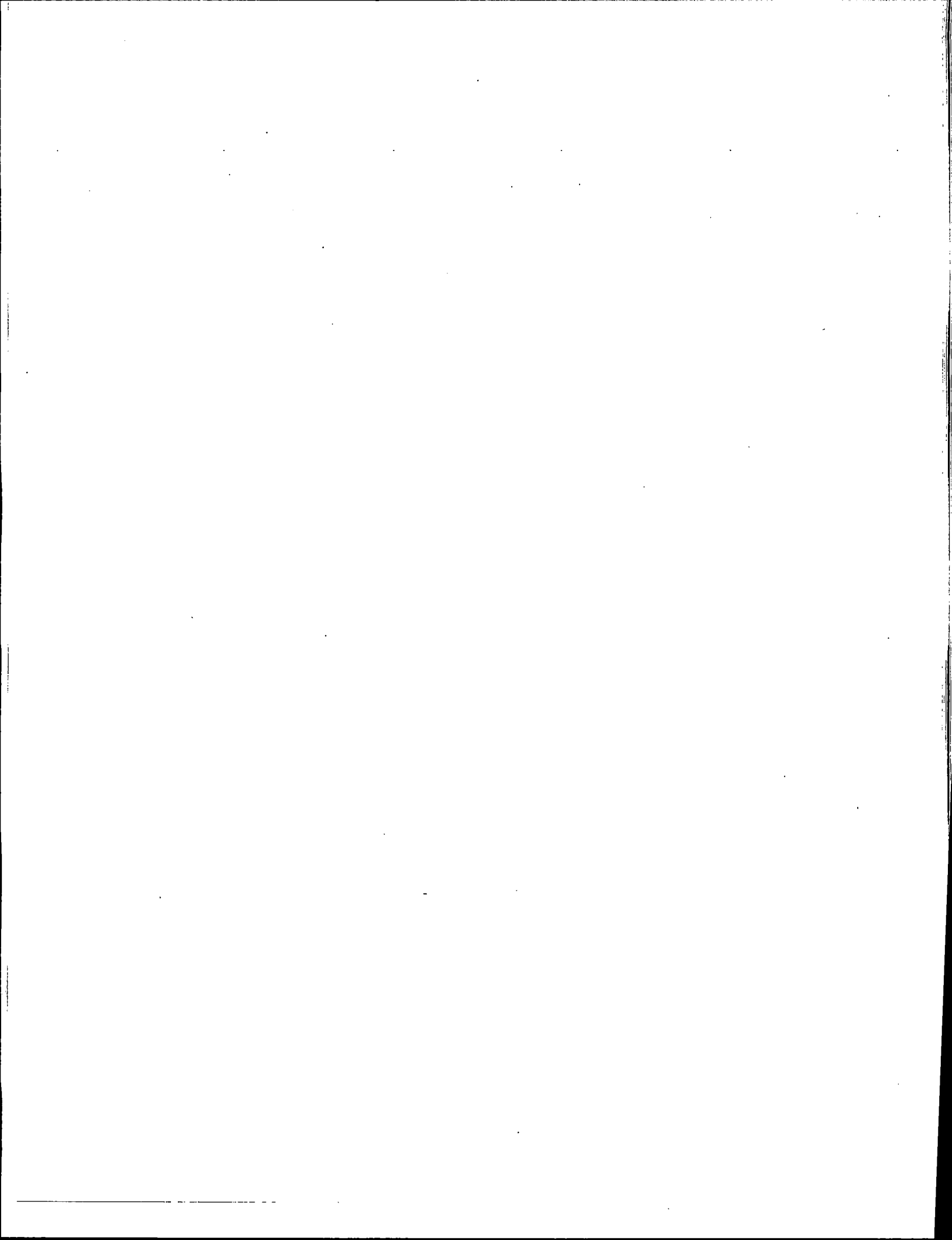
When two or more dentists practicing at practice under the same location submit Tax Identification Number ("TIN"), or one dentist submits Attending Dentist's Statements for another dentist's services under the submitting dentist's TIN, the fee determined to be the Premier Contracted Fee of all dentists at that location practicing or submitting Attending Dentist's Statements under the shared TIN will be the lowest Premier Contracted Fee of any of these dentists.

In the event of a decrease in Premier Contracted Fee maximum amounts allowed or levels of amounts of fee reimbursement generally applicable

to Premier dentists (other than a decrease resulting solely from changes to the code on Dental Procedures and Nomenclature (CDT codes)), Delta Dental will provide participating dentists with 120 calendar days' notice. Such notice will provide each affected Premier dentist (1) his/her Contracted Fees affected by the reduction(s) and (2) the potential financial impact of the reduction(s) on his/her Contracted Fee reimbursements from Delta Dental based upon the Premier dentist's submissions for procedures to Delta Dental over the twelve (12) month period ending on the most recent complete calendar quarter preceding the notice and the assumption that the participating dentist will perform the same set of procedures during the twelve (12) months following the reduction(s). If the dentist does not wish to accept the new Premier Contracted Fees, the dentist shall so advise Delta Dental and terminate his/her participating dentist agreement within the 120 calendar day notice period. Nothing herein requires Delta Dental to provide any notice of any INAP limit or any change in the INAP limit (including the amount, rate or percentage) or any specific maximum amounts allowed for specific CDT codes.

Delta Dental may, at its option, send a notice of decreases in Contracted Fee\* maximum amounts allowed at the same time that it provides a notice of amendments to these Rules, or any other rules, policies or procedures.

\*See Definitions at conclusion of Rules



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 May 2, 2018, I electronically served the CORRECTED ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED AMENDED CLASS ACTION SETTLEMENT via File&ServeXpress® on the recipients designated on the Transaction Receipt located on the File&ServeXpress® website.

Dated: May 2, 2018

T. Michael Yuen, Clerk

By:

  
\_\_\_\_\_  
Craig Blackstone, Deputy Clerk