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

22 CALIFORNIA DENTAL ASSOCIATION, a)	Case No.: CGC-22-603753
23 California Corporation; SPENCER ANDERSON,)	VERIFIED FIRST AMENDED
24 D.D.S.; SHADIE AZAR, D.M.D.; STEVE CHEN,)	COMPLAINT FOR:
25 D.D.S.; RAY KLEIN, D.D.S.; TOM MASSARAT,)	BREACH OF FIDUCIARY DUTY
26 D.D.S., M.S.; MEREDITH NEWMAN, D.M.D.;)	BREACH OF DUTY OF CARE
27 and GARRETT RUSSIKOFF, D.M.D.,)	BREACH OF DUTY OF LOYALTY
28 Plaintiffs,)	BREACH OF THE IMPLIED
v.)	COVENANT OF GOOD FAITH AND
DELTA DENTAL OF CALIFORNIA, a California)	FAIR DEALING
29 Corporation; LYNN L. FRANZOI; ROY A.)	BREACH OF CONTRACT
30 <u>GONELLA; GLEN F. BERGERT; STEVEN F.)</u>	

1 MCCANN; HEIDI YODOWITZ; TERRY A.) **VIOLATION OF CAL. BUSINESS &**
 O'TOOLE; ANDREW J. REID; IAN R. LAW;) **PROFESSIONS CODE § 17200, ET**
 2 JAY C. LAMB, D.M.D.; MICHAEL J. CASTRO;) **SEQ.**
 ALICIA F. WEBER; SARAH M. CHAVARRIA;) **DECLARATORY RELIEF**
 3 and DOES 1 through 20, inclusive,)
) Judge:
 4 Defendants.) Dept.:
) Complaint Filed: December 30, 2022
 5) Trial Date: None set
)
 6) **JURY TRIAL DEMANDED**

7
 8 Plaintiffs California Dental Association (“CDA”), on behalf of its members who are
 9 Delta Dental’s Dentist Members,¹ and Spencer Anderson, D.D.S., Shadie Azar, D.M.D., Steve
 10 Chen, D.D.S., Ray Klein, D.D.S., Tom Massarat, D.D.S., M.S., Meredith Newman, D.M.D., and
 11 Garrett Russikoff, D.M.D., individually (the “Individual Plaintiffs” and collectively with CDA,
 12 “Plaintiffs”), bring this action and Verified First Amended Complaint based upon personal
 13 knowledge of their own acts and upon information and belief as to all other matters alleged,
 14 against (i) Delta Dental of California (“Delta Dental” or the “Company”); (ii) certain members of
 15 Delta Dental’s Board of Directors (the “Director Defendants”); (iii) certain officers of Delta
 16 Dental (the “Officer Defendants,” collectively with the Director Defendants, “Individual
 17 Defendants”); and (iv) DOES 1 through 20, inclusive (collectively with Delta Dental and the
 18 Individual Defendants, “Defendants”).

19 **NATURE OF THE ACTION**

20 1. This case challenges certain actions and decisions of Delta Dental, a non-profit,
 21 tax-exempt corporation with the stated mission of enlisting the “strongest network” of dentists
 22 in California so that these dentists, who are members of Delta Dental, can provide critical
 23 services to the public. Rather than operating Delta Dental in service of a legitimate corporate
 24 purpose appropriate for a non-profit, tax-exempt organization, Defendants are operating Delta
 25

26 ¹ The term “Dentist Members” refers to licensed dentists in California with whom Delta Dental
 27 contracts and who are included within the Delta Dental network of dentists. Pursuant to Delta
 28 Dental’s bylaws, most recently amended on April 23, 2020 (the “Bylaws”), these dentists are
 Delta Dental’s Dentist Members.

1 Dental as a private for-profit company with the goal of further increasing Delta Dental’s market
2 power and dominance as well as the Individual Defendants’ own financial gain. Moreover,
3 Defendants are engaging in this conduct without regard for – and, in fact, to the detriment of –
4 the Dentist Members, the extraordinary community of dentists who provide critical oral health
5 care to patients who need and rely upon these services.

6 2. Defendants’ improper conduct is manifested by certain modifications to Delta
7 Dental’s arrangements with its Dentist Members that Delta Dental announced in September
8 2022 and unilaterally imposed beginning January 1, 2023 (the “2023 Amendments”). For the
9 Dentist Members who are Premier Specialty Dentists,² the 2023 Amendments significantly
10 reduce reimbursement fees paid to these providers for their services, in some cases by up to
11 40%. The 2023 Amendments also changed the entire nature of the fee determination process for
12 Premier Specialty Dentists and Premier General Dentists³ to eliminate the opportunity to request
13 specific fee schedules tailored to the circumstances of their respective practices. The Dentist
14 Members who are PPO Dentists⁴ fare no better under the 2023 Amendments. Although Delta
15 Dental modestly increased reimbursement fees associated with less common services provided
16 by Premier General Dentists and PPO Dentists, Delta Dental decreased reimbursement fees
17 associated with more routine services. Not only do these fee decreases come at a time when
18 costs to the Dentist Members have been rising steeply, but they also cause significant disruption
19 by forcing providers to reorganize their practices – including with respect to staffing, office
20
21

22 ² “Premier Specialty Dentists” are California-based specialists, such as periodontists,
23 endodontists and oral surgeons, who are parties or otherwise subject to a Participating Provider
24 Agreement (“PPA”) with Delta Dental for participation in the Delta Dental Premier Network to
provide dental benefit coverage.

25 ³ “Premier General Dentists” are California-based general dentists who are parties or otherwise
26 subject to a PPA with Delta Dental for participation in the Delta Dental Premier Network to
provide dental benefit coverage.

27 ⁴ “PPO Dentist Members” are California-based specialty and general dentists who are parties or
28 otherwise subject to a PPA with Delta Dental for participation in the Delta Dental PPO Network
to provide dental benefit coverage.

1 space, and patient relationships – that had been established in reliance on the prior fee
2 arrangements with Delta Dental.

3 3. The detrimental impact of the 2023 Amendments on the Dentist Members has
4 already been significant and, unless reversed, will continue to worsen. The Dentist Members
5 will need to modify their practices to try and make up for the significant fee decreases, including
6 by reducing the comprehensiveness of services provided, increasing their workload in a manner
7 that compromises the patient experience, and/or leaving the Delta Dental network entirely – a
8 daunting proposition given Delta Dental’s domination of the relevant market. Indeed, it is not
9 just the Dentist Members who will suffer the ramifications of Delta Dental’s conduct. Patients
10 who are covered by Delta Dental plans will bear the burden of these changes, including through
11 reduced choice of services and providers, increased wait times and delays in scheduling
12 appointments, increased costs due to fewer in-network providers, and (perhaps most
13 egregiously) disruption of long-standing, trusted dentist-patient relationships.

14 4. Defendants enacted the 2023 Amendments despite owing fiduciary duties to the
15 Dentist Members, including duties of due care and loyalty. Among other things, these duties
16 require Defendants to act in good faith and make reasonable inquiry to ensure that any action
17 impacting the Dentist Members has been reasonably investigated, that their decisions are based
18 on accurate facts and valid information, and that such actions do not cause inappropriate or
19 unnecessary harm to the Dentist Members. These duties also prohibit Defendants from using
20 Delta Dental to enrich themselves, including by paying its officers and directors exorbitant
21 compensation well beyond that which is appropriate for a tax-exempt, non-profit organization
22 and which compensation is in contravention of Delta Dental’s Bylaws. Instead, Defendants
23 must consider and reasonably balance the interests and needs of, and ensure the fair treatment
24 of, the Dentist Members in order to serve its corporate purpose of “building the strongest
25 network of dental providers” in California.

26 5. In addition, as a non-profit corporation operating for the benefit of its members,
27 Delta Dental owed and owes its Dentist Members, including the Individual Plaintiffs and others
28 who are CDA members, fiduciary obligations to ensure that the corporation operates for the

1 benefit of its constituents (i.e., the Dentist Members) and consistent with its specified purpose—
2 providing dental benefit coverage through contracts with independent professional service
3 providers.

4 6. By imposing the 2023 Amendments on the Dentist Members, Defendants have
5 breached their fiduciary duties owed to these Dentist Members. Upon information and belief,
6 Defendants adopted the 2023 Amendments without undertaking the careful, deliberate review
7 process that is required of fiduciaries. Had Defendants undertaken the good faith review
8 necessary to satisfy their fiduciary duties, it would have been clear that the significant fee
9 decreases and other modifications imposed by the 2023 Amendments cannot be reasonably
10 justified. The 2023 Amendments also violate the fiduciary duties owed by Defendants to the
11 Dentist Members insofar as the 2023 Amendments were enacted for the purpose of enriching
12 Defendants at the expense of the Dentist Members and, thus, at the expense of the patients these
13 Dentist Members were enlisted to serve, which is contrary to the stated purpose and mission of
14 Delta Dental to operate for the benefit of its constituent members. Certainly, Delta Dental –
15 which has billions of dollars in excess capital and which pays its directors hundreds of
16 thousands of dollars per year and its officers millions of dollars per year – was not forced to
17 lower reimbursement fees to its Dentist Members to maintain its financial viability.

18 7. Adding insult to injury, Delta Dental has taken steps to assure that its self-
19 interested reimbursement decisions, including the 2023 Amendments, are beyond any
20 meaningful internal challenge by the Dentist Members. Delta Dental has manipulated its charter
21 and Bylaws to effectively prevent its Dentist Members from exercising voting rights to
22 determine its policies, the composition of its Board of Directors (the “Board”), or the treatment
23 of its Dentist Members. As a result, the Individual Defendants have complete and unfettered
24 control over Delta Dental – control they have wrongly used to the detriment of the Dentist
25 Members.

26 8. Delta Dental has breached its contractual and fiduciary obligations to its Dentist
27 Members, including its Premier Specialty Dentists, Premier General Dentists, and PPO Dentists.
28 By operating in a manner contrary to its stated mission of providing dental benefit coverage

1 through contracts with independent professional service providers (i.e., the Dentist Members),
2 and by awarding the Director Defendants hundreds of thousands of dollars in compensation for
3 minimal work, Delta Dental has violated the express terms of the PPA and its fiduciary duties as
4 a non-profit organization. The 2023 Amendments also violate the covenant of good faith and
5 fair dealing implied by law in each PPA. By enacting the 2023 Amendments based on false
6 pretenses and faulty assessments, Delta Dental has abused the discretion accorded to it with
7 respect to reimbursement fees and, in so doing, has deprived the Dentist Members of the benefit
8 of their bargain in entering the PPA.

9 9. Defendants never should have adopted the 2023 Amendments, which (in addition
10 to violating Delta Dental's core mission) cause significant harm to a key constituency to whom
11 Delta Dental owes both fiduciary and contractual duties: the Dentist Members who work on a
12 daily basis to provide critical oral health care to patients covered by Delta Dental plans.
13 Defendants should be held accountable for their actions.

14 **PARTIES**

15 10. CDA is a California non-profit corporation with its principal place of business in
16 Sacramento, California. Since 1870, CDA has worked to empower California's community of
17 dentists and is the largest state dental association in the country. As a membership-based
18 organization comprised of more than 27,000 California dentists and dental students, CDA's
19 mission is to support its members in their practice and service to the public through innovation
20 in education, advocacy and related programs. Everything CDA does is for the purpose of
21 supporting dentists, their patients, the oral health of the public, and the ever-evolving profession
22 of dentistry.

23 11. CDA has associational standing to bring this claim on behalf of its members,
24 which include Premier Specialty Dentists, Premier General Dentists, and PPO Dentists, because:

25 a. each CDA member who is a Premier Specialty Dentist, a Premier General
26 Dentist, or a PPO Dentist, has standing to bring a claim in his or her own right;

27 b. protecting the interests of the CDA members is germane to and a part of
28 CDA's purpose;

1 c. neither the claims asserted nor the relief requested requires the
2 participation of any individual CDA member for adjudication; and

3 d. the CDA members on whose behalf this action is brought are suffering
4 immediate and threatened injury because of Delta Dental's actions.

5 12. In addition, in a prior action before the San Francisco Superior Court involving
6 overlapping parties and analogous issues, the Court considered whether CDA has associational
7 standing to assert fee related claims against Delta Dental similar to the claims brought in this
8 action. After extensive briefing and hearing, in January 2016, the Court determined
9 unequivocally that CDA has associational standing to assert claims such as these on behalf of its
10 members.

11 13. Plaintiff Meredith Newman, D.M.D., a Premier Specialty Dentist, is a practicing
12 endodontist licensed to practice in California, a CDA member, a party to a PPA with Delta
13 Dental for participation in Delta Dental's Premier Network, and a member of Delta Dental. She
14 received written notice from Delta Dental that it is instituting a revised fee determination
15 process and imposing a revised fee schedule that will yield a net reduction in reimbursement
16 fees for services rendered by Dr. Newman to patients with a Delta Dental plan, effective January
17 1, 2023.

18 14. Plaintiff Tom Massarat, D.D.S., M.S., a Premier Specialty Dentist, is a practicing
19 endodontist licensed to practice in California, a CDA member, a party to a PPA with Delta
20 Dental for participation in Delta Dental's Premier Network, and a member of Delta Dental. He
21 received written notice from Delta Dental that it is instituting a revised fee determination
22 process and imposing a revised fee schedule that will yield a net reduction in reimbursement
23 fees for services rendered by Dr. Massarat to patients with a Delta Dental plan, effective January
24 1, 2023.

25 15. Plaintiff Spencer Anderson, D.D.S., a Premier Specialty Dentist, is a practicing
26 oral surgeon licensed to practice in California, a CDA member, a party to a PPA with Delta
27 Dental for participation in Delta Dental's Premier Network, and a member of Delta Dental. He
28 received written notice from Delta Dental that it is instituting a revised fee determination

1 process and imposing a revised fee schedule that will yield a net reduction in reimbursement
2 fees for services rendered by Dr. Anderson to patients with a Delta Dental plan, effective
3 January 1, 2023.

4 16. Plaintiff Steve Chen, D.D.S., a Premier General Dentist, is a practicing general
5 dentist licensed to practice in California, a CDA member, and a party to a PPA with Delta
6 Dental for participation in Delta Dental's Premier Network, and a member of Delta Dental. He
7 received written notice from Delta Dental that it is imposing a revised fee schedule that will
8 yield a net reduction in reimbursement fees for services rendered by Dr. Chen to patients with a
9 Delta Dental plan, effective January 1, 2023.

10 17. Plaintiff Ray Klein, D.D.S., a PPO Dentist, is a practicing pediatric dentist
11 licensed to practice in California, a CDA member, and a party to a PPA with Delta Dental for
12 participation in Delta Dental's Preferred Provider Organization, and a member of Delta Dental.
13 He received written notice from Delta Dental that it is imposing a net reduction in
14 reimbursement fees for services rendered by Dr. Klein to patients with a Delta Dental plan,
15 effective January 1, 2023.

16 18. Plaintiff Garrett Russikoff, D.M.D., a PPO Dentist, is a practicing general dentist
17 licensed to practice in California, a CDA member, and a party to a PPA with Delta Dental for
18 participation in Delta Dental's Preferred Provider Organization, and a member of Delta Dental.
19 He received written notice from Delta Dental that it is imposing a net reduction in
20 reimbursement fees for services rendered by Dr. Russikoff to patients with a Delta Dental plan,
21 effective January 1, 2023.

22 19. Plaintiff Shadie Azar, D.M.D., a PPO Dentist, is a practicing periodontist
23 licensed to practice in California, a CDA member, and a former party to a PPA with Delta
24 Dental for participation in Delta Dental's Preferred Provider Organization. He received written
25 notice from Delta Dental that it is imposing a net reduction in reimbursement fees for services
26 rendered by Dr. Azar to patients with a Delta Dental plan, effective January 1, 2023. Based on
27 this notice, Dr. Azar determined that he could no longer operate within the Delta Dental network
28 given the substantial reduction in reimbursement fees for services rendered by him to patients

1 with a Delta Dental Plan. He left Delta Dental’s network prior to the effective date of the 2023
2 Amendments, to the substantial detriment of his practice.

3 20. Defendant Delta Dental is a California non-profit, tax-exempt corporation with
4 its principal place of business in San Francisco, California. Delta Dental is the largest provider
5 of dental benefit plans in California and dominates the market for dental benefit plans provided
6 to individuals, companies, and state and federal government agencies in California. In fact,
7 upon information and belief, all state-sponsored dental benefit plans for California state
8 employees are Delta Dental plans. According to its Articles of Incorporation, Delta Dental is
9 incorporated as a non-profit, tax-exempt corporation under California law for the “specific and
10 primary purpose” of “provid[ing] dental benefit coverage through contracts with independent
11 professional service providers.”

12 21. Upon information and belief, Defendant Lynn L. Franzoi (“Franzoi”) has been a
13 member of the Board since 2011. She served as the Chair of the Board from August 2017 until
14 December 2019. According to Delta Dental’s public tax filings, Franzoi was at all relevant
15 times paid more than \$1,000/hour and often more than \$3,000/per hour for her Board service
16 and has been paid in excess of \$1 million for her service on the Board from 2015-2019.⁵

17 22. Upon information and belief, Defendant Roy A. Gonella (“Gonella”) has been a
18 member of the Board since 2013 and has served as a member of Delta Dental’s Audit
19 Committee and Finance Committee. According to Delta Dental’s public tax filings, Gonella
20 was at all relevant times paid between \$820/hour and \$3,300/hour for his Board service and has
21 been paid nearly \$1 million for his service on the Board from 2015-2019.

22 23. Upon information and belief, Defendant Glen F. Bergert (“Bergert”) has been a
23 member of the Board since 1998 and has served as Chair of Delta Dental’s Audit Committee
24 and a member of Delta Dental’s Finance Committee. According to Delta Dental’s public tax
25

26 _____
27 ⁵ The estimated hourly rates are based on the information contained within IRS Form 990s filed
28 by Delta Dental and set forth in Appendix A to this Verified First Amended Complaint. The IRS
has not yet released Fiscal Year 2020 Form 990 filings for non-profit, tax-exempt organizations.

1 filings, Bergert was at all relevant times paid between \$900/hour and \$1,900/hour for his Board
2 service and has been paid in excess of \$1 million for his service on the Board from 2015-2019.

3 24. Upon information and belief, Defendant Steven F. McCann (“McCann”) has
4 been a member of the Board since July 2007 and has served as a member of Delta Dental’s
5 Audit Committee and Finance Committee. According to Delta Dental’s public tax filings,
6 McCann was at all relevant times paid more than \$800/hour and often more than \$1,400/per
7 hour for his Board service and has been paid nearly \$1 million for his service on the Board from
8 2015-2019.

9 25. Upon information and belief, Defendant Heidi Yodowitz (“Yodowitz”) has been
10 a member of the Board since April 2017. She is the current Chair of the Board and has served
11 as a member of Delta Dental’s Audit Committee and Finance Committee. According to Delta
12 Dental’s public tax filings, Yodowitz was at all relevant times paid more than \$500/hour for her
13 Board service and has been paid in excess of \$350,000 for her service on the Board from 2017-
14 2019.

15 26. Upon information and belief, Defendant Terry A. O’Toole (“O’Toole”) has been
16 a member of the Board since January 2008 and has served as Chair of Delta Dental’s Finance
17 Committee and a member of Delta Dental’s Audit Committee. According to Delta Dental’s
18 public tax filings, O’Toole was at all relevant times paid nearly \$1,000/hour and often more than
19 \$2,000/per hour for his Board service and has been paid in excess of \$1 million for his service
20 on the Board from 2015-2019.

21 27. Upon information and belief, Defendant Andrew J. Reid (“Reid”) has been a
22 member of the Board since 2015 and has served as a member of Delta Dental’s Audit
23 Committee and Finance Committee. According to Delta Dental’s public tax filings, Reid was at
24 all relevant times paid more than \$600/hour and often more than \$2,000/per hour for his Board
25 service and has been paid in excess of \$1 million for his service on the Board from 2015-2019.

26 28. Upon information and belief, Defendant Ian R. Law (“Law”) has been a member
27 of the Board since March 2020.
28

1 29. Upon information and belief, Defendant Jay C. Lamb, D.M.D. (“Lamb”) has
2 been a member of the Board since July 2022.

3 30. Defendant Michael J. Castro (“Castro”) has served as Delta Dental’s Chief
4 Executive Officer (“CEO”) since February 2019. Since joining Delta Dental in June 2000, he
5 has held multiple roles, including Controller from June 2000 until September 2004, Chief
6 Financial Officer (“CFO”) from September 2004 until October 2018, Acting CEO from October
7 2018 until 2019, and President from February 2019 until August 2022. According to Delta
8 Dental’s public tax filings, Castro received in excess of \$11 million in compensation from Delta
9 Dental from 2015-2019.

10 31. Defendant Alicia F. Weber (“Weber”) has served as Delta Dental’s Executive
11 Vice President and CFO since November 2018. Since joining Delta Dental in January 2005, she
12 has held multiple roles, including Controller from January 2005 until February 2010 and, upon
13 information and belief, Senior Vice President, Finance from February 2010 until around
14 November 2018. According to Delta Dental’s public tax filings, Weber received in excess of \$6
15 million in compensation from Delta Dental from 2015-2019.

16 32. Defendant Sarah M. Chavarria (“Chavarria”) has served as Delta Dental’s
17 President since August 2022. Since joining Delta Dental in 2017, she has held multiple roles,
18 including Executive Vice President and Chief People Officer from 2017 to March 2022 and
19 Chief Operations Officer from March 2022 until August 2022. According to Delta Dental’s
20 public tax filings, Chavarria received in excess of \$2 million in compensation from Delta Dental
21 from 2018-2019.

22 33. The compensation paid to Delta Dental’s officers, who have received millions of
23 dollars per year, is significantly higher than that paid to officers in other non-profit companies.
24 Delta Dental’s directors also have received vastly more in compensation than directors of non-
25 profit companies, even though Delta Dental’s Bylaws expressly prohibit its directors from
26 receiving any salary. Although the IRS has not yet released Fiscal Year 2020 Form 990 filings
27 for non-profit, tax-exempt organizations, and although Delta Dental does not otherwise inform
28 its Dentist Members of the compensation paid to its directors and officers, upon information and

1 belief, Delta Dental's directors and officers have continued to receive excessive compensation
2 similar to that which was paid in 2019.

3 34. Plaintiffs are ignorant of the true names and capacities, whether individual,
4 corporate, or otherwise, of defendants sued herein as DOES 1 through 20, inclusive, and
5 therefore sue these defendants by such fictitious names. Plaintiffs will further amend this
6 Verified First Amended Complaint to allege the true names and capacities of such defendants if
7 and when they are ascertained. Plaintiffs are informed and believe, and thereon allege, that each
8 of the DOE defendants sued herein was at all relevant times, the agent, employee, director,
9 officer, or representative of the named Defendants and/or the other DOE defendants, was acting
10 within the purpose and scope of such relationship, and is responsible in some manner for the
11 occurrences alleged in this Verified First Amended Complaint, and that Plaintiffs' injuries as
12 alleged herein were proximately caused by their respective acts and omissions.

13 **JURISDICTION AND VENUE**

14 35. This Court has jurisdiction over the causes of action asserted in this Verified First
15 Amended Complaint pursuant to California Constitution, Article VI, § 10 and Cal. C.C.P.
16 § 410.10, because this case is a cause not given by statute to other trial courts. The demand
17 exceeds the jurisdictional minimum, exclusive of interest, costs, and attorneys' fees.

18 36. This Court has jurisdiction over Defendants because they have sufficient
19 minimum contacts with California to render the exercise of jurisdiction by California courts
20 permissible under traditional notions of fair play and substantial justice. For example, Delta
21 Dental is organized under the California Nonprofit Corporation Law, the agreement between the
22 Dentist Members and Delta Dental is governed by California law, and Delta Dental's principal
23 place of business is in, and Defendants caused harm to Plaintiffs from within, the County of San
24 Francisco in the State of California.

25 37. Venue is proper in San Francisco County pursuant to Cal. C.C.P. §§ 395(a) and
26 395.5 because Defendants' wrongful conduct has in substantial part taken place in San
27 Francisco County. Delta Dental has its principal place of business in San Francisco. Each
28

1 Individual Defendant either: owns property, maintains an office, transacts business, engages in
2 financial operations, and/or has an agent or agents within the County of San Francisco.

3 **FACTUAL ALLEGATIONS**

4 38. Delta Dental, a non-profit, tax-exempt corporation organized under the laws of
5 California, is the largest provider of dental benefit plans in California. Its corporate purpose, as
6 stated in its Articles of Incorporation, is “to provide dental benefit coverage through contracts
7 with independent professional service providers.” Delta Dental’s website describes the dentists
8 with whom it contracts as “the strongest network of dental providers in the country.”
9 <https://www1.deltadentalins.com/about/corporate-profile.html>.

10 39. According to its Bylaws, Delta Dental has two classes of members: Dentist
11 Members and Corporate Members. There are significant differences between the power
12 accorded to the two classes. The Dentist Members have no vote over the actions of Delta
13 Dental or the composition of the Board. That power lies exclusively with Delta Dental’s
14 Corporate Members, who consist of the members of the Board. Under Delta Dental’s Bylaws,
15 at least sixty percent of its Corporate Members (and thus its Board) are required to be members
16 who (a) are not dentists, (b) are not the spouse of a dentist, and (c) have no significant interest in
17 any entity that provides dental services. Only twenty-five percent of its Corporate Members are
18 required to be practicing dentists licensed in California. As a result of these requirements, the
19 Board is controlled by members who are neither dentists nor affiliated with dentists, and thus
20 who have limited (if any) knowledge as to the needs and interests of the Dentist Members.
21 Upon information and belief, over seventy percent of Delta Dental’s current Board is comprised
22 of non-dentists.

23 40. Director nominees are chosen by the Board Chair and two additional directors
24 are also chosen by the Board Chair, and only Corporate Members, which (per above) are
25 overwhelmingly non-dentists, can vote on directors. As a result, Delta Dental’s core
26 constituency – namely, the dentists who contract with Delta Dental to serve patients covered by
27 Delta Dental plans (i.e., the Dentist Members) – have no meaningful say or input into the
28

1 Company's decision-making process, including the selection or compensation of the Board or
2 management.

3 41. The Board has delegated its authority regarding reimbursement fees paid to its
4 Dentist Members to a "Dentist Compensation Committee." This includes matters involving
5 adjustments to compensation for dental providers or changes to the methodology for calculating
6 such compensation. No Dentist Members, including those who are also Corporate Members
7 (and thus members of the Board), are permitted to serve on the Dentist Compensation
8 Committee. Upon information and belief, there exists no requirement that those who serve on
9 the Dentist Compensation Committee have any knowledge of or experience in what constitutes
10 fair and reasonable payment for services provided by dental providers.

11 42. Delta Dental claims to serve its mission by entering into PPAs with dentists
12 throughout California. These PPAs, including the provisions at issue in this action, are
13 essentially identical and expressly incorporate the "Delta Dental Bylaws," Delta Dental's
14 "Participating Dentist Rules," and "Delta Dental's Dentist Handbook." The dental providers
15 that have entered into a PPA with Delta Dental are Dentist Members and comprise the
16 independent professional service providers that Delta Dental recognizes as critical to its stated
17 mission.

18 43. Upon information and belief, Delta Dental has been the dominant provider of
19 dental benefit plans in California and has substantial market power. Delta Dental leverages its
20 strong network of high-quality dentists in California to further increase its dominance, making it
21 difficult for dentists to leave the Delta Dental network without risking the loss of many patients
22 and compromising (perhaps fatally) their practices.

23 44. In fact, Delta Dental has specifically designed its PPAs and plans to maximize
24 disruption to those dentists who leave the Delta Dental network. For example, unlike many
25 insurance companies (including, on information and belief, the majority of plans in California),
26 Delta Dental does not permit its policyholders to assign the payments required under their plans
27 to out-of-network dentists who provide services. Thus, a patient covered by a Delta Dental plan
28 who wishes to continue to see a dentist who has left Delta Dental's network must pay that

1 dentist directly and then wait for Delta Dental to reimburse them, creating a challenge for both
2 dentist (who is responsible for collecting the funds from the patient) and patient (who is
3 responsible for payment). In addition, Delta Dental strongly discourages its patients from using
4 dentists outside the Delta Dental network by providing less favorable coverage for out-of-
5 network services and by urging patients covered by Delta Dental plans not to use out-of-
6 network dentists even though that may be the patients' preference.

7 45. As a result of these practices, Delta Dental has effectively locked in many of its
8 Dentist Members, who risk tremendous damage to their practices and disruption of their patient
9 relationships if they leave Delta Dental's network. At the same time, through the PPA, Delta
10 Dental prohibits its Dentist Members from charging patients covered by Delta Dental plans
11 anything above the maximum reimbursement fee amount set forth in the applicable Delta Dental
12 fee schedule – even if the patient wants the service in question and even if the patient is willing
13 to pay the dentist directly for amounts above Delta Dental's maximum reimbursement fee.
14 Delta Dental also refuses to separately pay for certain services, instead subsuming these needed
15 services within other reimbursement codes in a manner that effectively deprives the dental
16 provider from being paid for the subsumed services, regardless of whether the services are
17 needed or desired by the patient.

18 46. While Delta Dental's policies and practices have created significant challenges
19 for dentists both within and outside Delta Dental's network, Delta Dental remains among the
20 most profitable and dominant providers of dental benefit plans in California and, upon
21 information and belief, has been steadily increasing its profits and market dominance over the
22 past decade. According to California's Department of Managed Healthcare's ("DMHC")
23 Financial Summary Reports, in 2021, Delta Dental had \$2.8 billion in total revenue and \$3.1
24 billion in total assets. At the end of 2021, Delta Dental had over \$2 billion more than the
25 Tangible Net Equity⁶ required by the DMHC. Upon information and belief, by December 31,

26 _____
27 ⁶ Tangible Net Equity ("TNE") is a healthcare plan's (including dental benefit providers
28 regulated by the DMHC) total assets minus total liabilities reduced by the value of intangible
assets and unsecured obligations of officers, directors, owners, or affiliates outside of normal

(continued...)

1 2022, Delta Dental’s excess TNE increased to approximately \$2.2 billion – nearly 3,000% more
2 than the TNE required by the DMHC.

3 47. While much of the revenue collected by Delta Dental is used to further (and
4 unnecessarily) inflate its already-substantial capital reserves, a significant portion is paid out to
5 Delta Dental’s directors and officers, including the Individual Defendants. On average, Delta
6 Dental’s directors receive hundreds of thousands of dollars per year for their “service” to Delta
7 Dental, often at a rate of more than \$2,000 per hour. Upon information and belief, such
8 compensation is unreasonable and wildly disproportionate to the minimal or no compensation
9 generally paid to directors of non-profit companies, including non-profit healthcare providers.
10 It also clearly violates Delta Dental’s Bylaws, which provide that directors “shall not receive
11 any salary for their services.”

12 48. The compensation paid to Delta Dental’s officers is similarly excessive and
13 unreasonable. These officers have been paid millions of dollars in salaries and bonuses
14 annually, which, on information and belief, is well beyond the compensation paid to officers at
15 other tax-exempt, non-profit organizations.

16 49. Delta Dental’s model is thus one where it prioritizes increasing its market power,
17 accumulating assets, and paying excessive compensation to its officers and directors, while
18 minimizing the reimbursement fees paid to its Dentist Members. The 2023 Amendments, which
19 were approved by the Individual Defendants and enacted by Defendants, were designed to
20 enable Delta Dental to further these self-serving goals, again at the expense of its Dentist
21 Members and in disregard for Delta Dental’s status as a non-profit, tax-exempt organization that
22 should be dedicated to serving its stated mission, not its own bottom line.

23 50. Although the 2023 Amendments will cause widespread harm to the Dentist
24 Members including Premier Specialty Dentists, Premier General Dentists, and PPO Dentists, the
25 specific changes imposed upon each group under the 2023 Amendments differ. For Premier
26 _____
27 course of business. The required TNE for a full-service dental benefit plan is the greater of \$1
28 million, a percentage of premium revenues, or a percentage of healthcare expenses. Excess TNE
is the difference between total TNE and required TNE.

1 Specialty Dentists, including periodontists, endodontists and oral surgeons, the 2023
2 Amendments impose a set schedule of maximum allowable fees that significantly reduce the
3 reimbursement fees received by these dentists for services provided to patients with a Delta
4 Dental plan.⁷ To make matters worse, Delta Dental has imposed these changes at a time when
5 costs – especially labor costs, which are critical to patient care – have been increasing
6 exponentially, putting significant pressure on dentists dedicated to maintaining the highest level
7 of service.

8 51. The 2023 Amendments impose similarly detrimental fee modifications on
9 Premier General Dentists. Although Delta Dental’s notification of the 2023 Amendments
10 misleadingly suggests that the amendments increase reimbursement fees paid to Premier
11 General Dentists, these increases are associated with less common services such as those that
12 are generally referred out by general dentists to specialty dentists, while reimbursement fees
13 associated with more frequently billed services have been decreased. In fact, upon information
14 and belief, the fees reduced under the 2023 Amendments are associated with services
15 constituting as much as half of Premier General Dentists’ collections from Delta Dental in a
16 given year. In addition, dentists are not permitted to bill and seek reimbursement separately for
17 certain services, but rather such services are deemed by Delta Dental to be part and parcel of a
18 related service and thus subject to the maximum reimbursement fee associated with that service.
19 This stands in contrast to other insurance companies, which permit providers to bill separately
20 for these services under two separate codes, each of which has an associated reimbursement fee.

21 52. Significantly, the 2023 Amendments did not simply revise existing fee schedules,
22 but rather they modified the entire fee determination process for Premier Specialty and Premier
23 General Dentists, to the significant detriment of these providers. Before the 2023 Amendments,
24 Premier Dentists filed their own fee schedules with Delta Dental and were permitted to file
25 annually to increase their reimbursement fees, subject to Delta Dental’s maximum allowable

26 _____
27 ⁷ Though the precise fee schedule differs depending on the geographical area within California in
28 which the Premier Specialty Dentist practices, in all cases the newly imposed schedules result in
a reduction of reimbursement fees.

1 fees and the Inflation Adjustment Percentage.⁸ Under this process, Premier Dentists
2 traditionally received higher fee reimbursements than PPO Dentists. All of this changed with
3 the 2023 Amendments. Now, Premier Dentists may no longer file their own schedules of fees,
4 but rather they are bound by Delta Dental’s standard Premier fee schedules, which in turn
5 impose significantly lower reimbursement fees for Premier Dentists. The 2023 Amendments
6 thus strike at the heart of the benefits the Dentist Members received by virtue of being a
7 “Premier” Dentist – benefits to which Premier Dentists were entitled due to their long-standing
8 relationships with Delta Dental.⁹

9 53. The 2023 Amendments also negatively impact PPO Dentists. Although PPO
10 Dentists were always reimbursed in accordance with fee schedules issued by Delta Dental, the
11 2023 Amendments modified these fee schedules to the detriment of many PPO Dentists. While
12 Delta Dental may have increased reimbursement fees associated with certain services, the 2023
13 Amendments reduced the reimbursement fees associated with other services, yielding a net
14 negative result for many PPO Dentists. In some instances, the reduction in reimbursement fees
15 is so significant that PPO Dentists have no choice but to cease providing the service – even
16 when it is specifically requested by a patient, and even if the patient is willing to pay out of
17 pocket for amounts above Delta Dental’s approved reimbursement fees but cannot do so due to
18 Delta Dental’s punitive prohibition on such payments.

19 54. The Dentist Members did not receive the news of the 2023 Amendments quietly.
20 Between the time the 2023 Amendments were announced and the time they became effective,
21 Plaintiffs (including CDA), as well as other Dentist Members, repeatedly reached out to Delta
22 Dental to discuss the purported rationale behind the 2023 Amendments and to see whether any
23 changes or accommodations could be made given the harm the amendments were sure to cause
24

25 ⁸ Delta Dental has historically imposed a “Inflation Adjustment Percentage” to limit the amount
26 of any requested reimbursement fee increase.

27 ⁹ “Premier” providers, who generally had better reimbursement fees than PPO Dentists, were
28 those who had entered into Premier-only PPAs with Delta Dental prior to Delta Dental requiring
newly contracting dentists to sign a PPO PPA.

1 the Dentist Members. These inquiries and pleas fell on deaf ears. Delta Dental informed
2 Dentist Members that their only options were to accept the 2023 Amendments or “get out” of
3 Delta Dental’s network. When CDA asked Delta Dental to explain and justify the 2023
4 Amendments, and to reconsider them, Delta Dental refused to provide any meaningful answers
5 to CDA’s questions or any meaningful explanations of the purpose of the amendments. Nor
6 would Delta Dental disclose the data, information, or analyses purportedly relied upon in
7 evaluating the 2023 Amendments and their impact on the Dentist Members.

8 55. Defendants were also unwilling to negotiate with the Dentist Members to
9 mitigate the impact of these changes. To the contrary, Defendants refused to entertain variances
10 from or exceptions to the 2023 Amendments, including with respect to individual provider fee
11 schedules, and the Dentist Members who tried to resolve their concerns regarding the 2023
12 Amendments with Delta Dental were either ignored or told to take it or leave it. Not only does
13 this cavalier response completely ignore the significant hardships that would ensue for Dentist
14 Members who leave the Delta Dental network, but Delta Dental’s response is also disingenuous
15 given that under DMHC regulations, Delta Dental is required to ensure that its network has
16 adequate capacity and availability of licensed health care providers and Delta Dental must report
17 any significant change to network adequacy.

18 56. The Board members enabled these harmful changes and deliberately failed to
19 undertake a reasonable investigation regarding the 2023 Amendments. Upon information and
20 belief, neither the Board nor Delta Dental’s officers conducted any outreach to the Dentist
21 Members to discuss or obtain information on the impact of the 2023 Amendments or potential
22 alternatives thereto. Nor did the directors and officers of Delta Dental otherwise undertake or
23 arrange a proper investigation or analysis into the potential or actual impacts of the 2023
24 Amendments on its Dentist Members, including on the ability of the Dentist Members to
25 provide services to patients with a Delta Dental plan. For example, upon information and belief,
26 Delta Dental’s reimbursement fee methodology does not consider the frequency of billed
27 procedures; thus, in setting the reimbursement fees for the 2023 Amendments, the fee
28 methodology did not consider the impact of decreases in reimbursement fees for commonly

1 billed procedures on the Dentist Members. The Board also failed to ensure that the reasons and
2 bases for the 2023 Amendments were adequately described to the Dentist Members. In short,
3 Delta Dental’s officers and directors paid no attention to the legitimate interests of its Dentist
4 Members in adopting the 2023 Amendments. Delta Dental’s directors and officers acted in bad
5 faith and in violation of their duty of care by deliberately ignoring pertinent information and
6 willfully disregarding the potential impact of the 2023 Amendments on Delta Dental’s
7 constituents.

8 57. In fact, there is no reasonable basis or justification for the 2023 Amendments that
9 is consistent with the obligations owed by Defendants to the Dentist Members, as well as with
10 Delta Dental’s obligations as a non-profit, tax-exempt organization. These changes do not serve
11 the interests of the Dentist Members, to whom Delta Dental owes fiduciary and contractual
12 duties. Nor does it further Delta Dental’s stated mission of “provid[ing] dental benefit coverage
13 through contracts with independent professional service providers.” Had Delta Dental truly
14 been focused on the interests of its Dentist Members and its mission as a non-profit
15 organization, Delta Dental would have utilized some portion of its billions of dollars in revenues
16 and assets to offer competitive dental benefit plans while at the same time setting fair and
17 reasonable reimbursement fees that support (rather than hinder) the highest level of patient care
18 and that appropriately value the vital contributions of the Dentist Members. Instead, Delta
19 Dental is focused on its own bottom line and increased market dominance.

20 58. Delta Dental’s improper conduct extends beyond its unjustified and harmful
21 modifications to reimbursement fees and the fee determination process. Upon information and
22 belief, Delta Dental has enacted certain policies and programs intended to accord preferential
23 treatment to some Dentist Members above others – depending on what is in Defendants’ own
24 self-interest. For example, upon information and belief, Delta Dental has entered into an
25 arrangement with Smile Generation, a network of dentists operating throughout California,¹⁰ by
26 which dentists affiliated with Smile Generation receive preferential treatment over other PPO

27 _____
28 ¹⁰ Upon information and belief, Smile Generation dentists are part of Pacific Dental Services, a
privately owned organization that manages dental practices throughout California.

1 Dentists and Premier Dentists. Under this agreement, patients covered by Delta Dental plans
2 receive more favorable coverage if they visit dentists affiliated with Smile Generation rather
3 than a non-Smile Generation PPO or Premier Dentist. Thus, through this differential treatment,
4 which Delta Dental has not disclosed to the Dentist Members, Delta Dental is driving its
5 patients towards Smile Generation dentists over other Dentist Members to whom Defendants
6 owe fiduciary duties.

7 59. Similarly, upon information and belief, through its agreements with employers,
8 Delta Dental is discriminating against Premier Dentists by reducing benefits for patients covered
9 by Delta Dental plans who chose to receive services from a Premier Dentist. For example, upon
10 information and belief, Delta Dental has incorporated the following language in at least some of
11 its agreements with employers:

12 If you receive services from a Delta Dental Premier dentist or a non-Delta Dental
13 dentist, your benefits will be reduced. You will be responsible for your share of
14 the costs up to Delta Dental's allowed amounts under the provider's filed fee
agreement with Delta Dental for the services you received.

15 Moreover, Delta Dental is engaging in this conduct without informing the Premier Dentists that
16 patients are intentionally being channeled away from them in order to serve Delta Dental's own
17 bottom line and its desire for market dominance.

18 60. Delta Dental's prioritization of its own self-interest over the interests of its
19 Dentist Members or their patients is also reflected in Delta Dental's newly minted "Loyalty
20 Program." On information and belief, pursuant to this recently enacted program, Premier
21 Specialty Dentists and Premier General Dentists who (as of May 15, 2022) only accepted Delta
22 Dental plans – i.e., they were not "in network" with any non-Delta Dental plans – were
23 permitted to choose between maintaining their prior fee schedules or shifting to the new fee
24 schedules applicable under the 2023 Amendments. In other words, the Dentist Members who
25 were in network with Delta Dental only were given preferential treatment over Dentist Members
26 who were also in network with non-Delta Dental plans. Delta Dental has not even attempted to
27 explain how favoring dentists who are exclusively in network with Delta Dental benefits its
28 Dentist Members or their patients.

1 61. At bottom, there can be no doubt that the 2023 Amendments, which cause
2 significant harm to the Dentist Members, will reduce rather than enhance dental coverage to the
3 public through contracts between Delta Dental and its Dentist Members – the exact opposite of
4 Delta Dental’s stated mission and justification for its tax-exempt status. Meanwhile, Delta
5 Dental’s own profits, net assets and market dominance continue to increase, all at the expense of
6 its Dentist Members and the patients they serve.

7 **DUTIES OF THE DEFENDANTS**

8 **Fiduciary and Other Duties**

9 62. By reason of their positions as officers and/or directors of the Company, each of
10 the Individual Defendants owed and owe the Dentist Members, including the Individual
11 Plaintiffs, fiduciary obligations of trust, loyalty, good faith, and due care, and were and are
12 required to perform their duties in good faith, in a manner consistent with and in furtherance of
13 the stated mission of the non-profit, tax-exempt organization, and with such care, including
14 reasonable inquiry, as an ordinarily prudent person in a like position would use under similar
15 circumstances.

16 63. Delta Dental owed and owes its Dentist Members, including the Individual
17 Plaintiffs and others who are CDA members, fiduciary obligations of obedience, trust, loyalty,
18 good faith, and due care, to ensure that the corporation operates in the interest of its constituent
19 members and in a manner consistent with and in furtherance of the stated mission of the non-
20 profit, tax-exempt organization.

21 64. To discharge their duties, Defendants were required to, among other things:

22 a. Ensure that any decision or action affecting the Dentist Members has been
23 reasonably investigated, including a consideration of relevant factors, and that the decision is
24 based on accurate facts and valid information;

25 b. Ensure that any decision considers and reasonably balances the interests
26 and needs of the Dentist Members in order to serve the corporate purpose of providing dental
27 benefit coverage to the public through contracts with these dentists;

1 c. Employ an appropriate process to ensure that decisions do not conflict
2 with the Individual Defendants' obligation to serve Delta Dental's mission, and that such
3 decisions are in the best interest of the Dentist Members;

4 d. Ensure that their actions are in the best interest of and do not unduly
5 penalize the Dentist Members, rather than in Defendants' self-interest;

6 e. With respect to the Board members, oversee the actions of management
7 and ensure that management has conducted a reasonable and thorough analysis of matters for
8 Board decision;

9 f. Avoid engaging in conduct that is in their own self-interest, including the
10 approval and receipt of unreasonable and excessive compensation;

11 g. Ensure that the compensation of its officers is just and reasonable;

12 h. Refrain from participating in any transactions where the Individual
13 Defendants receive or are entitled to receive a personal financial benefit not equally shared by
14 Delta Dental and its members, including the Dentist Members;

15 i. Refrain from unjustly enriching themselves at the expense or to the
16 detriment of the Dentist Members; and/or

17 j. Abide by its stated corporate purpose, organizational documents, and the
18 California Nonprofit Corporation Law.

19 65. As acknowledged by Delta Dental in a December 19, 2017 Press Release, "[a]s
20 fiduciaries, the directors . . . represent the collective interests of the company's stakeholders."
21 This includes the Dentist Members.

22 66. Delta Dental is obligated to ensure that it operates consistently with its governing
23 documents, including Delta Dental's Bylaws. The Individual Defendants, as officers and
24 directors of Delta Dental, are also bound by the Bylaws. The Bylaws describe the duties
25 undertaken by the Board and the active oversight role the Board plays in the Company's
26 business affairs.

27 67. Specifically, the Bylaws provide that "[s]ubject to limitations of the Articles of
28 Incorporation, and these Bylaws, and the general nonprofit corporation law of the State of

1 California, all corporate powers shall be exercised by or under the authority of, and the business
2 affairs of the corporation shall be controlled by, the Board of Directors.” Among other things,
3 the Bylaws require the Board:

4 a. To select and remove all officers, agents and employees of the corporation,
5 prescribe the authority and duties for them, fix their compensation, and require
6 security for faithful service.

7 b. To conduct, manage and control the property and business of the corporation,
8 and to make such rules and regulations therefore as they may deem best advised.
9 . . .

10 f. To select among its membership an executive committee and other committee,
11 and to delegate to such committees any of the powers and authority of the
12 directors in the management of the business and affairs of the corporation except
13 the adoption, amendment or repeal of provisions of these Bylaws and of the
14 Articles of Incorporation, the levy of assessments, or other actions prohibited by
15 California Corporations Code Section 7212; to appoint such committees,
16 composed of persons who need not necessarily be members of this corporation, as
17 it may deem necessary or expedient, to act in an advisory capacity.

18 g. To establish schedules for payments to dentists for professional services
19 performed by dentists for which this corporation is obliged to make payment,
20 including as part thereof, allowances and disallowances for materials thereof,
21 allowances and disallowances for materials and facilities used in the performance
22 of such services; to amend or modify all or any part of said schedules for
23 payment; to give notice of such schedules for payments and any changes or
24 modification thereof to all dentists who may perform professional services for
25 which this corporation is obligated to make payment.
26 . . .

27 j. To enter into and terminate contracts for the provision of dental services by
28 dentists, and to establish terms and conditions pursuant to which the corporation
may reimburse its subscribers or enrollees for dental services provided by dentists
with whom the corporation has not contracted.

68. The Bylaws also prohibits the directors from receiving any salary for their
services:

Section 8. Fees and Compensation. Directors, as such, shall not receive any
salary for their services, but by resolution the Board of Directors may provide for
reimbursement to themselves of expenses of attending any meetings of the Board
or committees and may provide a fixed fee to compensate directors for any time
in traveling to, preparing for and attending meetings of the Board of Directors or
committees. Members of the Board of Directors are eligible to hold office in the
corporation and receive such salary as may be fixed for that office.

1 69. The Bylaws, and the duties imposed thereby, are explicitly incorporated into the
2 PPA between each Premier Specialty Dentist, Premier General Dentist, or PPO Dentist and
3 Delta Dental.

4 **Breaches of Duties**

5 70. Defendants failed to act in good faith and with due care in enacting the 2023
6 Amendments, which (among other things) impose unreasonably low maximum reimbursement
7 fees and which have caused and will continue to cause significant harm not only to the Dentist
8 Members, but also to the public generally by restricting the availability of dentists of their
9 choice. Plaintiffs are informed and believe, and thereon allege, that Defendants failed to follow
10 an appropriate process in approving the 2023 Amendments. Plaintiffs are informed and believe,
11 and thereon allege, that in determining the contract changes and reimbursement fee
12 modifications reflected in the 2023 Amendments, Defendants did not base their calculations and
13 decisions on valid data setting forth actual fee levels for dentists in California in a reasonable
14 and accurate manner, nor did they perform or oversee the investigation that a reasonably prudent
15 person would require into the actual need for the 2023 Amendments or effect of those
16 modifications on the affected dentists including the ability of those dentists to provide services
17 to patients covered by Delta Dental plans. Defendants knew or should reasonably have known
18 that any data they were relying upon, to the extent they relied on any, did not provide a valid
19 basis for the reimbursement fee modifications and other changes Delta Dental is implementing.
20 Defendants were required to take reasonable measures to confirm that the changes are based on
21 valid and accurate data that is sufficient for the purpose of the decision presented, consider the
22 impact on relevant stakeholders and its overall mission as a non-profit organization, and ensure
23 that the interests of the Dentist Members have been reasonably and appropriately considered and
24 balanced. Defendants failed to do so.

25 71. In addition, the Director Defendants further failed, in violation of their fiduciary
26 duties of care and good faith, to oversee the implementation of the 2023 Amendments and to
27 ensure that reasonable processes were put in place to investigate the justification for or potential
28 consequences of the 2023 Amendments. Despite the fact that the 2023 Amendments would

1 have substantial, negative effects on the Dentist Members (and by extension their patients), the
2 Board consciously disregarded its obligations to ensure that there was an adequate assessment of
3 the impacts of those amendments and whether there were other alternatives that would have
4 been less harmful.

5 72. In addition, Delta Dental specifically breached its fiduciary duties in enacting the
6 2023 Amendments, which (among other things) impose unreasonably low reimbursement fees
7 and which have caused and will continue to cause significant harm to its Dentist
8 Members. Plaintiffs are informed and believe, and thereon allege, that Delta Dental failed to
9 ensure that the 2023 Amendments would be in the best interest of, and would not unduly
10 penalize, its Dentist Members, including the Individual Plaintiffs.

11 73. Further, although Delta Dental has vaguely suggested that the 2023 Amendments
12 are necessary to “more closely align” fees paid to the Dentist Members with those “generally
13 accepted as network levels in the industry,” upon information and belief, this vague and
14 conclusory statement is based upon invalid data and flawed information, or other information
15 that does not support the stated assertion nor provides a reasonable basis for the imposed
16 changes. Plaintiffs are further informed and believe, and thereon allege, that the Individual
17 Defendants failed to undertake a reasonable and unbiased assessment of competitive
18 reimbursement fee levels and have no legitimate basis to conclude or assert that reimbursement
19 fees Delta Dental pays to California Premier Specialty Dentists, Premier General Dentists,
20 and/or PPO Dentists are materially higher than reimbursement fees paid by other administrators
21 of dental benefit plans. Similarly, although Delta Dental has billions of dollars in net assets,
22 Plaintiffs are informed and believe, and thereon allege, that Defendants have not undertaken a
23 reasonable assessment or analysis regarding the necessary amount of net assets Delta Dental
24 must maintain to conduct operations and mitigate risk. Significantly, when CDA asked Delta
25 Dental to explain and justify the 2023 Amendments, Delta Dental refused to provide any
26 meaningful answers to CDA’s questions or any meaningful explanations of the purpose or
27 justification of the 2023 Amendments.

28

1 74. Moreover, as a tax-exempt organization Delta Dental pays virtually no taxes,
2 which gives it a substantial competitive advantage over most other companies offering dental
3 benefit plans in California. Thus, Delta Dental’s competitive need for the actions at issue in this
4 Verified First Amended Complaint are materially different from those of a tax paying
5 corporation – a fact that should have been considered by Defendants in exercising due care and
6 reasonable prudence but, upon information and belief, was not. Additionally, Plaintiffs are
7 informed and believe, and thereon allege, that Defendants failed to consider Delta Dental’s
8 existing reserves, revenue, and patient utilization costs in evaluating whether the 2023
9 Amendments are appropriate or required given the disproportionate and punitive impact on the
10 Dentist Members and the resultant impact on patients covered by Delta Dental plans.

11 75. The Individual Defendants also failed to act in good faith and breached their duty
12 of loyalty by acting in their own self-interest rather than in the best interests of the Dentist
13 Members, to whom the Individual Defendants owe fiduciary duties, including by enacting
14 amendments, policies and programs that prioritize their own enrichment over the interests of the
15 Dentist Members and their patients. Though Delta Dental is a non-profit organization, in 2019
16 alone, its Chief Executive Officer was paid over \$3 million in compensation. The next nine
17 highest-paid Delta Dental executives were paid more than \$1 million each that year. Upon
18 information and belief, such compensation – awarded at the expense of the Dentist Members –
19 is unreasonable and far exceeds that which is appropriate for officers of a non-profit
20 organization, including one of Delta Dental’s size and business.

21 76. Equally problematic is the Board members’ compensation, with individual
22 directors receiving compensation in 2019 ranging from \$101,788 to \$328,788 for one to five
23 hours of work each week. Upon information and belief, this compensation is highly excessive
24 for a non-profit organization of the size and nature of Delta Dental. It is also contrary to Delta
25 Dental’s own Bylaws, which prohibit directors receiving any salary for their service as a Board
26 member and expressly limit the compensation that may be provided to directors (a) for
27 reimbursement of expenses of attending any meetings of the Board or committees, and (b) a
28 fixed fee to compensate directors for time in traveling to, preparing for and attending meetings

1 of the Board or committees. Indeed, the outsized compensation paid to Delta Dental’s directors
2 can only be explained as an improper attempt to secure the Board’s compliance with
3 management’s transparent goal of enhancing the Company’s market dominance and profits, all
4 while sacrificing the financial welfare and interests of the Dentist Members.

5 77. Delta Dental – though purportedly a non-profit organization – is also sitting on a
6 huge cash reserve of \$1.7 billion as of 2019. Yet while Delta Dental and the Individual
7 Defendants are bloated with cash, the Dentist Members have been subject to contract changes,
8 policies and programs that are causing and will continue to cause significant harm to the Dentist
9 Members, and that are certain to compromise Delta Dental’s mission of providing dental
10 coverage through provider agreements. Certainly, there can be no legitimate justification for
11 Delta Dental to continue to amass excess capital – for no conceivable reason – at the expense of
12 its own Dentist Members and the patients they serve.

13 **FIRST CAUSE OF ACTION**

14 **(Direct Claim for Breach of Fiduciary Duty Against Delta Dental)**

15 78. Plaintiffs reallege and incorporate herein by reference each and every allegation
16 contained above as if fully set forth herein.

17 79. Delta Dental owed and owes its Dentist Members, including the Individual
18 Plaintiffs and others who are CDA members, fiduciary obligations of obedience, trust, loyalty,
19 good faith, and due care. In particular, Delta Dental owes a duty to ensure that the Company
20 operates in the interest of its constituent members and in a manner consistent with and in
21 furtherance of the stated mission of the tax-exempt organization, its organizational documents,
22 the California Nonprofit Corporation Law, and applicable common law. Delta Dental owes the
23 Dentist Members fiduciary duties to ensure that actions taken by the Company, including the
24 2023 Amendments, consider the interests of, and do not unduly penalize, the Dentist Members.

25 80. Delta Dental breached its fiduciary duties by failing to ensure that the Company
26 complied with its stated mission and the terms of its governing documents, including its Bylaws,
27 in enacting the 2023 Amendments and excessively compensating the Company’s officers and
28

1 directors. Delta Dental further breached its fiduciary duties by failing to ensure that an
2 appropriate process was followed in adopting the 2023 Amendments.

3 81. Delta Dental has breached its duty of loyalty by purposely taking action to the
4 detriment of its constituent Dentist Members for reasons unrelated and contrary to the stated
5 mission of the Company.

6 82. As a direct and proximate result of Delta Dental's breach of its fiduciary duties,
7 the Dentist Members (including the Individual Plaintiffs and others who are CDA members)
8 have suffered economic damage including in the form of inadequate and improper fee
9 reimbursements. Moreover, unless Delta Dental is enjoined from enforcing the 2023
10 Amendments, these Dentist Members will suffer irreparable harm, such as being compelled to
11 provide less comprehensive services to covered patients, losing patients, suffering from a
12 decline in reputation, and/or shuttering their practices entirely.

13 **SECOND CAUSE OF ACTION**

14 **(Direct Claim for Breach of Duty of Care Against All Individual Defendants)**

15 83. Plaintiffs reallege and incorporate herein by reference each and every allegation
16 contained above as if fully set forth herein.

17 84. The Individual Defendants owe the Dentist Members fiduciary duties, including
18 the highest obligations of good faith, fair dealing, due care and loyalty. In particular, the
19 Individual Defendants owe the Dentist Members a duty of due care to ensure that the Individual
20 Defendants' actions do not unduly harm the Dentist Members, and that these actions enhance
21 rather than reduce the ability of these Dentist Members to provide the services necessary to
22 improve dental benefit coverage to patients with a Delta Dental plan consistent with Delta
23 Dental's stated mission. Among other things, as fiduciaries, the Individual Defendants are
24 required to make reasonably certain that any decision or action affecting the Dentist Members
25 has been reasonably investigated, that all pertinent facts have been considered, and that the
26 decision is based on sound assessments, accurate facts, and valid, reliable information. The
27 Individual Defendants are also required to abide by the Company's organizational documents,
28 the California Nonprofit Corporation Law and applicable common law.

1 85. In enacting the 2023 Amendments, including the reimbursement fee
2 modifications and other contract changes that harm the Dentist Members, the Individual
3 Defendants breached their fiduciary duties to the Dentist Members. As alleged above, the
4 Individual Defendants, motivated by their own self-interest and acting contrary to the mission of
5 Delta Dental, failed to follow a reasonable and appropriate process to determine whether the
6 2023 Amendments were in the best interest of, and did not unduly harm, the Dentist Members.
7 This failure constitutes a breach of the duty of care owed by the Individual Defendants to the
8 Dentist Members.

9 86. As a direct and proximate result of the Individual Defendants' breaches of their
10 duty of care, the Dentist Members (including the Individual Plaintiffs and others who are CDA
11 members) have suffered economic damage including in the form of inadequate and improper fee
12 reimbursements. Moreover, unless Delta Dental is enjoined from enforcing the 2023
13 Amendments, these Dentist Members will suffer irreparable harm, such as being compelled to
14 provide less comprehensive services to covered patients, losing patients, suffering from a
15 decline in reputation, and/or shuttering their practices entirely.

16 **THIRD CAUSE OF ACTION**

17 **(Direct Claim for Breach of Duty of Loyalty Against All Individual Defendants)**

18 87. Plaintiffs reallege and incorporate herein by reference each and every allegation
19 contained above as if fully set forth herein.

20 88. The Individual Defendants owe the Dentist Members fiduciary duties including a
21 duty of loyalty to ensure that their actions are in the best interest of the Company and its Dentist
22 Members, rather than in the Individual Defendants' self-interest. Among other things, the duty
23 of loyalty obligates the Individual Defendants to refrain from engaging in conduct that is
24 motivated by their own self-interest, that enriches themselves at the expense of the Dentist
25 Members, such as enacting amendments, policies and programs that personally enrich the
26 Individual Defendants but that cause substantial economic and other harm to the Dentist
27 Members, and that compromise the stated mission of the non-profit organization, which relies
28 on the establishment of reasonable agreements between Delta Dental and its Dentist Members.

1 89. In imposing the 2023 Amendments as well as other plans and programs, the
2 Individual Defendants have acted (and continue to act) in their own self-interest, funding their
3 excessive and improper compensation through forced PPA contract amendments and
4 reimbursement fee modifications that harm the Dentist Members. The Individual Defendants'
5 conduct constitutes a breach of the duty of loyalty owed by them to the Dentist Members,
6 including the Individual Plaintiffs and other Dentist Members who are members of CDA.

7 90. The Individual Defendants further breached their duties of good faith and loyalty
8 by consciously disregarding relevant information regarding the 2023 Amendments. In
9 particular, the Individual Defendants failed to conduct an analysis of the potential impacts of the
10 2023 Amendments on its constituent members and on its stated mission of maintaining the
11 "strongest network" of dentists in California to provide critical service to the public, and
12 willfully ignored relevant information provided by Delta Dental's constituent members. In
13 doing so, the Individual Defendants acted in bad faith and in knowing disregard of their duties,
14 in violation of their duties of good faith and loyalty.

15 91. As a direct and proximate result of the Individual Defendants' breaches of their
16 duty of loyalty, the Dentist Members (including the Individual Plaintiffs and others who are
17 CDA members) have suffered economic damage including in the form of improper fee
18 reimbursements. Moreover, unless Delta Dental is enjoined from enforcing the 2023
19 Amendments that resulted from the Individual Defendants' breaches of fiduciary duty, these
20 Dentist Members will suffer irreparable harm, such as being compelled to provide less
21 comprehensive services to covered patients, losing patients, suffering from a decline in
22 reputation, and/or shuttering their practices entirely.

23 **FOURTH CAUSE OF ACTION**

24 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Delta Dental)**

25 92. Plaintiffs reallege and incorporate herein by reference each and every allegation
26 contained above as if fully set forth herein.

27 93. The Dentist Members entered into written contracts, referred to herein as the
28 PPA, with Delta Dental to become participating dentists in Delta Dental's Premier or PPO

1 network. The PPA contains an implied covenant of good faith and fair dealing under California
2 and any other applicable law.

3 94. The Dentist Members who are CDA members, including the Individual
4 Plaintiffs, performed all or substantially all of the actions that the PPA requires of them and
5 continue to do so.

6 95. All conditions required for Delta Dental's performance of the PPA have either
7 occurred or been excused.

8 96. Delta Dental's enactment of the 2023 Amendments, which significantly reduce
9 the overall reimbursement fees the Dentist Members are permitted to recover in exchange for
10 services provided to Delta Dental patients and which impose unduly low reimbursement fees on
11 the Dentist Members, constitutes a violation of the implied covenant of good faith and fair
12 dealing. Upon information and belief, Delta Dental enacted the 2023 Amendments based on
13 false pretenses and faulty assessments, and in the absence of valid data or information that
14 would justify the imposed modifications. In fact, available facts, data and other information
15 confirm that the reimbursement fees set by Delta Dental are wholly deficient and operate to
16 deprive the Dentist Members of the benefit of their bargain in entering into the PPA, pursuant to
17 which they agreed to provide services to patients covered by Delta Dental plans. Delta Dental's
18 abuse of discretion in setting the maximum allowable fees the Dentist Members may receive for
19 services provided in accordance with the PPA constitutes a violation of the duty of good faith
20 and fair dealing.

21 97. As a direct and proximate result of Delta Dental's violation of the implied
22 covenant of good faith and fair dealing, the Dentist Members who are CDA members, including
23 the Individual Plaintiffs, have suffered economic damage in the form of improper and
24 inadequate fee reimbursements. Moreover, unless Delta Dental is enjoined from enforcing the
25 2023 Amendments, these dentists will suffer irreparable harm, such as being compelled to
26 provide less comprehensive services to patients, losing patients, suffering from a decline in
27 reputation, and/or shuttering their practices entirely.

28

1 **FIFTH CAUSE OF ACTION**

2 **(Breach of Contract Against Delta Dental)**

3 98. Plaintiffs reallege and incorporate herein by reference each and every allegation
4 contained above as if fully set forth herein.

5 99. The Dentist Members entered into written contracts, referred to herein as the
6 PPA, with Delta Dental to become participating dentists in Delta Dental's Premier or PPO
7 networks. Among other documents, the PPA expressly incorporates Delta Dental's Bylaws,
8 which in itself constitutes a contract between Delta Dental and its Dentist Members.

9 100. The Dentist Members who are CDA members, including the Individual
10 Plaintiffs, performed all or substantially all of the actions that the PPA and Bylaws requires of
11 them and continue to do so.

12 101. Delta Dental's award of excessive compensation to the Individual Defendants
13 constitutes a breach of the Bylaws and the PPA. Article V, Section 8 of Delta Dental's Bylaws,
14 which are incorporated by reference into the PPA, states:

15 Directors, as such, shall not receive any salary for their services, but by resolution
16 the Board of Directors may provide for reimbursement to themselves of expenses
17 of attending any meetings of the Board or committees and may provide a fixed fee
18 to compensate directors for any time in traveling to, preparing for and attending
19 meetings of the Board of Directors or committees. Members of the Board of
20 Directors are eligible to hold office in the corporation and receive such salary as
21 may be fixed for that office.

22 1. Similarly, Article I, Section 2 of the Bylaws states:

23 This corporation is organized pursuant to the General Nonprofit Corporation Law,
24 and shall conduct its affairs and business without pecuniary gain or other profit to
25 its members and without distribution of any gain or dividends to its members;
26 provided that members may receive compensation for professional services
27 rendered and for services given as an officer or other employee of the corporation.

28 102. In contravention of these provisions, at least since 2015, Delta Dental has
awarded the Director Defendants hundreds of thousands of dollars in compensation each year
for minimal work. Also in contravention of these provisions, at least since 2015, Delta Dental
has awarded its officers millions of dollars in compensation each year, an amount that is highly

1 excessive and far beyond what can reasonably considered appropriate compensation accorded to
2 an officer of a non-profit.

3 103. Delta Dental also violated Article V, Section 6 of its Bylaws, which requires the
4 Company to operate in accordance with the Articles of Incorporation, including the stated
5 purpose of the non-profit organization, which is to provide dental benefit coverage through
6 contracts with independent professional service providers. As alleged above, the 2023
7 Amendments serve to reduce rather than enhance dental benefit coverage through contracts with
8 independent professional service providers.

9 104. As a direct and proximate result of Delta Dental's contractual breaches, the
10 Dentist Members who are CDA members, including the Individual Plaintiffs, have suffered
11 economic damage in the form of improper and inadequate fee reimbursements. Moreover,
12 unless Delta Dental is enjoined from enforcing the 2023 Amendments, these dentists will suffer
13 irreparable harm, such as being compelled to provide less comprehensive services to covered
14 patients, losing patients, suffering a decline in reputation, and/or shuttering their practices
15 entirely.

16 **SIXTH CAUSE OF ACTION**

17 **(Cal. Bus. & Prof. Code §§ 17200, et seq. By Individual Plaintiffs Against All Defendants)**

18 105. Plaintiffs reallege and incorporate herein by reference each and every allegation
19 contained above as if fully set forth herein.

20 106. As alleged herein, Defendants have committed "unlawful" business acts as
21 defined by California Business and Professions Code § 17200 by violating California Nonprofit
22 Corporation Law, Delta Dental's Bylaws, the PPA and common law.

23 107. As alleged herein, Defendants have committed "unfair" business acts as defined
24 by California Business and Professions Code § 17200 by acting to enrich themselves while
25 sacrificing the financial welfare of the Company's Dentist Members, and by reducing rather
26 than enhancing the availability of dental benefit coverage in California through contracts with
27 independent provisional service providers.
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1 108. The Individual Plaintiffs have suffered and will continue to suffer injury in fact
2 and lost money or property as a result of Defendants’ conduct alleged above, including
3 Defendants’ imposition of the 2023 Amendments. The Individual Plaintiffs, whose fee
4 reimbursements were negatively impacted by application of the 2023 Amendments, have an
5 ownership interest in the funds that should have been paid to them but were not.

6 109. Defendants’ conduct as alleged above reflects that they intend to continue their
7 unlawful and unfair conduct. If Defendants are permitted to continue their wrongful acts, the
8 Individual Plaintiffs will suffer further irreparable injury and loss.

9 110. The Individual Plaintiffs are entitled to restitution of the funds lost as a result of
10 Defendants’ unfair and unlawful actions in violation of California Business and Professions
11 Code § 17200. The Individual Plaintiffs are also entitled to an injunction against Delta Dental
12 to prevent Delta Dental from continuing its unlawful and unfair conduct.

13 **SEVENTH CAUSE OF ACTION**

14 **(Declaratory Relief Against All Defendants)**

15 111. Plaintiffs re-allege and incorporate herein by reference each and every allegation
16 of contained above as if fully set forth herein.

17 112. An actual dispute and controversy has arisen between the Dentist Members who
18 are CDA members and Defendants concerning their respective rights, duties, and obligations
19 under the PPA. Plaintiffs contend that the terms of the PPA, the Implied Covenant of Good
20 Faith and Fair Dealing inherent in the PPA, and the duties of loyalty and due care owed by
21 Defendants to the Dentist Members and the duty of Defendants to provide dental benefit
22 coverage through contracts with independent professional service providers preclude
23 Defendants from enforcing the 2023 Amendments, including the modification to reimbursement
24 fees memorialized in those amendments.

25 113. A judicial declaration is necessary and appropriate at this time under the
26 circumstances in order that Plaintiffs may ascertain the rights and duties of the Dentist Members
27 and Defendants under the PPA and California statutory and common law. Absent such a
28

1 declaration, the Dentist Members who are members of CDA, including the Individual Plaintiffs,
2 will suffer substantial and irreparable harm due to the implementation of the 2023 Amendments.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for relief as follows:

5 1. For an injunction preventing Delta Dental from enforcing the 2023 Amendments;

6 2. For a declaration determining that the conduct of Defendants in enacting and
7 enforcing the 2023 Amendments violates the duties of loyalty and due care owed by Defendants
8 to Delta Dental's Premier Specialty Dentists, Premier General Dentists, and PPO Dentists, as
9 well as Defendants' duty to provide dental benefit coverage through contracts with independent
10 service providers, and therefore are unlawful;

11 3. For a declaration determining that the 2023 Amendments proposed by Delta
12 Dental that are the subject of this action constitute a violation of the covenant of good faith and
13 fair dealing under the PPA and/or a breach of the PPA, as well as a violation of Delta Dental's
14 obligation to provide dental benefit coverage through contracts with independent professional
15 service providers owed by Defendants to Delta Dental's Premier Specialty Dentists, Premier
16 General Dentists, and PPO Dentists and are therefore unlawful and invalid;

17 4. For damages sustained by the Individual Plaintiffs as a result of Defendants'
18 breaches of fiduciary duty, breach of contract and breach of the implied duty of good faith and
19 fair dealing;

20 5. For an order providing to the Individual Plaintiffs restitution of the funds lost as a
21 result of Defendants' unfair and unlawful actions in violation of California Business and
22 Professions Code § 17200;

23 6. For an award of attorneys' fees and costs as allowable by law; and,

24 7. For such other and further relief as the Court may deem just and proper.

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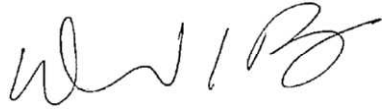
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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all claims and issues so triable.

Dated: April 20, 2023

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 

David J. Berger
Michael S. Sommer (admitted *pro hac vice*)
Jessica L. Margolis (admitted *pro hac vice*)

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Meredith Newman, D.M.D., and Garrett Russikoff,
D.M.D.

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VERIFICATION

I, Peter DuBois, hereby declare as follows:

I am the Executive Director of the California Dental Association (“CDA”), a Plaintiff in this action. I am authorized to make this verification for and on behalf of CDA and I make this verification for that reason.

I have read the foregoing Verified First Amended Complaint and know its contents. The matters stated in the foregoing Verified First Amended Complaint are true to the best of my knowledge, except as to the matters which are therein stated upon information or belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 17, 2023, in Sacramento, California.

DocuSigned by:
Peter DuBois
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Peter DuBois

APPENDIX A

Appendix A¹

CHART OF OFFICER AND DIRECTOR COMPENSATION

Defendant Lynn L. Franzoi

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2015	First Vice Chair	1.0	\$156,287	\$3,005	\$156,287
2016	First Vice Chair	1.0	\$174,287	\$3,352	\$330,574
2017	Chairman	3.0	\$213,287	\$1,367	\$543,861
2018	Chairman	5.0	\$288,775	\$1,111	\$832,636
2019	Chairman	5.0	\$328,788	\$1,265	\$1,161,424

Defendant Roy A. Gonella

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2015	Secretary	1.0	\$122,787	\$2,361	\$122,787
2016	Second Vice Chair	1.0	\$171,787	\$3,304	\$294,574
2017	First Vice Chair	2.0	\$170,287	\$1,637	\$464,861
2018	First Vice Chair	5.0	\$213,629	\$822	\$678,490
2019	First Vice Chair	5.0	\$218,788	\$841	\$897,278

Defendant Glen F. Bergert

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2015	Director	2.0	\$198,801	\$1,912	\$198,801
2016	Director	2.0	\$175,592	\$1,688	\$374,393
2017	Second Vice Chair	3.0	\$176,320	\$1,130	\$550,713
2018	Second Vice Chair	5.0	\$244,248	\$939	\$794,961
2019	Second Vice Chair	5.0	\$268,000	\$1,031	\$1,062,961

Defendant Steven F. McCann

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2015	Director	2.0	\$147,287	\$1,416	\$147,287
2016	Director	2.0	\$120,027	\$1,154	\$267,314
2017	Director	3.0	\$125,287	\$803	\$392,601
2018	Director	5.0	\$226,163	\$870	\$618,764
2019	Director	5.0	\$289,655	\$1,114	\$908,419

¹ The information set forth in this Appendix A is based on publicly available Form 990s filed with the Internal Revenue Service for years 2015 through 2019. Because Form 990s for subsequent years could not be located, Defendants Ian Law and Jay Lamb, both of whom joined the Board after 2019, are omitted from this chart.

1 **Defendant Heidi Yodowitz**

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2017	Director	3.0	\$82,287	\$527	\$82,287
2018	Director	4.0	\$119,847	\$576	\$202,134
2019	Director	5.0	\$165,200	\$635	\$367,334

5 **Defendant Terry O'Toole**

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2015	Treasurer	2.0	\$198,000	\$1,904	\$198,000
2016	Treasurer	2.0	\$211,044	\$2,029	\$409,044
2017	Treasurer	3.0	\$226,333	\$1,451	\$635,377
2018	Treasurer	5.0	\$246,718	\$949	\$882,095
2019	Treasurer	5.0	\$268,000	\$1,031	\$1,150,095

10 **Defendant Andrew J. Reid**

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2015	Chairman	2.0	\$200,287	\$1,926	\$200,287
2016	Chairman	2.0	\$222,784	\$2,142	\$423,071
2017	Immediate Past Chair	3.0	\$228,620	\$1,466	\$651,691
2018	Immediate Past Chair	5.0	\$171,182	\$658	\$822,873
2019	Immediate Past Chair	5.0	\$192,788	\$741	\$1,015,661

17 **Defendant Michael J. Castro**

Year	Position	Salary	Bonus & Incentive	Other Comp.	Total By Year
2015	EVP/CFO	\$566,496	\$854,926	\$27,370	\$1,448,792
2016	EVP/CFO	\$566,496	\$2,074,616	\$70,852	\$2,711,964
2017	EVP/CFO	\$566,496	\$1,289,511	\$76,554	\$1,932,561
2018	President, CEO; Former CFO	\$663,860	\$1,462,000	\$80,414	\$2,206,274
2019	President, CEO	\$1,004,492	\$2,126,814	\$45,484	\$3,176,790

23 **Defendant Alicia F. Weber**

Year	Position	Salary	Bonus & Incentive	Other Comp.	Total By Year
2015	SVP	\$383,200	\$447,982	\$39,061	\$870,243
2016	SVP	\$399,741	\$1,132,245	\$41,370	\$1,573,356
2017	SVP/CFO	\$400,000	\$720,950	\$41,747	\$1,162,697
2018	EVP/CFO	\$421,692	\$850,000	\$49,962	\$1,321,654
2019	EVP/CFO	\$540,515	\$1,002,420	\$59,761	\$1,602,696

1 **Defendant Sarah M. Chavarria**

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Year	Position	Salary	Bonus & Incentive	Other Comp.	Total By Year
2018	EVP/CPO	\$458,750	\$276,563	\$18,716	\$754,029
2019	EVP/CPO	\$519,538	\$799,042	\$14,383	\$1,332,963

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