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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 CITY AND COUNTY OF SAN FRANCISCO

10
11 CALIFORNIA DENTAL ASSOCIATION, a) Case No.: CGC-22-603753
California Corporation; SPENCER ANDERSON,)
12 D.D.S.; SHADIE AZAR, D.M.D.; STEVE CHEN,) **VERIFIED SECOND AMENDED**
D.D.S.; RAY KLEIN, D.D.S.; TOM MASSARAT,) **COMPLAINT FOR:**
13 D.D.S., M.S.; MEREDITH NEWMAN, D.M.D.;) **BREACH OF DUTY OF CARE**
and GARRETT RUSSIKOFF, D.M.D.,) **BREACH OF DUTY OF LOYALTY**
14) **BREACH OF THE IMPLIED**
Plaintiffs,) **COVENANT OF GOOD FAITH AND**
15) **FAIR DEALING**
v.) **DECLARATORY RELIEF**
16)
DELTA DENTAL OF CALIFORNIA, a California)
17 Corporation; LYNN L. FRANZOI; ROY A.) Judge: Hon. Ethan P. Schulman
GONELLA; GLEN F. BERGERT; STEVEN F.) Dept.: 304
18 MCCANN; HEIDI YODOWITZ; TERRY A.) Complaint Filed: December 30, 2022
O'TOOLE; ANDREW J. REID; IAN R. LAW;) FAC Filed: April 20, 2023
19 JAY C. LAMB, D.M.D.; MICHAEL J. CASTRO;) Trial Date: None set
ALICIA F. WEBER; SARAH M. CHAVARRIA;)
20 and DOES 1 through 20, inclusive,) **JURY TRIAL DEMANDED**
21)
Defendants.)
22)
23)

24 Plaintiffs California Dental Association (“CDA”), on behalf of its members who are also
25 Delta Dental Dentist Members (defined below), and Spencer Anderson, D.D.S., Shadie Azar,
26 D.M.D., Steve Chen, D.D.S., Ray Klein, D.D.S., Tom Massarat, D.D.S., M.S., Meredith Newman,
27 D.M.D., and Garrett Russikoff, D.M.D., individually (the “Individual Plaintiffs” and collectively
28 with CDA, “Plaintiffs”), bring this action and Verified Second Amended Complaint based upon

1 personal knowledge of their own acts and upon information and belief as to all other matters
2 alleged, against (i) Delta Dental of California (“Delta Dental” or the “Company”); (ii) certain
3 members of Delta Dental’s Board of Directors (the “Director Defendants”); (iii) certain officers of
4 Delta Dental (the “Officer Defendants,” collectively with the Director Defendants, the “Individual
5 Defendants”); and (iv) DOES 1 through 20, inclusive (collectively with Delta Dental and the
6 Individual Defendants, “Defendants”).

7 **NATURE OF THE ACTION**

8 1. By this action, Plaintiffs challenge as unlawful and invalid the actions of
9 Defendants in approving and implementing amendments, effective as of January 1, 2023 (“2023
10 Amendments”), to the “Participating Provider Agreement” (“PPA”) that Delta Dental imposes on
11 its Dentist Members. These actions, as well as the other policies and practices alleged herein, are
12 unlawful and invalid because: (1) they were taken in violation of fiduciary duties owed by the
13 Individual Defendants to Plaintiffs as members of Delta Dental, and (2) they violate the
14 contractual duty of good faith and fair dealing owed to Plaintiffs by Delta Dental that is inherent
15 in the PPAs.

16 2. Delta Dental is a nonprofit mutual benefit corporation and 501(c)(4) social welfare
17 organization whose stated mission is “to provide dental benefit coverage through contracts with
18 independent professional service providers.” These professional service providers are members
19 of the nonprofit corporation – referred to in the Bylaws as “Dentist Members” – and, pursuant to
20 Delta Dental’s Bylaws, are entitled to enter into service agreements with Delta Dental (i.e., the
21 PPAs) as a privilege of membership in the organization.

22 3. Due in significant part to the efforts and investments of its Dentist Members,
23 without whom Delta Dental could not operate, Delta Dental’s power and wealth has grown
24 exponentially over the past decade. Yet despite its enormous profits, net worth and market power,
25 Delta Dental and its officers and directors have refused to increase the fees paid to Dentist
26 Members in exchange for oral health care services provided to patients with a Delta Dental plan,
27 leaving it to Dentist Members to figure out how to continue to provide critical care for their
28 patients while handling rapidly increasing costs in the face of stagnant reimbursement fees.

1 4. Just when it seemed the marginalization of Dentist Members could not get any
2 worse, Defendants enacted the 2023 Amendments. The 2023 Amendments change the entire
3 structure by which the fees of many Dentist Members are determined, including by eliminating
4 the ability of certain Dentists Members to submit their own fee schedules accounting for their
5 costs. The 2023 Amendments also substantially reduce the reimbursement fees paid to Dentist
6 Members, in some cases by up to 40%, thereby threatening the ability of many Dentist Members
7 to continue to provide services to Delta Dental patients. Defendants enacted the 2023
8 Amendments without any legitimate or justifiable business need and without any regard to how
9 they would impact Dentist Members or their patients.

10 5. Defendants' actions in adopting and implementing the 2023 Amendments violated
11 Defendants' fiduciary duties and other obligations to Dentist Members. As alleged in detail
12 herein, Defendants did not engage in the most basic actions that faithful fiduciaries are required
13 to do when making such a critical and complex decision. Among other things:

- 14 • The Compensation Committee charged with considering and approving the 2023
15 Amendments received no materials or analysis in advance of the meeting at which
16 the amendments were addressed and approved. A reasonably prudent fiduciary in
17 the position of the Compensation Committee members would have required
18 materials addressing the need for and impact of the 2023 Amendments to be
19 provided in advance of the meeting, so that these materials and the data contained
20 therein could be adequately assessed and the Compensation Committee members
21 could be properly prepared to address the highly complex issues implicated by the
22 proposed amendments.
- 23 • Although none of the Compensation Committee members were dental providers,
24 the Compensation Committee had no advisers, consultants, or other independent
25 information presented to them regarding the impact of the 2023 Amendments on
26 Dentist Members and their patients. Indeed, the Compensation Committee did
27 not have any independent advisers or consultants present or provide materials to
28 them on any issues at all, either before or during the meeting during which the
2023 Amendments were approved. A reasonably prudent fiduciary in the position
of the Compensation Committee members would have sought and considered
independent expert analysis on the need for or likely impact of the 2023
Amendments given the complexity of the issues implicated and the lack of
experience of Committee members in the needs of a dental practice.
- Notwithstanding the lack of any preparatory materials or analysis, and the lack of
any independent expert advice, the Compensation Committee approved the 2023
Amendments as presented in single a meeting held over Zoom that lasted only 75
minutes. Prior to this meeting, Compensation Committee members had not

1 received any materials or information about the newly imposed fees, the
2 purported reasons for them, or the impact these fee reductions would have on the
3 Dentist Members to whom these directors owed fiduciary duties and on their
4 patients. A reasonably prudent fiduciary presented with such monumental
5 changes would have required a more extensive inquiry and thus more time to
6 consider these complicated issues including the opportunity for a deeper
7 assessment and appropriate follow-up.

- 8 • Defendants (including the Compensation Committee) were aware that Dentist
9 Members' fees had been held essentially stagnant for over a decade while the cost
10 of providing high quality dentistry (which Delta Dental represents it enables) had
11 gone up substantially, resulting in a significant negative effect on Dentist
12 Members and their ability to serve patients with a Delta Dental plan. Under such
13 circumstances, a reasonably prudent fiduciary in Defendants' position would have
14 been on notice that the 2023 Amendments would have a highly detrimental effect
15 on Dentist Members' practices and their ability to continue serving Delta Dental
16 patients. Defendants' failure to investigate the impact of the 2023 Amendments
17 on the Dentist Members whose fees were being modified constitutes gross
18 negligence. Among other things, Defendants should have investigated issues such
19 as the costs of performing procedures, the frequency patients require billed
20 procedures, the costs of running a dental practice, and other basic issues affecting
21 Dentist Members, their practices and their patients. Indeed, Defendants did not
22 even conduct any organized outreach to Dentist Members to get their perspective
23 on the ramifications of the 2023 Amendments for their practices and patients.
- 24 • Defendants (including the Compensation Committee) were aware that in the
25 decade leading up to the 2023 Amendments, while Dentist Member fees were
26 held stagnant, Delta Dental dominated the market and was wildly profitable, with
27 net assets far exceeding that which it needed to conduct operations and mitigate
28 risk. Under such circumstances, where Delta Dental had increased its assets far
beyond what was appropriate or necessary, a reasonably prudent fiduciary in
Defendants' position would have conducted or solicited an analysis as to whether
the 2023 Amendments had any sound business reason, let alone a business reason
sufficient to justify the harm caused to Dentist Members. Yet Defendants failed
to do so.
- Despite the fact that Delta Dental is a nonprofit social welfare organization
purportedly dedicated to providing oral healthcare services to Californians
through agreements with Dentist Members, Defendants (including the
Compensation Committee) failed to consider the impact of the 2023 Amendments
on the Delta Dental patients who were being cared for by the Dentist Members
whose fees were being modified, including whether the fee reductions would
negatively impact patient choice of services and providers, as well as other
aspects of the patient experience. Any reasonably prudent fiduciary in
Defendants' position would have investigated the impact on patients who rely on
Delta Dental plans.

1 6. As is apparent from the above, as well as the other allegations contained herein,
2 Defendants knew (or at the very least should have known) that a more thorough investigation was
3 required prior to approving and enacting the 2023 Amendments. Yet rather than conduct a good
4 faith, reasonable investigation, Defendants consciously disregarded pertinent information and
5 relevant considerations, putting their own self-interest above the interests of the very fiduciaries
6 Defendants were charged with protecting. Had Defendants undertaken a good faith inquiry, as
7 any reasonably prudent fiduciary would have done and as the law required them to do, Defendants
8 would not have adopted the 2023 Amendments, which (among other things) lack any legitimate
9 justification, punitively impact Dentist Members, and deprive Dentist Members of the benefit of
10 their bargain under the PPAs.

11 7. Defendants' violation of their duties and obligations through enactment of the
12 2023 Amendments has caused and will continue to cause these Dentist Members substantial harm.
13 For certain Dentist Members, the continued viability of their practices will be threatened. For
14 others, in order to mitigate the impact of the significant fee decreases, they will need to change
15 the way they conduct their practices in ways that compromise their ability to provide high quality
16 services, including by reducing the comprehensiveness of services provided, increasing their
17 workload in a manner that causes increased wait times, adjusting staff or office space, and/or
18 leaving the Delta Dental network entirely – a daunting proposition given Delta Dental's
19 domination of the relevant market.

20 8. It is not just the Dentist Members who will suffer the ramifications of Defendants'
21 conduct. Patients who are covered by Delta Dental plans will also bear the burden of these
22 changes, including through reduced choice of services and providers, increased wait times due to
23 increased patient loads for in-network providers, delays in scheduling appointments due to fewer
24 in-network providers, increased costs due to fewer in-network providers, compromised quality of
25 experience, and – perhaps most egregiously – disruption of long-standing, trusted dentist-patient
26 relationships.

27 9. In short, the 2023 Amendments, as well as the other harmful practices and policies
28 described herein, violate Defendants' fiduciary duties and obligations to Dentist Members and

1 will cause significant harm to the very individuals that Defendants rely upon to provide critical
2 oral health care to patients covered by Delta Dental plans. Defendants should be held accountable
3 for their actions.

4 **PARTIES**

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

12 11. CDA has associational standing to bring this claim on behalf of its members, which
13 include Dentist Members, because:

- 14 a. each CDA member who is a Dentist Member has standing to bring a claim
15 in his or her own right;
- 16 b. protecting the interests of the CDA members is germane to and a part of
17 CDA's purpose;
- 18 c. neither the claims asserted nor the relief requested requires the participation
19 of any individual CDA member for adjudication; and
- 20 d. the CDA members on whose behalf this action is brought are suffering
21 immediate and threatened injury because of Defendants' actions.

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

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

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

13 15. Plaintiff Spencer Anderson, D.D.S., a Premier Specialty Dentist, is a practicing
14 oral surgeon licensed to practice in California, a CDA member, a party to a PPA with Delta Dental
15 for participation in Delta Dental’s Premier Network, and a member of Delta Dental. He received
16 written notice from Delta Dental that it is instituting a revised fee determination process and
17 imposing a revised fee schedule that will yield a net reduction in reimbursement fees for services
18 rendered by Dr. Anderson to patients with a Delta Dental plan, effective January 1, 2023.

19 16. Plaintiff Steve Chen, D.D.S., a Premier General Dentist,² is a practicing general
20 dentist licensed to practice in California, a CDA member, and a party to a PPA with Delta Dental
21 for participation in Delta Dental’s Premier Network, and a member of Delta Dental. He received
22 written notice from Delta Dental that it is imposing a revised fee schedule that will yield a net
23

24 _____
25 ¹ “Premier Specialty Dentists” are California-based specialists, such as periodontists, endodontists
26 and oral surgeons, who are parties or otherwise subject to a Participating Provider Agreement
27 (“PPA”) with Delta Dental for participation in the Delta Dental Premier Network to provide dental
28 benefit coverage.

² “Premier General Dentists,” which are California-based general dentists who are parties or
otherwise subject to a PPA with Delta Dental for participation in the Delta Dental Premier Network
to provide dental benefit coverage.

1 reduction in reimbursement fees for services rendered by Dr. Chen to patients with a Delta Dental
2 plan, effective January 1, 2023.

3 17. Plaintiff Ray Klein, D.D.S., a PPO Dentist,³ is a practicing pediatric dentist
4 licensed to practice in California, a CDA member, and a party to a PPA with Delta Dental for
5 participation in Delta Dental's Preferred Provider Organization, and a member of Delta Dental.
6 He received written notice from Delta Dental that it is imposing a net reduction in reimbursement
7 fees for services rendered by Dr. Klein to patients with a Delta Dental plan, effective January 1,
8 2023.

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

15 19. Plaintiff Shadie Azar, D.M.D., a PPO Dentist, is a practicing periodontist licensed
16 to practice in California, a CDA member, and a former party to a PPA with Delta Dental for
17 participation in Delta Dental's Preferred Provider Organization. He received written notice from
18 Delta Dental that it is imposing a net reduction in reimbursement fees for services rendered by
19 Dr. Azar to patients with a Delta Dental plan, effective January 1, 2023. Based on this notice, Dr.
20 Azar determined that he could no longer operate within the Delta Dental network given the
21 substantial reduction in reimbursement fees for services rendered by him to patients with a Delta
22 Dental Plan. He left Delta Dental's network prior to the effective date of the 2023 Amendments,
23 to the substantial detriment of his practice.

24 20. Defendant Delta Dental is a California nonprofit mutual benefit tax-exempt
25 corporation and a 501(c)(4) social welfare organization with its principal place of business in San
26

27 ³ "PPO Dentists" are California-based specialty and general dentists who are parties or otherwise
28 subject to a PPA with Delta Dental for participation in the Delta Dental PPO Network to provide
dental benefit coverage.

1 Francisco, California. Delta Dental’s “specific and primary purpose” is to “provide dental benefit
2 coverage through contracts with independent professional service providers.” Entering into such
3 contracts with Delta Dental is a “privilege of membership” accorded to Delta Dental’s Dentist
4 Members, to whom Delta Dental’s directors and officers owe fiduciary duties. Delta Dental is
5 the largest provider of dental benefit plans in California and dominates the market for dental
6 benefit plans provided to individuals, companies, and state and federal government agencies in
7 California.

8 21. Upon information and belief, Defendant Lynn L. Franzoi (“Franzoi”) has been a
9 member of the Board for twelve years, since 2011. She served as the Chair of the Board from
10 August 2017 until December 2019. According to Delta Dental’s public tax filings, Franzoi was
11 at all relevant times paid at least \$450/hour and often more than \$3,000/per hour for her Board
12 service and has been paid in excess of \$1.3 million for her service on the Board from 2015-2021.⁴

13 22. Upon information and belief, Defendant Roy A. Gonella (“Gonella”) has been a
14 member of the Board for ten years, since 2013, and has served as a member of Delta Dental’s
15 Audit Committee and Finance Committee. Mr. Gonella was also Chair of the Dentist
16 Compensation Committee when the 2023 Amendments were considered and approved.
17 According to Delta Dental’s public tax filings, Gonella was at all relevant times paid between
18 \$560/hour and \$3,300/hour for his Board service and has been paid in excess of \$1 million for his
19 service on the Board from 2015-2021.

20 23. Upon information and belief, Defendant Glen F. Bergert (“Bergert”) has been a
21 member of the Board for twenty-five years (since 1998), and has served as Chair of Delta Dental’s
22 Audit Committee and a member of Delta Dental’s Finance Committee. Mr. Bergert was also a
23 member of the Dentist Compensation Committee when the 2023 Amendments were considered
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25 ⁴ The estimated hourly rates are based on the information contained within IRS Form 990s filed
26 by Delta Dental and set forth in Appendix A to this Verified Second Amended Complaint. Despite
27 Plaintiffs’ requests, Delta Dental has not produced its Form 990s or other compensation
28 information for 2022, and the Form 990s have yet to be released by the IRS. Given the trend over
the five prior years, there is every reason to believe that these will continue to confirm substantial
amounts paid to Delta Dental’s officers and directors.

1 and approved. According to Delta Dental’s public tax filings, Bergert was at all relevant times
2 paid between \$650/hour and \$1,900/hour for his Board service and has been paid in excess of
3 \$1.3 million for his service on the Board from 2015-2021.

4 24. Upon information and belief, Defendant Steven F. McCann (“McCann”) has been
5 a member of the Board for sixteen years, since July 2007, and has served as a member of Delta
6 Dental’s Audit Committee and Finance Committee. Mr. McCann was also a member of the
7 Dentist Compensation Committee when the 2023 Amendments were considered and approved.
8 According to Delta Dental’s public tax filings, McCann was at all relevant times paid more than
9 \$600/hour and up to \$1,400/per hour for his Board service and has been paid in excess of \$1
10 million for his service on the Board from 2015-2021.

11 25. Upon information and belief, Defendant Heidi Yodowitz (“Yodowitz”) has been a
12 member of the Board for six years, since April 2017. She is the current Chair of the Board and
13 has served as a member of Delta Dental’s Audit Committee and Finance Committee. Ms.
14 Yodowitz was also an ex-officio member of the Dentist Compensation Committee when the 2023
15 Amendments were considered and approved. According to Delta Dental’s public tax filings,
16 Yodowitz was at all relevant times paid more than \$500/hour for her Board service and has been
17 paid in excess of \$700,000 for her service on the Board from 2017-2021.

18 26. Upon information and belief, Defendant Terry A. O’Toole (“O’Toole”) has been
19 a member of the Board for fifteen years, since January 2008, and has served as Chair of Delta
20 Dental’s Finance Committee and a member of Delta Dental’s Audit Committee. Mr. O’Toole
21 was also a member of the Dentist Compensation Committee when the 2023 Amendments were
22 considered and approved. According to Delta Dental’s public tax filings, O’Toole was at all
23 relevant times paid nearly \$650/hour and often more than \$2,000/per hour for approximately five
24 hours of work per week for his Board service and has been paid in excess of \$1 million for his
25 service on the Board from 2015-2021.

26 27. Upon information and belief, Defendant Andrew J. Reid (“Reid”) has been a
27 member of the Board for eight years, since 2015, and has served as a member of Delta Dental’s
28 Audit Committee and Finance Committee. Mr. Reid was also a member of the Dentist

1 Compensation Committee when the 2023 Amendments were considered and approved.
2 According to Delta Dental's public tax filings, Reid was at all relevant times paid more than
3 \$600/hour and often more than \$2,000/per hour for his Board service and has been paid in excess
4 of \$1.25 million for his service on the Board from 2015-2021.

5 28. Upon information and belief, Defendant Ian R. Law ("Law") has been a member
6 of the Board since March 2020. According to Delta Dental's public tax filings, in 2021, Law was
7 paid more than \$380/hour for his Board service. Law has been paid in excess of \$160,000 in
8 compensation between 2020 and 2021.

9 29. Upon information and belief, Defendant Jay C. Lamb, D.M.D. ("Lamb") has been
10 a member of the Board since July 2022. Information about Mr. Lamb's compensation is not yet
11 publicly available.

12 30. Defendant Michael J. Castro ("Castro") has served as Delta Dental's Chief
13 Executive Officer ("CEO") since February 2019. Since joining Delta Dental over twenty-three
14 years ago in June 2000, he has held multiple roles, including Controller from June 2000 until
15 September 2004, Chief Financial Officer ("CFO") from September 2004 until October 2018,
16 Acting CEO from October 2018 until 2019, and President from February 2019 until August 2022.
17 According to Delta Dental's public tax filings, Castro received in excess of \$26 million in
18 compensation from Delta Dental from 2015-2021. In 2020 alone, Castro received over \$9.5
19 million from Delta Dental, including over \$5 million under the heading "other compensation,"
20 while in 2021 (the last full year before the 2023 Amendments were approved), Castro received
21 approximately \$5.5 million in compensation.

22 31. Defendant Alicia F. Weber ("Weber") has served as Delta Dental's Executive Vice
23 President and CFO since November 2018. Since joining Delta Dental over eighteen years ago in
24 January 2005, she has held multiple roles, including Controller from January 2005 until February
25 2010 and, upon information and belief, Senior Vice President, Finance from February 2010 until
26 around November 2018. According to Delta Dental's public tax filings, Weber received in excess
27 of \$10 million in compensation from Delta Dental from 2015-2021, including approximately \$2.2
28 million in 2021 (the last full year before the 2023 Amendments were approved).

1 § 410.10, because this case is a cause not given by statute to other trial courts. The demand
2 exceeds the jurisdictional minimum, exclusive of interest, costs, and attorneys' fees.

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

10 37. Venue is proper in San Francisco County pursuant to Cal. C.C.P. §§ 395(a) and
11 395.5 because Defendants' wrongful conduct has in substantial part taken place in San Francisco
12 County. Delta Dental has its principal place of business in San Francisco. Each Individual
13 Defendant either: owns property, maintains an office, transacts business, engages in financial
14 operations, and/or has an agent or agents within the County of San Francisco.

15 **FACTUAL ALLEGATIONS**

16 **Delta Dental's Purported Mission and Structure**

17 38. Delta Dental was created in or around 1955 as a tax-exempt corporation devoted
18 to the goal of making private dentists more available to citizens in need of oral health care in
19 California. Delta Dental is a nonprofit mutual benefit corporation under California law and a tax-
20 exempt social welfare organization under Section 501(c)(4) of the Internal Revenue Code,
21 meaning Delta Dental must be operated exclusively to promote social welfare and to further the
22 common good and general welfare of the people of the relevant community. Today, Delta Dental
23 is the largest provider of dental benefit plans in California. Its corporate purpose, as stated in its
24 Articles of Incorporation, is "to provide dental benefit coverage through contracts with
25 independent professional service providers." Delta Dental's website describes the dentists with
26 whom it contracts as "the strongest network of dental providers in the country."⁵

27
28 ⁵ <https://www1.deltadentalins.com/about/corporate-profile.html>.

1 39. According to its Bylaws, Delta Dental has two classes of members: Dentist
2 Members and Corporate Members. There are significant differences between the power accorded
3 to the two classes. The Dentist Members have no vote over the actions of Delta Dental or the
4 composition of the Board. That power lies exclusively with Delta Dental's Corporate Members,
5 who consist of the members of the Board. Under Delta Dental's Bylaws, at least sixty percent of
6 its Corporate Members (and thus its Board) are required to be members who (a) are not dentists,
7 (b) are not the spouse of a dentist, and (c) have no significant interest in any entity that provides
8 dental services. Only twenty-five percent of Delta Dental's Corporate Members are required to
9 be practicing dentists licensed in California. As a result of these requirements, the Board is
10 controlled by members who are neither dentists nor affiliated with dentists, and thus who have
11 limited if any knowledge as to the needs and interests of the Dentist Members. Currently, over
12 seventy percent of Delta Dental's Board is comprised of non-dentists.

13 40. Director nominees are chosen by a Nominating Committee consisting of the Chair
14 of the Board and two additional directors selected by the Chair. Additional nominations may be
15 made by a nominating petition with the signatures of not less than three Corporate Members.
16 Only Corporate Members, who (per above) are overwhelmingly non-dentists, can vote on whether
17 a particular nominee should become a director. As a result, Delta Dental's core constituency –
18 namely, the dentists who contract with Delta Dental to serve patients covered by Delta Dental
19 plans (i.e., the Dentist Members) – have no meaningful say or input into the selection or
20 composition of the Board, and thus no real say regarding Delta Dental's decision-making process.

21 41. The Board has delegated its authority regarding reimbursement fees paid to its
22 Dentist Members to a "Dentist Compensation Committee" ("Compensation Committee" or
23 "Committee"). This includes matters involving adjustments to compensation for dental providers
24 or changes to the methodology for calculating such compensation. No Dentist Members,
25 including those who are also Corporate Members (and thus members of the Board), are permitted
26 to serve on the Compensation Committee. Moreover, on information and belief, there exists no
27 requirement that those who serve on the Compensation Committee have any prior knowledge of
28 or experience in what constitutes fair and reasonable payment for services provided by dental

1 providers. Nor are Compensation Committee members required to have prior knowledge of or
2 experience in how changes in provider compensation may impact the quality or quantity of
3 services provided to patients.

4 42. Dentist Members comprise the “independent professional service providers” that
5 Delta Dental recognizes as critical to its stated mission. That is, Delta Dental claims to serve its
6 mission by entering into PPAs with its Dentist Members, who in turn provide oral healthcare
7 services to patients covered by Delta Dental plans. The ability to enter into a PPA with Delta
8 Dental is the primary privilege of being a Dentist Member, and one must be a Dentist Member in
9 order to enter into a PPA.

10 43. With limited exception, the PPAs are drafted by Delta Dental and imposed on the
11 individual Plaintiffs on a “take it or leave it” basis, and Delta Dental refuses to negotiate the terms
12 of the PPAs with individual Dentist Members. For this reason, the PPAs (including the provisions
13 at issue in this action) between each Dentist Member and Delta Dental are essentially identical,
14 and each expressly incorporate the “Delta Dental Bylaws,” Delta Dental’s “Participating Dentist
15 Rules,” and “Delta Dental’s Dentist Handbook.”

16 **Delta Dental Grows its Substantial Wealth and Market Power While Keeping**
17 **Reimbursement Fees Stagnant**

18 44. When it was initially created in 1955, and in the decades that followed, the purpose
19 of Delta Dental was to create conditions in which Dentist Members were more willing and able
20 to serve California residents who needed dental service. Delta Dental’s fee arrangements with its
21 Dentist Members reflected these objectives and enabled Delta Dental to build the largest provider
22 network in California and secure the market dominance it enjoys today.

23 45. Over time, however, Delta Dental’s priorities shifted. Rather than working with
24 providers to expand the quality and availability of oral health care services throughout California,
25 Delta Dental and its officers and directors increasingly became focused on Delta Dental’s own
26 market position and bottom line at the expense of everything and everyone else. This was
27 reflected in the reimbursement fees paid by Delta Dental to its Dentist Members, which (prior to
28 the 2023 Amendments) had not changed since 2009, even as the costs associated with running a

1 practice – including but not limited to the cost of labor, supplies and office space – steadily
2 increased during this period.

3 46. In 2013, Delta Dental sought to impose fee reductions that were contrary to
4 agreements in place at the time. Litigation ensued, and the dispute was resolved via Settlement
5 Agreement without any fee decreases imposed on Dentist Members. As part of the heavily
6 negotiated Settlement Agreement, Dentist Members succeeded in imposing an important
7 limitation on Delta Dental’s ability to set fees: Delta Dental was obligated to comply with
8 statutory and common law, including fiduciary duties and the implied duty of good faith and fair
9 dealing. In this regard, the Settlement Agreement was intended to and did restrict Delta Dental’s
10 discretion and impose accountability for decisions regarding reimbursement rates. Per the terms
11 of the Settlement Agreement, Delta Dental’s obligation to comply with statutory and common
12 law carried forward to all future conduct including (among other things) the setting of fees.
13 Accordingly, while Delta Dental may have been accorded discretion, that discretion was expressly
14 limited, affording Dentist Members crucial protection with respect to fee changes going forward.

15 47. In the years since the 2013 litigation and Settlement Agreement, Delta Dental
16 continued to hold fees stagnant, declining to increase fees even as labor and materials costs
17 continued to increase, even in the face of significant inflation, and even as COVID rendered dental
18 visits risky for both patients and providers. Yet as Dentist Members struggled to make do with
19 stagnant fees in what was an unprecedentedly challenging environment for the provision of oral
20 healthcare, Delta Dental continued to accumulate market power, hoard assets, and award
21 excessive executive and director compensation. As a result, for years, Delta Dental has been a
22 dominant provider of dental benefit plans in California and has possessed substantial market
23 power. Moreover, Delta Dental leverages its strong network of high-quality dentists in California
24 to further increase its dominance, making it difficult for dentists to leave the Delta Dental network
25 without risking the loss of many patients and compromising (perhaps fatally) their practices.

26 48. For this reason, it is not practicable for Dentist Members to simply leave Delta
27 Dental’s network if they do not like the contract amendments unilaterally imposed by Delta
28 Dental. In fact, Delta Dental has specifically designed its PPAs and plans to maximize disruption

1 to those dentists who leave the Delta Dental network. For example, unlike many insurance
2 companies, Delta Dental does not permit its policyholders to assign the payments required under
3 their plans to out-of-network dentists who provide services. Thus, a patient covered by a Delta
4 Dental plan who wishes to continue to see a dentist who has left Delta Dental's network must pay
5 that dentist directly and then wait for Delta Dental to reimburse them, creating a challenge for
6 both the dentist (who is responsible for collecting funds from the patient) and patient (who is
7 responsible for making payment). In addition, Delta Dental strongly discourages its patients from
8 using dentists outside the Delta Dental network by providing less favorable coverage for out-of-
9 network services and by urging patients covered by Delta Dental plans not to use out-of-network
10 dentists even though that may be the patients' preference.

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

22 50. While Delta Dental's policies and practices have made it very difficult for Dentist
23 Members and other dental providers to continue providing quality oral health care services over
24 the years, Delta Dental remains among the most profitable providers of dental benefit plans in
25 California and has been steadily increasing its profits and market dominance. Delta Dental's
26 Form 990s show that its profits increased from \$177 million in 2017 to \$259 million in 2021, the
27 last full year before the 2023 Amendments were considered and approved. According to
28 California's Department of Managed Healthcare's ("DMHC") Financial Summary Reports, in

1 2022, Delta Dental had \$3 billion in total revenue and \$3.4 billion in total assets, such that by
2 December 31, 2022, Delta Dental’s excess Tangible Net Equity (“TNE”)⁶ had increased to
3 approximately \$2.2 billion – nearly 3,000% more than the TNE required by the DMHC.

4 51. Much of the revenue collected by Delta Dental is used to unjustifiably inflate its
5 already-substantial capital reserves, which largely sit idle with no plan or purpose. A meaningful
6 portion, however, is paid out to Delta Dental’s directors and officers, including the Individual
7 Defendants. For example, the Chief Executive Officer of Delta Dental was paid: over \$3 million
8 in compensation in 2019; over \$9 million in 2020; and over \$5 million in 2021. The next nine
9 highest-paid Delta Dental executives were paid more than \$1 million each in 2019, between \$1
10 million and \$5 million in 2020, and between \$1 million and over \$2 million in 2021. Indeed, in
11 2020 – when Dentist Members were struggling to treat patients during a global pandemic –
12 compensation paid to Delta Dental executives reached historical heights. Though Delta Dental
13 has refused to provide compensation information for 2022, the period during which the 2023
14 Amendments were approved, those documents almost certainly would show the same pattern of
15 unreasonably high officer compensation.

16 52. Such compensation – which was bestowed by the Board at the same time Dentist
17 Members to whom those officers and directors owe fiduciary duties grappled with rising costs
18 and stagnant fees – is unreasonable and unjust. It also exceeds that which is appropriate for
19 officers of a non-profit organization. According to a comprehensive study released in 2023 based
20 on publicly available tax data, in 2021, the national median compensation for chief executive
21 officers of 501(c)(4) organizations with budgets greater than \$5 million was \$318,264, while the
22 median for the same category of California 501(c)(4) organizations was \$294,628. Across all
23 nonprofit organizations with budgets greater than \$50 million, the median compensation for chief
24

25 ⁶ Tangible Net Equity (“TNE”) is a healthcare plan’s (including dental benefit providers regulated
26 by the DMHC) total assets minus total liabilities reduced by the value of intangible assets and
27 unsecured obligations of officers, directors, owners, or affiliates outside of normal course of
28 business. The required TNE for a full-service dental benefit plan is the greater of \$1 million, a
percentage of premium revenues, or a percentage of healthcare expenses. Excess TNE is the
difference between total TNE and required TNE.

1 executive officers in 2021 was \$506,423 nationally and \$458,331 in California. By contrast, the
2 Chief Executive Officer of Delta Dental was paid over \$9 million in 2020 and over \$5 million in
3 2021. The same trend exists for other executive officer positions. In 2021, the national median
4 compensation for all non-CEO officer positions was under \$300,000 both for 501(c)(4)
5 organizations with budgets greater than \$5 million and (with only two exceptions) across all
6 nonprofit organizations with budgets greater than \$50 million.⁷ By contrast, Delta Dental's non-
7 CEO officers each received over \$1 million (and sometimes significantly more) in both 2020 and
8 2021, and have continued to receive such substantial compensation in subsequent years.⁸

9 53. In fact, Delta Dental's officers' compensation often exceeds compensation for
10 officers at similarly sized publicly-traded, for profit companies. For example, in 2022, the median
11 total annual compensation for chief executive officers at publicly-traded companies in the
12 insurance sector with \$2.5 billion to \$10 billion in assets was approximately \$4.2 million – over
13 one million dollars less than the Chief Executive Officer of Delta Dental was paid in 2021 and
14 less than half of the approximately \$9 million Delta Dental's CEO was paid in 2020. Moreover,
15 at publicly-traded companies, officers (as well as directors) are accountable to shareholders and
16 are subject to disclosure and other regulatory requirements, which serve as important restraints
17 on those officers' and directors' ability to self-deal through their compensation. Delta Dental's
18 officers and directors face no such restraint, nor do they face meaningful regulatory oversight,
19 leaving their incentives to maximize the magnitude and certainty of their compensation
20 unmitigated.

21 54. The compensation paid to Delta Dental's directors is similarly unreasonable and
22 unjust. Delta Dental's Bylaws expressly prohibit directors from receiving any salary for their
23 service as a Board member. Rather, the Bylaws limit the Board to passing resolutions reimbursing
24 directors for expenses of attending any meetings of the Board or committees and providing a

25 _____
26 ⁷ Two of the thirteen executive positions evaluated for nonprofits with budgets greater than \$50
million had median salaries of greater than \$300,000 but less than \$400,000.

27 ⁸ While the relevant categories from the nonprofit study include companies whose budgets are not
28 as large as Delta Dental's, the data is consistent with the principle that officer compensation for a
nonprofit is generally smaller as compared to for-profit companies.

1 “fixed fee” to compensate directors for time in traveling to, preparing for and attending meetings
2 of the Board or committees. Yet the Individual Defendants who are directors of Delta Dental
3 have provided themselves with substantial compensation that goes beyond the permitted
4 reimbursements and clearly constitutes a salary. For example, for approximately five hours of
5 work per week (according to Delta Dental’s Form 990s), the Individual Defendants who are
6 directors received between \$101,788 and \$328,788 in 2019, between \$108,000 and \$211,196 in
7 2020, and between \$109,000 and \$212,043 in 2021. By contrast, a 2022 study shows that private,
8 for-profit companies with revenue greater than \$1 billion pay their directors a median annual
9 retainer or “fixed fee” of \$65,000.⁹

10 55. The majority of Delta Dental’s Board members have been on the Board for a
11 decade or longer,¹⁰ creating a situation where there exists an entrenched group of directors
12 deciding on one another’s compensation year after year without any shareholder or other external
13 review. Indeed, many experts in corporate governance have opined that directors should be
14 limited to tenures of less than a decade for the good of the organization and to prevent the erosion
15 of independence that can occur over time.¹¹

18 ⁹ Though some of these companies pay their directors a small per meeting fee, Delta Dental’s
19 Bylaws only authorize reimbursement of incurred expenses and a “fixed fee” (i.e., annual retainer).

20 ¹⁰ Among the Individual Defendants who are directors, Mr. Bergert has been a director for 25
21 years, Mr. McCann has been a director for 16 years, Mr. O’Toole has been a director for 15 years,
22 Ms. Franzoi has been a director for 12 years, Mr. Gonalla has been a director for 10 years. Michael
23 Castro, Delta Dental’s Chief Executive Officer since 2019, has worked at the company for over
24 23 years and thus has overlapped with these directors for their entire tenures (save the first two
25 years of Mr. Bergert’s astounding 25-year tenure).

26 ¹¹ See, e.g., BoardSource, “Leading with Intent: 2017 National Index of Nonprofit Board
27 Practices, available at <https://leadingwithintent.org/wp-content/uploads/2017/09/LWI2017.pdf>
28 (noting that as of 2017, 72 percent of boards have term limits, which have become the norm; “Term
limits help ensure that a board’s composition reflects its current leadership needs.”); Matt Aiello
and Lee Hanson, Heidrick & Struggles Governance Letter, “Time’s up: Director Tenure Moves
to the Front Burner,” available at
[https://www2.deloitte.com/content/dam/Deloitte/us/Documents/regulatory/us-aers-director-
tenure-moves-frontburner-2102015.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/regulatory/us-aers-director-tenure-moves-frontburner-2102015.pdf) (term limits are intended to address such potential
problems as erosion of genuine independence over time, inability of the board to refresh itself in a
timely manner, and loss of touch as the company’s business environment changes dramatically).

1 56. Because Dentist Members have limited rights under Delta Dental’s Bylaws, they
2 have no meaningful say regarding the compensation of Delta Dental’s officers or directors. Nor
3 is there any meaningful external oversight of these decisions. Accordingly, Defendants are left
4 entirely free to set and increase their own compensation year after year, creating a situation that
5 inherently creates a conflict, particularly as no one is tasked with overseeing compensation
6 determinations. Even public for-profit companies allow stockholders to have “say on pay.” Yet
7 the directors and officers of Delta Dental, a nonprofit mutual benefit corporation and 501(c)(4)
8 social welfare organization, are able to make decisions in their own interest without any
9 accountability or scrutiny and without any input or vote from Dentist Members of Delta Dental,
10 who have no “say on pay.”

11 57. Moreover, upon information and belief, many of these directors have no other
12 source of income beyond sitting on the boards of Delta Dental and its affiliates. Given the
13 substantial financial benefits associated with Board membership – which the Board members are
14 able to grant themselves – these directors have a vested interest in maintaining their Board
15 positions, including through rubber-stamping recommendations from management and enacting
16 policies that benefit themselves without conducting a good faith inquiry into pertinent issues and
17 without any regard for the impact these policies have on Dentist Members and their patients. And,
18 as alleged in detail below, that is precisely what happened with respect to the 2023 Amendments.
19 The Individual Defendants consciously disregarded their duties to Dentist Members and clearly
20 relevant information, instead acting in their own self-interest by rubber-stamping contract changes
21 desired by management that protected their own financial interest while harming the Dentist
22 Members.

23 58. Excessive compensation is not the only manifestation of Delta Dental directors’
24 prioritization of their own self-interest above the good of Dentist Members generally. Upon
25 information and belief, Board members who are affiliated with a dental practice also benefit from
26 more favorable reimbursement fees than are available to Dentist Members at large. These
27 secretive side deals are negotiated separate and apart from the set fees generally imposed on
28 Dentist Members and are intended to secure cooperation with respect to, among other things,

1 unfavorable fee arrangements imposed on Dentist Members at large. The unjustified benefits
2 received by Delta Dental’s Board members, coupled with their complete lack of accountability,
3 renders them conflicted in making decisions regarding reimbursement rates and other matters
4 impacting Delta Dental’s Dentist Members – including the 2023 Amendments.

5 59. As is apparent from the above, the business model employed by the Individual
6 Defendants is one where they prioritize increasing Delta Dental’s market power, accumulating
7 assets, and paying excessive compensation and salaries to its officers and directors – all while
8 minimizing as much as possible the reimbursement fees paid to its Dentist Members and
9 preventing those Dentist Members from having any meaningful say over Delta Dental’s
10 leadership or its practices and policies. It was in this context that Defendants enacted the 2023
11 Amendments, which were plainly designed to further Defendants’ self-serving objectives at the
12 expense of the Dentist Members and contrary to Delta Dental’s stated mission as a mutual benefit
13 nonprofit and a 501(c)(4).

14 **Defendants Wrongfully Enact The 2023 Amendments Following a Deficient Process and**
15 **Without Need or Justification**

16 60. The process employed in connection with the adoption of the 2023 Amendments
17 was infected by the conflicts and conditions alleged above and was far below the standard that a
18 reasonably prudent fiduciary would have adopted to evaluate such a decision. Barring some
19 legitimate reason for urgency – which did not exist in this case given Delta Dental’s secure
20 financial position and the fact that Dentist Members fees had remained largely unchanged for over
21 ten years – when making a decision of this magnitude and complexity, a board is obligated to
22 employ a process that allows for full consideration of the issues at hand. This includes the
23 opportunity to impartially and independently evaluate the reasons for and implications of the
24 decision, including through review of information and data upon which any reasonably prudent
25 fiduciary would rely when making such a decision, and to pursue follow-up inquiries that any
26 reasonably prudent fiduciary would have pursued. None of that happened here.

27 61. Although the changes effectuated by the 2023 Amendments were monumental and
28 the issues implicated complex, these changes were considered and approved by a sub-set of the

1 Board at a single 75-minute meeting of the Compensation Committee, the details of which fell far
2 short of what a reasonably prudent fiduciary would have required in assessing such amendments.

3 More specifically:

4 a. Though the issues to be considered at the August 10 Meeting were
5 complicated and implicated significant data and metrics, and though normal practice (and,
6 upon information and belief, Delta Dental’s usual practice) requires that the Board receive
7 Board books containing relevant materials in advance of Board and Committee meetings,
8 no materials were provided to the Compensation Committee in advance of the August 10
9 Meeting; rather, Committee members were entirely dependent on the limited information
10 disclosed by management at the brief Zoom meeting when evaluating and voting on the
11 2023 Amendments. This precluded Compensation Committee members from preparing
12 for the meeting in advance including by requesting further information or data, soliciting
13 expert advice, or identifying questions for management – as any reasonably prudent
14 fiduciary would want to do.

15 b. Though a Delta Dental executive (Sr. Vice President & Chief Relationship
16 and Business Development Officer Mohammad Navid) provided a brief and superficial
17 overview of the 2023 Amendments at the August 10 Meeting, the overview failed to
18 address a host of issues any reasonably prudent fiduciary would have regarded as highly
19 pertinent to the decision of whether to approve the amendments, including (as discussed in
20 further detail below) Delta Dental’s need for the 2023 Amendments given its market
21 dominance and substantial net assets, the methodology used to determine the proposed
22 changes to Dentist Members’ fees, the impact on Dentist Members’ ability to provide oral
23 healthcare services especially in the face of rising costs and long-stagnant fees (including
24 whether the changes made it economically infeasible for dentists to continue providing
25 certain procedures), the impact on patient experience and provider relationships, and the
26 impact on Dentist Members generally including whether the amendments are fair and
27 reasonable. Moreover, this superficial overview was provided by an executive who focuses
28 on areas such as sales, product strategy, and business development, and thus lacks

1 competency and reliability on critical issues such as the needs of dental providers and the
2 impact of fee reductions on patient services.

3 c. Because none of the Compensation Committee members were dental
4 providers, they lacked the knowledge necessary to adequately evaluate the 2023
5 Amendments and their impact on Dentist Members and their practices. Yet no independent
6 experts or consultants presented at or attended the August 10 Meeting, and no expert
7 materials, studies, or analyses were distributed to Committee members at or in advance of
8 the meeting. Given that the primary purpose of the 2023 Amendments was to reduce the
9 reimbursement fees paid to Dentist Members, and given the complexity and numerosity of
10 the data and metrics necessary to assess the impacts of these reductions on dental providers,
11 any reasonably prudent fiduciary called upon to evaluate such amendments would have
12 insisted on a thorough expert analysis or opinion in evaluating the impacts associated with
13 such a major shift. In particular, the Compensation Committee should have, but did not,
14 employed and considered the advice and analysis of independent experts qualified to
15 address the impact of the various fee modifications on dental providers' practices and their
16 ability to serve patients within the Delta Dental network. This failure to involve
17 independent advisors is all the more troubling given the directors' conflicts of interest
18 described above.

19 d. Compensation Committee members at the August 10 Meeting were told that
20 the timeline for approval was short; to proceed with management's desired effective date
21 of January 1, 2023, notice would need to be provided to CDA no later than August 20,
22 2022 – a mere ten days after the meeting – and providers were required to be notified no
23 later than September 1, 2022. Yet there was no business urgency for the 2023 Amendments
24 to be decided upon in a 75-minute Zoom meeting with no expert analysis or materials.
25 Given the complexity and scope of the 2023 Amendments, a reasonably prudent fiduciary
26 would have insisted upon a much more fulsome analysis than a mere 75-minute Zoom
27 meeting with no materials distributed in advance and no experts in attendance, which in
28 turn would have required more time to evaluate the proposed changes including the

1 opportunity to closely review relevant materials and ask follow-up questions as
2 appropriate.

3 62. In short, despite representing a massive sea change in the relationship between
4 Dentist Members and Delta Dental, the 2023 Amendments were presented as a *fait accompli*. All
5 that the Compensation Committee was called upon to do was to rubber-stamp the changes. And
6 that is precisely what they did, voting unanimously to pass the 2023 Amendments in full, without
7 a single adjustment or revision.

8 63. As is clear from the allegations above, Defendants failed to conduct a reasonable
9 inquiry into fundamental issues that Defendants knew (or at the very least should have known)
10 were highly material to the decision of whether to enact the 2023 Amendments. The entire
11 purpose of the 2023 Amendments was to reduce the reimbursement fees paid to Dentist Members
12 or otherwise modify their arrangements with Delta Dental. Yet Defendants utterly failed to
13 investigate the impact these changes would have on Dentist Members and their ability to serve
14 patients. This failure constitutes a significant dereliction of duty.

15 64. More specifically, *at minimum*, any reasonably prudent fiduciary considering the
16 2023 Amendments would have investigated and considered:

- 17 a. the frequency of billed procedures, which determines the overall impact of
18 the proposed fee changes on Dentist Members;
- 19 b. the costs of performing procedures, which determines whether and to what
20 extent Dentist Members will remain profitable despite the fee reductions;
- 21 c. the costs of running a dental practice, including obtaining the necessary
22 labor and materials during a time when inflation and supply costs have significantly
23 increased;
- 24 d. the training necessary for complex procedures, which increases the
25 investment required for dental providers to provide these needed services to patients;
- 26 e. the impact of COVID, which significantly reduced the number of patient
27 visits in the years leading up to the 2023 Amendments, causing many (if not most) dental
28 practices to suffer economically; and

1 f. the impact of decreasing Dentist Members' reimbursement fees on Delta
2 Dental patients, including limitations on patients' choice of services and providers,
3 increased wait times, delays in scheduling appointments, increased costs due to fewer in-
4 network providers, and disruption of long-standing, trusted dentist-patient relationships.

5 65. Not only did Defendants fail to investigate the above issues, but Defendants did
6 not conduct or cause to be conducted *any* organized outreach to Dentist Members to obtain
7 information or get their perspective on the potential impact of the 2023 Amendments on their
8 practices and patients – even though none of the Compensation Committee members were Dentist
9 Members, who uniquely understood the impact and would bear the full brunt of the changes.
10 Defendants' failure to investigate the above issues was grossly negligent and a clear violation of
11 their duty to act in good faith and with such care as an ordinarily prudent fiduciary in a like
12 position would use under similar circumstances.

13 66. While Defendants' failure to consider the impact of the 2023 Amendments on
14 Dentist Members and the patients they serve is in itself an egregious breach of their duties and
15 obligations, Defendants' misconduct extends even further. In addition to ignoring the impact of
16 their decisions on a key constituency, Defendants utterly failed to conduct a reasonable
17 investigation into whether there was a legitimate need or justification for the 2023 Amendments.

18 67. At the time the 2023 Amendments were considered and approved, Delta Dental
19 possessed substantial market power as well as billions of dollars in assets for which it had neither
20 a need nor a plan. In 2021, the last full year before the 2023 Amendments were considered, Delta
21 Dental had \$2.8 billion in total revenue and \$3.1 billion in total assets. In 2022, when Defendants
22 enacted the 2023 Amendments but before they went into effect, Delta Dental continued to
23 maintain total assets of more than \$3 billion, meaning that Delta Dental had over \$2 billion *or*
24 *3,000% more* than the TNE required by DMHC.

25 68. Defendants utterly failed to take this into account in evaluating the 2023
26 Amendments. More specifically, Defendants did not undertake any assessment or analysis
27 regarding the necessary amount of net assets Delta Dental must maintain to conduct operations
28 and mitigate risk. Nor did Defendants discuss a plan for Delta Dental's rapidly accumulating

1 assets or how they intended to reconcile this stockpiled cash with Delta Dental’s status as a
2 nonprofit. And Defendants failed to consider the fact that, as a tax-exempt organization, Delta
3 Dental pays virtually no taxes, which gives it a significant competitive advantage over most other
4 companies offering dental benefit plans in California. In fact, Defendants failed to conduct *any*
5 reasonable inquiry into whether there was a legitimate and justifiable need for the 2023
6 Amendments. Defendants’ failure to consider fundamental issues such as Delta Dental’s existing
7 reserves, revenue, patient utilization costs, and tax status – particularly in light of the substantial
8 harm the 2023 Amendments were likely to cause (and have caused) Delta Dental’s own Dentist
9 Members – constitutes an abuse of discretion and a dereliction of duty.

10 69. Had Defendants considered any of these issues – which an ordinarily prudent and
11 independent fiduciary would have done and which they should have known was their obligation
12 to do – it would have been apparent that there was no legitimate need or justification for the 2023
13 Amendments and Defendants would not have enacted them. More specifically, any reasonable,
14 good faith inquiry would have revealed that reducing the reimbursement fees paid to Dentist
15 Members was not in any way needed to maintain Delta Dental’s competitive position, profitability
16 or success. To the contrary, Delta Dental was able to accumulate substantial market power and
17 wealth without any such reductions.

18 70. Had Defendants acted with the due care required under the law, they also would
19 have confirmed that reducing Dentist Members’ fees after over ten years of stagnation and in the
20 face of continuously rising costs was inherently unfair and unreasonable and could not possibly
21 be justified. As alleged in detail below, the 2023 Amendments impose unreasonably low
22 reimbursement fees that significantly penalize Dentists Members and meaningfully hinder their
23 ability to provide services to patients with a Delta Dental plan. Given Delta Dental’s secure
24 financial position – evidenced, among other things, by billions of dollars in excess assets – no
25 reasonable, independent fiduciary would countenance the implementation of amendments that
26 significantly harm Dentist Members and their patients. Yet that precisely is what Defendants did;
27 acting in their own self-interest and without proper process, they rubber-stamped amendments
28

1 that are unjust and unreasonable towards the very Dentist Members to whom they owe fiduciary
2 and other duties.

3 **The 2023 Amendments Significantly Harm Dentist Members**

4 71. From the moment the 2023 Amendments were announced, it was clear they would
5 cause widespread harm to Dentist Members. Though Dentist Members had not received a fee
6 increase in over a decade, the 2023 Amendments reduced reimbursement fees paid to Dentist
7 Members. Moreover, these changes were implemented even though costs – especially labor and
8 materials costs, which are critical to patient care – have been increasing exponentially, and when
9 dental providers are just starting to recover from the impact of COVID on their practices.

10 72. For Premier Specialty Dentists, the 2023 Amendments substantially reduce fees
11 across the board – in some instances by up to 40% – while for Premier General Dentists, the 2023
12 Amendments decrease reimbursement fees for more frequently billed services while increasing
13 (often modestly) fees for less common services, such as those that are generally referred out to
14 specialty dentists. The 2023 Amendments also modify the entire fee determination process for
15 Premier Dentists, to the significant detriment of these providers. Before the 2023 Amendments,
16 Premier Dentists filed their own fee schedules with Delta Dental and were permitted to file
17 annually to increase their fees, subject to Delta Dental’s maximum allowable fees and the Inflation
18 Adjustment Percentage.¹² Now, rather than file their own schedules, Premier Dentists are bound
19 by Delta Dental’s standard schedules.¹³

20 73. The 2023 Amendments also result in reduced reimbursement fees for many PPO
21 Dentists. That is because the 2023 Amendments increased the fees associated with certain
22 procedures by only a negligible amount, while materially decreasing fees associated with other
23 procedures. In some instances, the reduction in reimbursement fees associated with a particular
24

25 _____
26 ¹² Delta Dental has historically imposed a “Inflation Adjustment Percentage” to limit the amount
of any requested reimbursement fee increase.

27 ¹³ “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 service is so significant that PPO Dentists have no choice but to cease providing the service –
2 even when it is specifically requested by a patient, and even if the patient is willing to pay out of
3 pocket for amounts above Delta Dental’s approved reimbursement fees but cannot do so due to
4 Delta Dental’s punitive prohibition on such payments.

5 74. The Dentist Members did not receive the news of the 2023 Amendments quietly.
6 As an initial matter, many of the notices received by Dentist Members misrepresented the nature
7 of the fee changes, as did the notice to CDA. Moreover, although the notice to Dentist Members
8 vaguely suggested that the 2023 Amendments were necessary to “more closely align” fees paid
9 to the Dentist Members with those “generally accepted as network levels in the industry,” this
10 superficial and vague statement was absurd on its face. Delta Dental’s tremendous market power
11 was well known, as was its billions of dollars in revenue and assets and its excess TNE, all of
12 which were indicated in publicly available documents. The notion that Delta Dental had to reduce
13 provider fees to be competitive, therefore, was demonstrably false. Moreover, Dentist Members
14 knew first-hand what it took to run a practice and serve patients, and thus knew that the proposed
15 fee adjustments would compromise both.

16 75. Between the time Dentist Members were notified of the 2023 Amendments by mail
17 in September 2022, and the time they became effective on January 1, 2023, Plaintiffs (including
18 CDA), as well as other Dentist Members, repeatedly reached out to Delta Dental to discuss the
19 purported rationale behind the 2023 Amendments and to determine whether any changes or
20 accommodations could be made given the harm the amendments were sure to cause the Dentist
21 Members. These inquiries and pleas fell on deaf ears. Delta Dental informed Dentist Members
22 that their only options were to accept the 2023 Amendments or “get out” of Delta Dental’s
23 network. When CDA asked Delta Dental to explain and justify the 2023 Amendments, and to
24 reconsider them, Delta Dental refused to provide any meaningful answers to CDA’s questions or
25 any meaningful explanations of the purpose of or need for the amendments. Nor would Delta
26 Dental disclose the data, information, or analyses purportedly relied upon in evaluating the 2023
27 Amendments and their impact on the Dentist Members.

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

11 77. At bottom, there can be no doubt that the 2023 Amendments, which cause
12 significant harm to the Dentist Members, will reduce rather than enhance dental coverage to the
13 public through contracts between Delta Dental and its Dentist Members – the exact opposite of
14 Delta Dental’s stated mission and justification for its tax-exempt status. Meanwhile, Delta
15 Dental’s own profits, net assets and market dominance continue to increase, as does the Individual
16 Defendants’ compensation, all at the expense of the Dentist Members and the patients they serve.

17 **Other Harmful Policies of Delta Dental**

18 78. Defendants’ improper conduct extends beyond unjustified and harmful
19 modifications to reimbursement fees and the fee determination process. Upon information and
20 belief, the Individual Defendants have approved and Delta Dental has enacted certain policies and
21 programs intended to accord preferential treatment to some Dentist Members above others –
22 depending on what is in Defendants’ own self-interest. For example, upon information and belief,
23 the Individual Defendants approved and Delta Dental entered into an agreement with Smile
24 Generation, a network of dentists operating throughout California,¹⁴ by which dentists affiliated
25 with Smile Generation receive preferential treatment over other PPO Dentists and Premier
26 Dentists. Under this agreement, patients covered by Delta Dental plans receive more favorable

27 _____
28 ¹⁴ Upon information and belief, Smile Generation dentists are part of Pacific Dental Services, a
privately owned organization that manages dental practices throughout California.

1 coverage if they visit dentists affiliated with Smile Generation rather than a non-Smile Generation
2 PPO or Premier Dentist. Thus, through this differential treatment, which Delta Dental has not
3 disclosed to the Dentist Members, but which Dentist Members learned of from patients and other
4 Smile Generation Dentists, Defendants are driving its patients towards Smile Generation dentists
5 over other Dentist Members, to whom the Defendants owe fiduciary duties and/or other
6 obligations.

7 79. 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
15 agreement with Delta Dental for the services you received. Moreover, Delta Dental
16 is engaging in this conduct without informing the Premier Dentists that patients are
intentionally being channeled away from them in order to serve Delta Dental's own
bottom line and its desire for market dominance.

17 80. Defendants' prioritization of their own self-interest over the interests of Dentist
18 Members or their patients is also reflected in a purported "Loyalty Program" created for the first
19 time by the 2023 Amendments. Pursuant to this recently enacted program, Premier Specialty
20 Dentists and Premier General Dentists who (as of May 15, 2022) only accepted Delta Dental plans
21 – i.e., they were not "in network" with any non-Delta Dental plans – were permitted to continue
22 with higher fees and avoid being subject to the fee decreased imposed by the 2023 Amendments.
23 In other words, the Dentist Members who were in network with Delta Dental only were given
24 preferential treatment over Dentist Members who were also in network with non-Delta Dental
25 plans. Defendants have not even attempted to explain how favoring dentists who are exclusively
26 in network with Delta Dental benefits its Dentist Members or their patients. This purported
27 "Loyalty" program is not intended to improve the availability of oral health care services to
28 California patients by Dentist Members, but instead is intended to punish any Dentist Member

1 who also provides dental services through any other dental benefits plan. This is particularly
2 unfair to Dentist Members who practice in areas where the demographics render it essentially
3 necessary for the dentist to accept other plans in addition to Delta Dental.

4 **Defendants' Conduct Breached Their Duties and Obligations to Dentist Members**

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

12 82. To discharge their duties, the Individual Defendants were required to, among other
13 things:

14 a. Ensure that any decision or action affecting the Dentist Members has been
15 reasonably investigated through a careful and deliberate process that considers relevant factors and
16 is based on accurate facts and valid information;

17 b. Ensure that any decision considers and reasonably balances the interests and
18 needs of relevant stakeholders including the Dentist Members;

19 c. Consider the impact of any decision on Dentist Members as well as Delta
20 Dental's overall mission as a non-profit with the stated corporate purpose of providing dental
21 benefit coverage to the public through contracts with these dentists;

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

25 e. Ensure that their actions are in the best interest of and do not unduly
26 penalize the Dentist Members, rather than in the Individual Defendants' self-interest;

27
28

1 f. With respect to the Board members, oversee the actions of management and
2 ensure that management has conducted a reasonable and thorough analysis of matters for Board
3 decision;

4 g. Avoid engaging in conduct that is in their own self-interest, including the
5 approval and receipt of unreasonable and excessive compensation and the acceptance of more
6 favorable fee arrangements than are available to others;

7 h. Ensure that the compensation of its officers is just and reasonable;

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

11 j. Refrain from unjustly enriching themselves at the expense or to the
12 detriment of the Dentist Members; and/or

13 k. Abide by its stated corporate purpose, organizational documents, and the
14 California Nonprofit Corporation Law.

15 83. Delta Dental itself has acknowledged that its directors owe these fiduciary duties.
16 For example, in a December 19, 2017 Press Release, Delta Dental stated “[a]s fiduciaries, the
17 directors . . . represent the collective interests of the company’s stakeholders.” This includes the
18 Dentist Members.

19 84. The Individual Defendants, as officers and directors of Delta Dental, are bound by
20 the governing documents, including the Bylaws, and are obligated to ensure that DDC operates
21 consistently with the Bylaws. The Bylaws describe the duties undertaken by the Board and the
22 active oversight role the Board plays in the Company’s business affairs. The Bylaws, and the
23 duties imposed thereby, are also explicitly incorporated into the PPA between each Premier
24 Specialty Dentist, Premier General Dentist, or PPO Dentist and Delta Dental, and thus are binding
25 on Delta Dental.

26 85. The Bylaws expressly prohibit the Individual Director Defendants from receiving
27 any salary for their services:
28

1 89. The Individual Defendants owe the Dentist Members fiduciary duties, including
2 the highest obligations of good faith, fair dealing, due care, and loyalty. In particular, the
3 Individual Defendants owe the Dentist Members a duty of due care to ensure that the Individual
4 Defendants' actions do not unduly harm the Dentist Members, that their actions are just and
5 reasonable as to Dentist Members, and that these actions enhance rather than reduce the ability of
6 these Dentist Members to provide the services necessary to improve dental benefit coverage to
7 patients with a Delta Dental plan consistent with Delta Dental's stated mission. Among other
8 things, as fiduciaries, the Individual Defendants are required to make reasonably certain that any
9 decision or action affecting the Dentist Members has been reasonably investigated, that all
10 pertinent facts have been considered, and that the decision is based on sound assessments, accurate
11 facts, and valid, reliable information. The Individual Defendants are also required to abide by the
12 Company's organizational documents, the California Nonprofit Corporation Law, and applicable
13 common law.

14 90. In enacting the 2023 Amendments, including the reimbursement fee modifications
15 and other contract changes that harm the Dentist Members, the Individual Defendants breached
16 their fiduciary duties to the Dentist Members. As alleged above, the Individual Defendants,
17 motivated by their own self-interest and acting contrary to the mission of Delta Dental, failed to
18 follow a reasonable and appropriate process to determine whether the 2023 Amendments were in
19 the best interest of and did not unduly harm the Dentist Members, failed to perform or oversee
20 the investigation that a reasonably prudent fiduciary would require into the need for the 2023
21 Amendments or the effect of the 2023 Amendments on Dentist Members and their ability to
22 provide services to patients covered by Delta Dental plans. Instead, Defendants conducted a
23 rushed and perfunctory process that ignored pertinent information and failed to consider key
24 questions and information that a reasonably prudent fiduciary in their position would require.
25 This failure constitutes a breach of the duty of care owed by the Individual Defendants to the
26 Dentist Members. They relied on little to no information in adopting the 2023 Amendments.

27 91. As a direct and proximate result of the Individual Defendants' breaches of their
28 duty of care, the Dentist Members (including the Individual Plaintiffs and others who are CDA

1 members) have suffered economic damage including in the form of inadequate and improper fee
2 reimbursements. Moreover, unless Delta Dental is enjoined from continuing to enforce the 2023
3 Amendments, these Dentist Members will suffer irreparable harm, such as being compelled to
4 provide less-comprehensive services to covered patients, losing patients, suffering from a decline
5 in reputation, and/or shuttering their practices entirely.

6 **SECOND CAUSE OF ACTION**

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

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

10 93. The Individual Defendants owe the Dentist Members fiduciary duties including a
11 duty of loyalty to ensure that their actions are in the best interest of the Company and its Dentist
12 Members, rather than in the Individual Defendants' self-interest. Among other things, the duty
13 of loyalty obligates the Individual Defendants to refrain from engaging in conduct that is
14 motivated by their own self-interest, that enriches themselves at the expense of the Dentist
15 Members, including enacting amendments, policies and programs that personally enrich the
16 Individual Defendants but that cause substantial economic and other harm to the Dentist
17 Members, and that compromise the stated mission of the non-profit organization, which relies on
18 the establishment of reasonable agreements between Delta Dental and its Dentist Members.

19 94. In imposing the 2023 Amendments, as well as other plans, policies and programs,
20 the Individual Defendants have acted (and continue to act) in their own self-interest, placating
21 management and funding their excessive and improper compensation through contract
22 amendments and reimbursement fee modifications that unfairly and unreasonably harm the
23 Dentist Members to whom the Individual Defendants owe fiduciary duties. Decreased fee
24 reimbursements have allowed the Individual Defendants to act in their own self-interest by
25 shifting compensation away from the Dentist Members so that the Individual Defendants can line
26 their own pockets through unjust and unreasonable salaries and other compensation.

27 95. In addition, upon information and belief, at least some of the Individual Defendants
28 engage in side-deals that exempt them or providers with whom they are affiliated from

1 unfavorable fee reductions and instead allow them to negotiate their own fee arrangements. The
2 Individual Defendants' conduct constitutes a breach of the duty of loyalty owed by them to the
3 Dentist Members, including the Individual Plaintiffs and other Dentist Members who are
4 members of CDA.

5 96. The Individual Defendants further breached their duties of good faith and loyalty
6 by consciously disregarding relevant information regarding the 2023 Amendments, by failing to
7 conduct a good faith investigation as to the need for and impact of the 2023 Amendments, and by
8 ignoring the unfair and unjust nature of the 2023 Amendments as concerns the Dentist Members
9 to whom the Individual Defendants owe duties. As alleged in detail above, motivated by their
10 own self-interest, including their desire to maintain and continue to reap the financial benefits of
11 their Board positions and to please management, the Individual Defendants failed to investigate
12 and consider the potential impacts of and the purported need for the 2023 Amendments and
13 willfully ignored relevant information, including information readily accessible to them through
14 Dentist Members. In doing so, the Individual Defendants acted in bad faith and in knowing
15 disregard of their duties, in violation of their duties of good faith and loyalty.

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

24 **THIRD CAUSE OF ACTION**

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

26 98. Plaintiffs reallege and incorporate herein by reference each and every allegation
27 contained above as if fully set forth herein.
28

1 99. The Dentist Members entered into written contracts, referred to herein as the PPA,
2 with Delta Dental to become participating dentists in Delta Dental’s Premier or PPO network.
3 The PPA contains an implied covenant of good faith and fair dealing under California and any
4 other applicable law. Delta Dental also agreed to the terms of the Settlement Agreement, which
5 prohibits Delta Dental from violating statutory or common law – including the implied covenant
6 of good faith and fair dealing – when setting reimbursement fees. The Settlement Agreement
7 remains valid and binding upon Delta Dental in addition to the PPAs, and cannot be negotiated
8 away through unilateral amendments to the PPAs.

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

12 101. All conditions required for Delta Dental’s performance of the PPA and Settlement
13 Agreement have either occurred or been excused.

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

26 103. As a direct and proximate result of Delta Dental’s violation of the implied covenant
27 of good faith and fair dealing, the Dentist Members who are CDA members, including the
28 Individual Plaintiffs, have suffered economic damage in the form of improper and inadequate fee

1 reimbursements. Moreover, unless Delta Dental is enjoined from continuing to enforce the 2023
2 Amendments, these dentists will suffer irreparable harm, such as being compelled to provide less
3 comprehensive services to patients, losing patients, suffering from a decline in reputation, and/or
4 shuttering their practices entirely.

5 **FOURTH CAUSE OF ACTION**

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

7 104. Plaintiffs re-allege and incorporate herein by reference each and every allegation
8 of contained above as if fully set forth herein.

9 105. An actual dispute and controversy has arisen between the Dentist Members who
10 are CDA members and Defendants concerning their respective rights, duties, and obligations
11 under the PPA. Plaintiffs contend that the terms of the PPA, the Implied Covenant of Good Faith
12 and Fair Dealing inherent in the PPA, and the duties of loyalty and due care owed by Defendants
13 to the Dentist Members and the duty of Defendants to provide dental benefit coverage through
14 contracts with independent professional service providers preclude Defendants from enforcing
15 the 2023 Amendments, including the modification to reimbursement fees memorialized in those
16 amendments.

17 106. A judicial declaration is necessary and appropriate at this time under the
18 circumstances in order that Plaintiffs may ascertain the rights and duties of the Dentist Members
19 and Defendants under the PPA and California statutory and common law. Absent such a
20 declaration, the Dentist Members who are members of CDA, including the Individual Plaintiffs,
21 will suffer substantial and irreparable harm due to the implementation of the 2023 Amendments.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for relief as follows:

- 24 1. For an injunction preventing Delta Dental from enforcing the 2023 Amendments;
25 2. For a declaration determining that the conduct of the Individual Defendants in
26 enacting and enforcing the 2023 Amendments violates the duties of loyalty and due care owed by
27 the Individual Defendants to Delta Dental's Premier Specialty Dentists, Premier General Dentists,
28

1 and PPO Dentists, as well as Defendants' duty to provide dental benefit coverage through
2 contracts with independent service providers, and therefore are unlawful;

3 3. For a declaration determining that the 2023 Amendments proposed by Delta
4 Dental that are the subject of this action constitute a violation of the covenant of good faith and
5 fair dealing under the PPA;

6 4. For damages sustained by the Individual Plaintiffs as a result of the Individual
7 Defendants' breaches of fiduciary duty and Delta Dental's breach of the implied duty of good
8 faith and fair dealing;

9 5. For such other and further relief as the Court may deem just and proper.

10 **DEMAND FOR JURY TRIAL**

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

12
13 Dated: November 10, 2023

14 WILSON SONSINI GOODRICH & ROSATI
15 Professional Corporation

16
17 By: *s/ David J. Berger*

18 David J. Berger
19 Ana Alicia Sontag, State Bar No. 340602

20 Michael S. Sommer (admitted *pro hac vice*)
21 Jessica L. Margolis (admitted *pro hac vice*)
22 Benjamin M. Potts (admitted *pro hac vice*)
23 Sara Bricker (admitted *pro hac vice*)

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25 California Dental Association, Spencer Anderson,
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27 Ray Klein, D.D.S., Tom Massarat, D.D.S., M.S.,
28 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”), 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 Second Amended Complaint and know its contents. The matters stated in the foregoing Verified Second 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 November 08, 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 -- Director for 12 years

| 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 |
| 2020 | Director | 5.0 | \$108,000 | \$450 | \$1,269,424 |
| 2021 | Director | 5.0 | \$109,000 | \$454.17 | \$1,378,424 |

Defendant Roy A. Gonella – Director for 10 years

| 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 |
| 2020 | First Vice Chair | 5.0 | \$136,000 | \$566.67 | \$1,033,278 |
| 2021 | First Vice Chair | 5.0 | \$144,168 | \$600.70 | \$1,177,446 |

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 2021. Because Form 990s for 2022 are not publicly available and Defendants have refused to produce recent compensation information, Defendant Jay Lamb, who joined the Board in 2022, is omitted from this chart.

1 **Defendant Glen F. Bergert – Director for 25 years**

| 2 | Year | Position | Avg. Hrs/Week | Compensation | \$/Hour | Total |
|---|-------------|----------------------|----------------------|---------------------|----------------|--------------------|
| 3 | 2015 | Director | 2.0 | \$198,801 | \$1,912 | \$198,801 |
| 4 | 2016 | Director | 2.0 | \$175,592 | \$1,688 | \$374,393 |
| 5 | 2017 | Second Vice Chair | 3.0 | \$176,320 | \$1,130 | \$550,713 |
| 6 | 2018 | Second Vice Chair | 5.0 | \$244,248 | \$939 | \$794,961 |
| 7 | 2019 | Second Vice Chair | 5.0 | \$268,000 | \$1,031 | \$1,062,961 |
| 8 | 2020 | Second Vice Chair | 5.0/2.0 | \$156,000 | \$650 | \$1,218,961 |
| 9 | 2021 | Second Vice Chair | 5.0/2.0 | \$156,200 | \$650.83 | \$1,375,161 |

13
14 **Defendant Steven F. McCann – Director for 16 years**

| 15 | Year | Position | Avg. Hrs/Week | Compensation | \$/Hour | Total |
|----|-------------|-----------------|----------------------|---------------------|----------------|--------------|
| 16 | 2015 | Director | 2.0 | \$147,287 | \$1,416 | \$147,287 |
| 17 | 2016 | Director | 2.0 | \$120,027 | \$1,154 | \$267,314 |
| 18 | 2017 | Director | 3.0 | \$125,287 | \$803 | \$392,601 |
| 19 | 2018 | Director | 5.0 | \$226,163 | \$870 | \$618,764 |
| 20 | 2019 | Director | 5.0 | \$289,655 | \$1,114 | \$908,419 |
| 21 | 2020 | Director | 5.0 | \$148,200 | \$617.5 | \$1,297,295 |
| 22 | 2021 | Director | 5.0 | \$150,168 | \$625.7 | \$1,447,463 |

23
24 **Defendant Heidi Yodowitz – Director for 6 years**

| 25 | Year | Position | Avg. Hrs/Week | Compensation | \$/Hour | Total |
|----|-------------|-----------------|----------------------|---------------------|----------------|--------------|
| 26 | 2017 | Director | 3.0 | \$82,287 | \$527 | \$82,287 |
| 27 | 2018 | Director | 4.0 | \$119,847 | \$576 | \$202,134 |
| 28 | 2019 | Director | 5.0 | \$165,200 | \$635 | \$367,334 |

| | | | | | |
|------|-------|-----|-----------|----------|------------------|
| 2020 | Chair | 5.0 | \$211,196 | \$879.98 | \$578,530 |
| 2021 | Chair | 5.0 | \$212,043 | \$883.51 | \$790,573 |

Defendant Terry O'Toole – Director for 15 years

| 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 |
| 2020 | Director | 5.0 | \$147,200 | \$613.33 | \$1,297,295 |
| 2021 | Director | 5.0 | \$156,200 | \$650.83 | \$1,453,495 |

Defendant Andrew J. Reid – Director for 8 years

| 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 |
| 2020 | Director | 5.0 | \$120,000 | \$500 | \$1,135,661 |
| 2021 | Director | 5.0 | \$121,968 | \$508.20 | \$1,257,629 |

Defendant Ian R. Law – Director for 3 years

| Year | Position | Avg. Hrs/Week | Compensation | \$/Hour | Total |
|------|----------|---------------|--------------|----------|----------|
| 2021 | Director | 5.0 | \$93,000 | \$387.50 | \$93,000 |

1 **Defendant Michael J. Castro**

| 2 Year | Position | Salary | Bonus & Incentive | Other Comp. | Total By Year |
|---------------|-------------------------------|---------------|------------------------------|--------------------|----------------------|
| 3 2015 | EVP/CFO | \$566,496 | \$854,926 | \$27,370 | \$1,448,792 |
| 4 2016 | EVP/CFO | \$566,496 | \$2,074,616 | \$70,852 | \$2,711,964 |
| 5 2017 | EVP/CFO | \$566,496 | \$1,289,511 | \$76,554 | \$1,932,561 |
| 6 2018 | President, CEO; Former CFO | \$663,860 | \$1,462,000 | \$80,414 | \$2,206,274 |
| 7 2019 | President, CEO | \$1,004,492 | \$2,126,814 | \$45,484 | \$3,176,790 |
| 8 2020 | President, CEO | \$1,028,077 | \$3,158,698 | \$5,336,558 | \$9,523,333 |
| 9 2021 | President, CEO | \$990,000 | \$4,486,038 | \$53,528 | \$5,529,566 |

10 **Defendant Alicia F. Weber**

| 11 Year | Position | Salary | Bonus & Incentive | Other Comp. | Total By Year |
|----------------|-----------------|---------------|------------------------------|--------------------|----------------------|
| 12 2015 | SVP | \$383,200 | \$447,982 | \$39,061 | \$870,243 |
| 13 2016 | SVP | \$399,741 | \$1,132,245 | \$41,370 | \$1,573,356 |
| 14 2017 | SVP/CFO | \$400,000 | \$720,950 | \$41,747 | \$1,162,697 |
| 15 2018 | EVP/CFO | \$421,692 | \$850,000 | \$49,962 | \$1,321,654 |
| 16 2019 | EVP/CFO | \$540,515 | \$1,002,420 | \$59,761 | \$1,602,696 |
| 17 2020 | EVP/CFO | \$620,3554 | \$1,374,384 | \$72,724 | \$2,067,462 |
| 18 2021 | EVP/CFO | \$698,462 | \$1,464,997 | \$54,195 | \$2,217,654 |

19 **Defendant Sarah M. Chavarria**

| 20 Year | Position | Salary | Bonus & Incentive | Other Comp. | Total By Year |
|----------------|-----------------|---------------|------------------------------|--------------------|----------------------|
| 21 2018 | EVP/CPO | \$458,750 | \$276,563 | \$18,716 | \$754,029 |
| 22 2019 | EVP/CPO | \$519,538 | \$799,042 | \$14,383 | \$1,332,963 |
| 23 2020 | EVP/CPO | \$579,692 | \$1,221,366 | \$16,656 | \$1,817,714 |
| 24 2021 | EVP/CPO | \$628,923 | \$1,405,121 | \$26,652 | \$2,061,696 |