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11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **CITY AND COUNTY OF SAN FRANCISCO**

13 AHMED MONEIM, D.D.S.; CHARINA)
14 BAILON, D.D.S.; JOYCE TSE, D.D.S.)
15 individually and on behalf of all others similarly)
16 situated,)

17 Plaintiffs,)

18 vs.)

19 DELTA DENTAL OF CALIFORNIA, a)
20 California Corporation)

21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

Case No.: CGC-18-565581

CLASS ACTION

SECOND AMENDED COMPLAINT FOR:
1. Breach of Covenant of Good Faith and Fair Dealing;
2. B & P Section 17,200
3. Declaratory Relief

29 Plaintiffs Ahmed Moneim, D.D.S., Charina Bailon, D.D.S., and Joyce Tse, D.D.S.
30 (collectively "Individual Plaintiffs"), individually and on behalf of all others similarly situated,
31 hereby complain against Delta Dental of California ("Delta" or "Delta Dental") and allege as
32 follows:

PARTIES

33 1. Ahmen Moneim, D.D.S., is a licensed dentist who practices dentistry in the State of
34 California. Dr. Moneim has entered into a written Participating dentist Agreement with Delta
35 Dental for providing dental services to patients covered by Delta dental insurance.

1 2. Charina Bailon, D.D.S., is a licensed dentist who practices dentistry in the State of
2 California. Dr. Bailon has entered into a written Participating dentist Agreement with Delta Dental
3 for providing dental services to patients covered by Delta dental insurance.

4 3. Joyce Tse, D.D.S., is a licensed dentist who practices dentistry in the State of California. Dr.
5 Tse has entered into a written Participating dentist Agreement with Delta Dental for many years, for
6 providing dental services to patients covered by Delta dental insurance.

7 4. Delta Dental is a California corporation with a principal place of business located in San
8 Francisco, California. Delta Dental is the largest provider of dental plans in the State of California
9 and dominates the market for dental plans provided to companies in California. Delta Dental
10 provides dental services through networks of dentists in California, many of whom contract solely
11 with Delta Dental.

12 5. The true names, capacities, or involvement, whether individual, corporate, governmental, or
13 associate of the defendants named herein as Doe are unknown to Plaintiff who therefore sues said
14 defendants by such fictitious names. Plaintiff prays leave to amend this complaint to show their true
15 names and capacities when the same have been finally determined.

16 6. Plaintiff is informed and believes, and upon such information and belief alleges, that each of
17 the defendants designated herein as Doe is negligently or otherwise legally responsible in some
18 manner of the events and happenings herein referred to, and negligently or otherwise caused injury
19 and damages legally thereby to Plaintiff and the Class, defined below, as is hereafter alleged.

20 7. At all times herein mentioned, each and every of the defendants herein was the agent,
21 servant, partner, joint venture, employee, and/or franchisee of each of the other defendants, and
22 each was at all times acting within the course and scope of such agency, service, employment joint
23 venture, partnership, and/or franchise.

24 **JURISDICTION AND VENUE**

25 8. This class action is brought pursuant to California Code of Civil Procedure section 382. The
26 damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior
27 Court and will be established according to proof at trial.

28 9. This Court has jurisdiction over this action pursuant to the California Constitution, Article
VI, section 10, which grants the Superior Court "original jurisdiction in all causes except those

1 given by statute to other courts.” The statutes under which this action is brought do not specify any
2 other basis for jurisdiction.

3 10. This Court has jurisdiction over Defendant because, on information and belief, Defendant
4 maintains its principal place of business in this jurisdiction, Defendant has sufficient minimum
5 contacts in California, or otherwise intentionally avails itself of the California market so as to
6 render the exercise of jurisdiction over it by the California courts consistent with traditional notions
7 of fair play and substantial justice.

8 11. Venue is proper in this Court because, upon information and belief, Defendant transacts
9 business in this County and the acts and omissions alleged herein took place in this County.

10 **FACTUAL ALLEGATIONS**

11 12. This action arises out of Delta Dental’s conduct in performing audits on provider dentists
12 and submitting requests for reimbursement to participating dentists after the statutorily allowed
13 time permitted by the Keene-Knox Act and other applicable regulations (“time barred claims”).
14 Delta’s attempts to collect on time barred claims breaches its contractual obligations to participating
15 dentists to act in good faith and fair dealing owed to all participating dentists Delta Dental has
16 contracted with, and such conduct also violates California’s Unfair Competition Law, Cal. Bus. &
17 Prof. Code §§ 17200, *et seq.* (the “UCL”).

18 13. Pursuant to Delta Dental’s terms of service, Delta Dental and participating dentists are
19 governed by the regulations set forth in Title 28 California Code of Regulations Section 1340, *et*
20 *seq.* also known as the Knox-Keene Act. The Knox-Keene Act governs and regulates health care
21 service plans, including health maintenance organizations (HMOs) with the State of California.

22 14. Specifically, section 1300.71(b)(5) of the Knox-Keene Act requires that:

23 A plan or a plan’s capitated provider shall not request reimbursement
24 for the overpayment of a claim, including requests made pursuant to
25 Health and Safety Code Section 1371.1, unless the plan or the plan’s
26 capitated provider sends a written request for reimbursement to the
27 provider within 365 days of the Date of Payment on the over paid
28 claim. The written notice shall include the information specified in
section (d)(3). The 365-day time limit shall not apply if the

1 overpayment was cause in whole or in part by fraud or
2 misrepresentation on the part of the provider.

3 Where section 1300.71(d)(3) provides the format and content requirement for reimbursement
4 requests made by Delta Dental for a paid claim.

5 15. Plaintiffs and members of the class all entered into written provider agreements with Delta
6 Dental for the payment of dental claims after submission of such claims and approval by Delta
7 Dental. The written agreements between Plaintiffs, members of the Class and Delta Dental all
8 contained identical or substantially similar clauses regarding the potential for audits performed by
9 Delta of previously approved dental claims submitted by participating dentists. Specifically, Delta
10 Dental's participating dentist rules state that a participating dentist is required to keep accurate and
11 complete billing, financial, and treatment records of all eligible patients for a minimum of five (5)
12 and maintain the records at the dental office of at least three (3) years. Further, the agreements
13 require that dentists provide said information to Delta as may be necessary for compliance with
14 provisions of the Knox-Keene Health Care Service Plan of 1975. The provider agreements further
15 give Delta the right to inspect, make copies of the books records and papers of a participating
16 dentist, relating to the fees the dentist charged for the dental services provided, the cost to the
17 patient, and the payments received by the dentist.

18 16. Despite the provisions included in the provider agreements with Delta and the relevant
19 regulations of the Knox-Keene Act barring requests for reimbursement more than 365 days or one
20 (1) year after payment has been made, Delta Dental has repeatedly and routinely performed audits
21 on participating dentists which have resulted in demands by Delta Dental for reimbursement of
22 overpaid dental claims that were submitted by the dentist and paid by Delta Dental more than 365
23 days prior to the demand by Delta Dental. Such a practice in demanding payment on time-barred,
24 previously approved and paid dental claims has perpetuated improperly and incorrectly calculated
25 reimbursement requests from Delta Dental to providing dentists in California.

26 17. Delta Dental consistently fails to inform participating dentists subject to its audits and
27 requests for reimbursement that claims previously submitted by the dentist and approved and paid
28 by Delta Dental more than 365 days prior to the request for repayment are time barred as provided
by Section 1300.71(b)(5) of the Knox-Keene Act. Delta Dental consistently fails to provide a clear

1 explanation to participating dentists subject to its audits and requests for reimbursement of how,
2 why, or that the participating dentist engaged in fraud or misrepresentation for any claims
3 previously submitted by the dentists and approved and paid by Delta Dental.

4 18. Individual Plaintiffs have informed Delta Dental of their position that Delta Dental's
5 requests and demands for reimbursement of claims previously submitted by the dentist and
6 approved and paid by Delta Dental more than 365 days prior to the request for repayment are time
7 barred and Delta Dental has refused, and continues to refuse to cease demands for payment of such
8 time barred claims from providing dentists. Furthermore, Delta Dental has refused to provide a
9 clear, consistent and truthful explanation as to why section 1300.71(b)(5) should not and does not
10 apply to the requests for reimbursement made to Plaintiffs and members of the Class of claims
11 previously submitted by the dentist and approved and paid by Delta Dental more than 365 days
12 prior to the request for repayment by Delta Dental.

13 19. Delta Dental's refusal to abide by the requirements of the Knox-Keene Act barring
14 reimbursement of paid dental claims that are more than 365 days old at the time of request for
15 reimbursement, has resulted in wrongful, improper and inaccurately calculated reimbursement
16 requests to Plaintiffs and members of the Class.

17 20. Furthermore, when a participating dentist has refused to reimburse Delta Dental when it
18 demands payment for time barred claims, Delta Dental has threatened to terminate the dentist's
19 provider agreement or refuse to renew the provider agreement until such time barred refund claims
20 are paid.

21 21. Delta Dental continues this wrongful, improper and unauthorized practice today, resulting in
22 impermissible limitations and interferences with dentist/patient relationships. Further, the manner in
23 which Delta Dental has demanded and/or accepted payment for reimbursement claims made to
24 dentists unaware of the provisions of section 1300.71 of the Knox-Keene Act is wrongful, improper
25 and has caused substantial financial damage to Plaintiffs and members of the class.

26 22. The refusal of Delta Dental to act in accordance with 28 C.C.R. §1300.71 of the Knox-
27 Keene Act, which is substantially the same for all participating dentist breaches Delta Dental's duty
28 of good faith and fair dealing and violates the UCL. This ongoing breach of duty is substantially the
same for all dentists who are providers under a written agreement with Delta Dental.

1 23. Furthermore, the manner in which Delta Dental has wrongfully, improperly and inaccurately
2 requested reimbursement to Plaintiffs and members of the Class for claims previously submitted
3 and paid for by Delta Dental, has not been made in accordance with a good faith and reasonable
4 application of Delta Dental's contractual duties and such conduct frustrates and denies Plaintiffs
5 and members of the Class the benefits of being a Delta Dental Provider. Providing dentists have
6 suffered, continue to suffer and/or will imminently suffer substantial financial damage as a direct
7 and proximate result of the Delta Dental's breaches of the implied covenant of good faith and fair
8 dealing and Delta Dental's violations of the UCL, and the reasons for and basis for determining this
9 damage is substantially identical for all dentists who have agreed to provider agreements with Delta
10 Dental.

11 24. Plaintiffs are informed and believe that in these requests for reimbursement, Delta Dental
12 engaged in illegal and misleading statements to the dentists in order to conceal the true nature of the
13 demands by Delta Dental of for time barred claims. Plaintiffs are informed and believe that Delta
14 Dental made such misleading statements to conceal the fact that the demands were in fact time-
15 barred by the Knox-Keene Act.

16 **CLASS ACTION ALLEGATIONS**

17 25. The class is comprised of, and defined as:

18 All California participating dentists, from four years prior to the date of filing of this
19 Complaint up to the time the class is certified, who had claims submitted, approved and paid
20 by Delta Dental more than 365 days before Delta Dental sent an initial written request or
21 demand for reimbursement of alleged overpayment of such claims.

22 26. This action is brought and may be properly maintained as a class action pursuant to the
23 provisions of California Code of Civil Procedure Section 382. Plaintiffs bring this action on behalf
24 of themselves and all member of the class as defined in the paragraph 26.

25 27. Plaintiffs are informed and believe that there are approximately 500 dentists who are
26 members of the class. The members of the class are ascertainable and are so numerous, that joinder
27 of all class members in this action is impracticable. Moreover, the costs of this litigation are so high
28 that individual members of the class cannot economically bring the claims asserted here on an
individual basis.

1 28. There is a well-defined community of interest among the members of the proposed class.
2 The factual bases of Delta Dental's misconduct are common to all members of the class and
3 represent a common practice of wrongful conduct resulting in damages to all members of the class.
4 As alleged above, Delta Dental's conduct that breaches its duty of good faith and fair dealing is
5 essentially identical as to all members of the class. Every dentist who is a member of the class has
6 the same basic legitimate expectation that Delta Dental would honor the basic obligations implied
7 their written agreements with its participating dentists, and would refrain from imposing artificial
8 limits on requests for reimbursement that were not authorized by the written agreement or by the
9 Knox-Keene Act. Further, the financial injury and impact of Delta Dental's conduct is substantially
10 the same for all dentists who are members of the class.

11 29. The Individual Plaintiffs are representative of the proposed class. They have operated under
12 the same or substantially similar written agreements with Delta Dental, had the same legitimate
13 expectations, suffered from the same breaches of the covenant of good faith and fair dealing, and
14 violations of the UCL and suffered the same common damages and financial injuries from the past
15 and ongoing threats for future injury from Delta Dental's conduct. The Individual Plaintiffs, like all
16 other class members of the class, have or will suffer the same irreparable harm and damages to their
17 practices if Delta Dental's audit and time barred claim collection practices continue, and are
18 permitted. The Individual Plaintiffs, like all other members of the class who have received audits
19 and requests or demands for reimbursement from Delta Dental for time barred claims, have suffered
20 and continue to suffer the same financial harm from Delta Dental's wrongful audit and collection
21 practices. The Individual Plaintiffs are typical members of the class.

22 30. The provisions of the Knox-Keene Act as it applies to the written agreements between Delta
23 Dental and the members of the Class and Delta Dental's conduct challenged in this case are
24 substantially the same for all class members. The dental claim audits and requests or demands for
25 reimbursement occurred more than a year after the claims were initially submitted by the dentist for
26 approval and payment by Delta Dental. Such claims were reviewed, approved and paid by Delta
27 over one year prior to request or demand for reimbursement by Delta Dental. There are numerous
28 questions of law and fact common to Individual Plaintiffs and the members of the class, and those

1 questions predominate over questions that may affect individual members of the class. The
2 common questions of fact include the following:

- 3 a. Did Delta Dental make claims or demands for reimbursement to dentists for
4 claims that were initially submitted by the dentist for approval and payment
5 to Delta Dental and such claims were reviewed, approved and paid by Delta
6 over one year prior to request or demand for repayment by Delta Dental?
- 7 b. Did Delta Dental intend to mislead dentists that its requests or demands for
8 reimbursement that were over one year prior to the submission of the claim
9 by the dentist, which was reviewed and approved and paid by Delta Dental
10 appropriate and legal in light of the Knox-Keene Act regulations?
- 11 c. Did Delta Dental continue to receive reimbursement payments from provider
12 dentists who engaged in the non-judicial negotiation procedure governed by
13 the Knox-Keene Act which were time barred?
- 14 d. Did Delta Dental routinely audit and request or demand reimbursement from
15 provider dentists on claims that were over one year prior to the submission of
16 the claim by the dentists, which was reviewed and approved and paid by
17 Delta Dental?
- 18 e. Did Delta Dental continue to request reimbursement for claims that were
19 over one year prior to the submission of the claim by the dentist, which was
20 reviewed and approved and paid by Delta Dental despite knowledge of the
21 provisions of the Knox-Keene Act that prohibits requests for reimbursement
22 over a year after the date of payment?
- 23 f. Did Delta Dental take action which caused financial harm or injury to
24 provider dentists by refusing to renew their Delta membership or take other
25 action against its provider dentists such as cancellation of their Delta Dental
26 membership or placing them on focused review for failing to pay Delta
27 Dental's requests or demands for reimbursement on time barred claims?

28 31. Common questions of law include the following:

- 1 a. Was Delta Dental's conduct in requesting reimbursement for claims that
2 were submitted by the participating dentist, reviewed and paid by Delta
3 Dental over one year prior to the request or demand by Delta Dental for
4 reimbursement a breach of the covenant of good faith and fair dealing?
5 b. Was Delta Dental's conduct in requesting reimbursement for claims that
6 were submitted by the participating dentist, reviewed and paid by Delta
7 Dental over one year prior to the request or demand by Delta Dental for
8 reimbursement a breach of the UCL?
9 c. Was Delta Dental's statements to dentists that the requests for reimbursement
10 were valid and enforceable despite the fact that such claims were submitted
11 by the participating dentist, reviewed and paid by Delta Dental over one year
12 prior to the request or demand by Delta Dental for reimbursement misleading
13 and/or the covenant of good faith and fair dealing, and/or a violation of the
14 UCL?
15 d. Were the audits performed by Delta Dental requesting reimbursement
16 payments for claims that were submitted by the participating dentist,
17 reviewed and paid by Delta Dental over one year prior to the request or
18 demand by Delta Dental for reimbursement a violation of the covenant of
19 good faith and fair dealing, and/or a violation of the UCL?
20 e. Did Delta Dental improperly take disciplinary action against Plaintiffs and
21 Class members by non renewing their Delta Membership, or terminating
22 their Delta Membership for the refusal to refund or reimburse time barred
23 claims to Delta Dental.

24 32. Individual Plaintiffs' claims are typical of the claims of the other class members of the class.
25 Individual Plaintiffs and all members of the class have sustained economic damage arising out of
26 the common course of conduct as alleged herein and are likely to sustain irreparable harm if the
27 course of conduct herein continues.

28 33. Plaintiffs will fairly and adequately represent and protect the interests of the class. They
have retained counsel with experience in prosecuting this type of action. The Plaintiffs and their

1 counsel are committed to vigorously prosecuting this action on behalf of the class and have the
2 financial resources necessary to do so. Neither Plaintiffs nor their counsel have any interest adverse
3 to the class.

4 34. A class action is superior to other available methods for the fair and efficient adjudication of
5 this controversy since individual joinder of all members of the class is impracticable. Further, as the
6 damages suffered by each individual member of the class may be relatively small, the expense and
7 burden of individual litigation would make it difficult or impossible for individual members of the
8 class to redress the wrongs done to them. The cost to the court system of such individual
9 adjudication would be substantial. Individual litigation would also present the potential for
10 inconsistent or contradictory judgments and would magnify the delay and expense to all parties and
11 the court system in multiple trials of identical factual issues. By contrast, the conduct of this action
12 as a class action presents fewer management difficulties, conserves the resources of the parties and
13 the court system and protects the rights of each class member.

14 **FIRST CAUSE OF ACTION**

15 **(Breach of Covenant of Good Faith and Fair Dealing)**

16 35. Plaintiffs re-allege and incorporate herein by reference each and every allegation of
17 Paragraphs 1 through 34 above as though fully set forth herein.

18 36. Class members entered into written agreements with Delta Dental to become participating
19 dentists in Delta Dental's provider network. The written agreements entered into by the parties
20 contain an implied covenant of good faith and fair dealing under California and any other
21 applicable law.

22 37. Pursuant to the parties' written agreements, Class members were subjected to charging
23 patients who were covered by Delta Dental insurance fees that were controlled by and approved by
24 Delta Dental. Delta Dental controlled the fees and profits generated by provider dentists in order to
25 control Delta Dental expenses and hence enhance profits for Delta Dental. Provider dentists such as
26 the Class members benefited from the relationship by generating successful dental practices
27 founded upon Delta Dental patients. Delta Dental reserved the right to audit the books and records
28 of provider dentists. Through the audit process, Delta Dental has demanded payment on claims that
were previously presented by participating dentists to Delta Dental for approval, such claims were

1 approved by Delta Dental and then after performing its audit, Delta Dental has improperly and
2 illegally demanded reimbursement on claims that were approved and paid over one year prior.
3 Delta Dental's conduct amounts to a "demonstrable and unjust payment pattern" as set forth in 28
4 C.C.R. §1300.71(a)(8)(D) by failing to request reimbursement of an overpayment of a claim
5 consistent with the provisions of 28 C.C.R. §1300.71(b)(5). Delta Dental has then undertaken
6 action to threaten membership cancellation or non renewal and has in fact cancelled or non renewed
7 participating dentist membership in Delta Dental when the participating dentist refused to pay the
8 reimbursement demand for time barred claims. This action by Delta Dental has breached the
9 covenant of good faith and fair dealing by denying such provider dentists the benefits of the written
10 agreements with Delta Dental that such provider dentists had earned and accrued over the years of a
11 steady and reliable patient base by subjecting themselves to the fee and reimbursement fixing and
12 price controls implemented by Delta Dental.

13 38. Class members performed all or substantially all of their signification obligations under the
14 written agreements with Delta Dental, or were excused from such performance because of Delta
15 Dental's non-performance, material breach or waiver.

16 39. Delta Dental, through the wrongful conduct alleged above, violated the reasonable
17 commercial expectations of the Class that Delta Dental would in good faith honor the terms of the
18 parties' written agreements and act in a manner consistent with its agreed upon promises in the
19 written agreements. Delta Dental's conduct, including but not limited to the continued improper
20 audit and claim refund practice of demanding reimbursement of prior approved claims which are
21 time barred unlawfully and unfairly interferes with Class members' rights to receive the full
22 benefits of the written agreements entered into with Delta.

23 40. There is no adequate basis or justification for Delta Dental's conduct as alleged above. To
24 the contrary, Delta Dental's conduct is designed and intended to avoid its contractual obligations, to
25 impose unjustified reimbursement requests and to improperly deter dentists from challenging the
26 fee reimbursement requests all of which would preserve Delta Dental's profits at the expense of
27 both participating dentists and patients. The Class members are informed and believe that this
28 practice of Delta Dental is also motivated to terminate Delta Premier status of its provider
members, resulting in greater profits for Delta and the disruption of the dentist patient relationship.

1 41. As a direct and proximate result of Delta Dental's material breaches of the implied covenant
2 of good faith and fair dealing, the Class has suffered economic damage in the form of improperly
3 calculated fee reimbursements and illegal demands for and receipt of such claim reimbursements
4 and such provider dentists are threatened with or have suffered irreparable future harm arising from
5 continued improperly calculated reimbursement requests and threats of cancellation of dentist
6 provide status based on such time barred reimbursement claims. Unless Delta Dental is enjoined
7 from submitting such improperly calculated reimbursement requests and collection of such claims,
8 the Class will suffer irreparable harm, including the cancellation or non-renewal of dentists'
9 provider status as members of Delta Dental; participating dentists will also be damaged by the
10 cancellation of the dentist-patient relationships that have developed over time, and/or a significant
11 disruption and financial damage to their practice in which they have invested and developed in
12 reliance on Delta Dental's promises as set forth in the parties' written agreements and as
13 represented by Delta Dental.

14 42. Plaintiffs and the Class are entitled to monetary damages arising from Delta Dental's
15 conduct as alleged herein. These actions violate Delta Dental's duty of good faith and fair dealing
16 and entitled the Class members to a judgment determining that the reimbursements to Delta Dental
17 for dental service claims approved and paid over a year prior are improper and thus null and void.

18 **SECOND CAUSE OF ACTION**

19 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

20 43. Plaintiffs re-allege and incorporate herein by reference each and every allegation of
21 Paragraphs 1 through 42 above as though fully set forth herein.

22 44. The Individual Plaintiffs and members of the Class have suffered injury in fact and lost
23 money or property as a result of Delta Dental's conduct alleged above, including the payment of
24 improperly calculated requests for reimbursements on time barred claims. The Individual Plaintiffs
25 and members of the Class further are threatened with imminent, particularized, and concrete injury
26 in that the improperly calculated requests for reimbursement from Delta Dental on time barred
27 claims results in members of the Class having to surrender funds to Delta Dental that Delta is not
28 entitled to. Furthermore such provider dentists are exposed to cancellation or non renewal of their

1 Delta Dental membership or are threatened with legal action to collect on such time barred claims
2 to the detriment and damage of the Individual Plaintiffs and members of the Class.

3 45. As alleged herein, Delta Dental has committed “unlawful” business acts as defined by
4 California Business and Professions Code §17200 by violating the Knox-Keene Act, Cal. Code
5 Regs. tit 28 §1300.71(b)(5) (2012). Delta Dental acted and continues to intend to submit requests
6 for reimbursement on time barred dental claims well in excess of the statutorily defined time frame
7 to do so. Delta Dental’s conduct violates the applicable provisions of the Knox-Keene Act and its
8 accompanying regulations and therefore is unlawful. Furthermore, Delta Dental’s conduct amounts
9 to a “demonstrable and unjust payment pattern” as set forth in 28 C.C.R. §1300.71(a)(8)(D) by
10 failing to request reimbursement of an overpayment of a claim consistent with the provisions of 28
11 C.C.R. §1300.71(b)(5).

12 46. As alleged herein, Delta Dental has committed “unfair” business acts as defined by
13 California Business and Professions Code § 17200. Among other things, Delta Dental has
14 continued to request from dentists’ reimbursement for claims that were paid over a year prior the
15 request for reimbursement. Furthermore, Delta Dental has failed to inform dentists of the
16 requirements imposed upon it by the Knox-Keene Act, and has continued to request reimbursement
17 for time-barred dental claims.

18 47. As alleged herein, Delta Dental has committed fraudulent or deceptive business acts and
19 practices as defined by California Business and Professions Code § 17200. Among other things,
20 Delta’s statements to dentists that it was entitled to reimbursement for claims that were paid over a
21 year prior to the request for reimbursement; and its omissions, specifically that it was bound by the
22 requirements of Cal. Code Regs. tit. 28 § 1300.71(b)(5), were deceptive, false and misleading.
23 Class members relied upon Delta Dental’s statements and omissions to their detriment – for
24 example by remitting payment for reimbursement claims that were time barred by the Knox-Keene
25 Act, or by having their participating dentist agreement non-renewed or terminated as alleged
26 hereinabove.

27 48. As a result of Delta Dental’s unlawful, unfair, and deceptive conduct, the Individual
28 Plaintiffs and members of the Class have suffered or will imminently suffer economic injury. As
alleged above, Class members received requests for reimbursements that were improperly

1 calculated and requested reimbursement for claims that were time barred by 28 C.C.R.
2 §1300.71(b)(5) of the Knox-Keene Act.

3 49. Delta Dental's conduct as alleged above reflects that Delta Dental intends to continue its
4 unlawful, unfair and deceptive conduct. If Delta Dental is permitted to continue its wrongful acts,
5 Plaintiffs and members of the class will suffer irreparable injury and loss.

6 50. Plaintiffs and members of the class are entitled to restitution for the amounts that were paid
7 by provider dentists to Delta Dental in response to a request for reimbursement for all claims
8 submitted more than one year from the date of Delta Dental's request for reimbursement notice.

9 Plaintiffs and members of the Class are also entitled to an injunction against Delta Dental to prevent
10 Delta Dental from continuing its unlawful, unfair and deceptive conduct.

11 51. Plaintiffs and the Class also seek an award of attorney fees pursuant to Code of Civil
12 Procedure § 1021.5.

13 **THIRD CAUSE OF ACTION**

14 **(Declaratory Relief)**

15 52. Plaintiffs re-allege and incorporate herein the allegations set forth in paragraphs 1 through
16 51 above as though fully set forth herein.

17 53. An actual dispute and controversy has arisen between the Class and Delta Dental with
18 respect to requests for reimbursements made by Delta Dental to Plaintiffs and members of the class,
19 and the parties respective rights under the Knox-Keene Act and the written agreements entered into
20 between the parties. Plaintiffs seek a declaration of those rights, duties and obligations on behalf of
21 the Class, including specifically that Delta Dental must cease to request reimbursement from
22 dentists for claims that were paid more than a year prior to the request for reimbursement by Delta
23 Dental; that Delta Dental must provide dentists with proper accounting for all reimbursement
24 requests made; that Delta Dental must reimburse participating dentists who paid Delta Dental for its
25 demands for time barred claims; that Delta Dental reinstate any participating dentists whose
26 membership in Delta Dental was non renewed or cancelled as a result of the failure to reimburse
27 Delta Dental for time barred claims; and that Delta's continued requests for reimbursement of
28 improperly accounted claims constitutes a breach of the covenant of good faith and fair dealing and

1 an unlawful, deceptive and unfair business practice under the Unfair Competition Law, Cal. Bus. &
2 Prof. Code §§ 17200, et seq.

3 **PRAYER**

4 WHEREFORE, Plaintiffs pray for relief as follows:

5 54. For a declaration of the rights and duties and obligations of Delta Dental and the Class
6 based on the allegations set forth above.

7 55. For a declaration that Delta Dental's conduct as alleged violates its duty of good faith and
8 fair dealing arising under the parties' written agreements.

9 56. For injunctive relief restraining Delta Dental from demanding unlawful and improper
10 requests for reimbursement from its participating dentists as alleged herein and according to proof.

11 57. For damages according to proof.

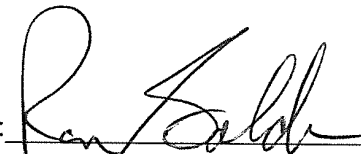
12 58. For restitution, including monies paid by Class Members to Delta Dental for the improper
13 and time barred requests for reimbursements made by Delta Dental.

14 59. For reinstatement of participating dentist agreements that were cancelled or otherwise
15 modified as a result of non-payment of improper and time-barred requests for reimbursement by
16 Delta Dental.

17 60. For attorney fees pursuant to Code of Civil Procedure § 1021.5.

18 61. For such other and further relief as the Court may determine is just and proper.
19
20

21 THE GOLDMAN LAW FIRM

22
23
24 By: 
25 RONALD P. GOLDMAN
26 Attorney for Plaintiffs
27 AHMED MONEIM, D.D.S.
28 CHARINA BAILON, D.D.S.;
JOYSE TSE, D.D.S.

24 Dated: October 19, 2018

1 **PROOF OF SERVICE**

2 X I declare that I am employed in the county of Marin, California, am over the age of eighteen
3 years, and am not a party to the within entitled action. My business address is 55 Main Street,
4 Tiburon, CA 94920.

5 _____ I am an active member of the State Bar of California, whose business address is 55 Main
6 Street, Tiburon, CA 94920, and not a party to the within entitled action.

7 On **October 19, 2018**, I served the attached:

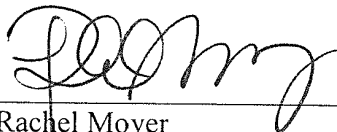
- 8 • **SECOND AMENDED COMPLAINT**

9 on each of the parties or the attorneys for such parties involved in this action,

10 Russell P. Cohen, Esq.
11 Howard M. Ullman, Esq.
12 Orrick, Herrington & Sutcliffe LLC
13 The Orrick Building
14 405 Howard St.
15 San Francisco, CA 94105-2669
16 rcohen@orrick.com
17 hullman@orrick.com

16 XX (BY REGULAR MAIL) I placed the envelope(s) for collection and mailing on the
17 date and at the place shown below, following our ordinary business practices. I am
18 readily familiar with this business's practice of collecting and processing
19 correspondence for mailing. On the same day that correspondence is placed for
20 collection and mailing, it is deposited in the ordinary course of business with the
21 U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

22 I declare/certify under penalty of perjury under the laws of the state of California
23 that the foregoing is true and correct. Executed on **October 19, 2018**, Tiburon, California.

24 
25 Rachel Moyer