

No. 20-242

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## Supreme Court of The United States

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Norine Cave

Petitioner,

v.

Delta Dental of California,

Respondent.

FILED  
AUG 20 2020  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

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On Petition for a Writ of Certiorari to  
The United States Court of Appeals  
for the Ninth Circuit

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### PETITION FOR A WRIT OF CERTIORARI

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## **I. Questions Presented**

1. Whether a covered entity violates ERISA, by improperly denying beneficiaries' rights and further compounds such violations by approving unauthorized benefits while withholding medical records in its entirety, in order to avoid liability and to conceal its breaches of fiduciary duties?
2. Where a Plan's fiduciary holds the authority and sole responsibility of adjudicating claims governed by ERISA and fails to follow the terms under the Plan, would a beneficiary have the equal right to challenge a fraudulent claim/determination under the same standard of review as a denied claim for relief pursuant to ERISA §§ 502(a), 502(a)(3)?

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#### **IV. Petition for Writ of Certiorari**

Petitioner, Norine Cave (“Cave”) respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

#### **V. Opinions Below**

- The Ninth Circuit Mandate in *Cave v. Delta Dental of California* No. 18-17131. Mandate entered on March 31, 2020.
- The Ninth Circuit Opinion in *Cave v. Delta Dental of California* No. 18-17131 denying rehearing en banc is unreported. Order entered on March 23, 2020.
- The Ninth Circuit Memorandum in *Cave v. Delta Dental of California*, No. 18-17131 affirming the United States District Court Northern District of California, San Francisco decision in 3:18-cv-01205-WHO is unreported. Memorandum entered on December 18, 2019.
- United States District Court Northern District of California, San Francisco. 3:18-cv-01205-WHO. *Cave v. Delta Dental of California*, Order on Motion to Dismiss. Order entered on October 23, 2018 is unreported.
- *Cave v. Delta Dental of California*, United States District Court Northern District of California, San Francisco. 3:18-cv-01205-WHO. Order dismissing

Cave's claims under HIPPA and granting leave to file under ERISA are unreported. Order entered on May 30, 2018.

Cave cites these in this petition pursuant to FRAP 32.1.

Ninth Circuit Court of Appeals opinions are reproduced in Appendix A, to this Petition (App. 30a-32a, 33a). District Court Northern District of California, San Francisco opinions are reproduced in the Appendix (App. 35a-41a, 42a-52a)

## **VI. Jurisdiction**

A memorandum from the Ninth Circuit was entered on December 18, 2019 (App. 30a-32a). The petition for re-hearing was denied on March 23, 2020 (App. 33a).

On March 19, 2020, this Court extended the deadline to file any petition for a writ of certiorari due on or after the date of the order to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for re-hearing.

Cave's timely petition for a panel rehearing to the Ninth Circuit was denied on March 23, 2020. Cave invokes this Court's jurisdiction under 28 U.S.C. § 1254(1), having timely filed this petition for writ of certiorari within 150 days of the Ninth Circuit judgment. The due date is tolled as August 20, 2020.

## **VII. Relevant Statutory Provisions**

1. ERISA 502(a), reproduced in Appendix (App. 68a).
2. ERISA 502(a)(3), reproduced in Appendix (App. 68a)
3. 29 U.S.C. § 1132(c)(1)(B); , reproduced in Appendix (App. 68a-77a).
4. 29 C.F.R. § 2575.502c-1, reproduced in Appendix (App. 78a).

## **VIII. Statement of The Case**

In 1944, President Franklin D. Roosevelt, in his State of Union address, advanced his idea of a "Second Bill of Rights" which would include "(t)he right to adequate medical care and the opportunity to achieve and enjoy good health." This Court's decisions in the areas of right to privacy and bodily integrity suggest the Constitution provide an individual right to access healthcare services at one's own expense from willing providers. Medical cooperativeness on behalf of patients, is based, in part, of implied right to autonomy regarding respect and treatment. An important and instrumental element of health care is one's own medical records, to include, the right of access. The Employment Retirement and Income Act of 1974, 29 U.S.C. § 1001 ("ERISA") was created to protect the interests of plans and their participants and beneficiaries, while providing appropriate remedies and access to federal courts. In 1996, housed under ERISA, the HIPAA ("Privacy Rule"), in pertinent part, was enacted to provide individuals with a legal enforceable right to review and receive copies upon request of the information in their medical and other

health records maintained by their healthcare providers and health plans.

Designated record sets are defined under 45 C.F.R. § 164.501. The said records refer to any item, collection, or grouping of information that includes Protected Health Information (“PHI”) and is maintained, collected, used, or disseminated by or for a covered entity. Under the Privacy Rule beneficiaries have the right of access to the said health information about themselves maintained by the covered entities, including medical records, billings, x-rays, payment records, clinical notes etc.. This right to access is a guaranteed and equal right under federal law. Covered entities must act upon such requests no later than 30 days after such requests are received and may be extended up to a maximum of 60 days for good reason.

This case presents the question of when federal laws under ERISA are violated by covered entities refusing to timely provide right of access of medical records to a beneficiary of a plan; when a grievance is filed against a provider of service, contracted with the said entity or otherwise, does the applicable remedy of relief provided by ERISA § 502(a) apply?

This case poses to this Court, questions concerning where a beneficiary of an ERISA plan has a cause of action for the improper disbursement of benefits for a known fraudulent claim, can it be challenged by the said beneficiary, for recoupment (Plan) under the same standard of review as a denied benefit?

The withholding of Cave’s medicals records, in its entirety, was and is in violation of federal law and remains as a genuine material issue of fact.

## **1. Fraudulent claim and Delta Dental's repeated defense of its approval.**

Petitioner, Norine Cave (“Cave”) obtained insurance coverage through Delta Dental of California (Delta Dental”) from her spouse's plan sponsored by The Entertainment Industry Flex Plan. On January 27, 2014, Cave unknowingly entered into a medically unnecessary procedure through her dental provider, employed by Coast Dental of Georgia (“Coast Dental”) stemming through (an alleged discovered condition) from a previous consultation on October 21, 2013.

After experiencing pain and complications from the procedure, Cave subsequently consulted with other dentists, and would eventually obtain verification of the unnecessary procedure, as opined by at least four experts. It was discovered, in part, through reviews of history from previous records, (more specifically through the x-rays used for the diagnosis of treatment) that the procedure was unquestionably unnecessary. Upon discovery and verification of the alleged fraud scheme, as there was no pre-existing condition to substantiate the treatment, Cave notified Delta Dental in a timely manner. After coming to terms with the fraudulent diagnosis and all that was associated with it, to include Cave's insurance coverage, it was also discovered that the procedure was also found to be botched.

The unnecessary and botched procedure caused permanent loss and damages, (which included a displacement of the left temporomandibular joint disc) and had to be redone on April 15, 2014, by another dental office. On April 30, 2014, a

grievance, to include upcoding / overcharges, was filed with Delta Dental pertaining to the fraudulent claim. Delta Dental stood by its initial determination of approval after reviewing the grievance. It claimed that it could not determine the validity of the claim because the provider of service did not submit x-rays of diagnostic quality. As previously argued by Cave, the admission by Delta Dental served as a complete breach of its fiduciary duties because the procedure in question required x-rays of diagnostic quality in order to be approved for benefits.

Cave made the first request to review or obtain her medical records in June of 2014.

Delta Dental refused the request to review or release medical records citing California's Evidence Code §1170 and Health and Safety Code §1370. Cave sent Delta Dental additional records to include history of x-rays in support of the grievance. Delta Dental continually stood by its original determination of the disbursement of benefits while continuing to withhold access to Cave's medical records.

Here, under the plan in question, the covered entity, Delta Dental acted as a fiduciary and claims administrator. Delta Dental was solely responsible for processing submitted claims although the plan was sponsored by Flex Plan. Delta Dental held and holds the claim file and was responsible for properly maintaining and releasing those said records. Delta Dental's conduct and duties required it to act solely in the interests of the participants and beneficiaries under its fiduciary responsibilities. Moreover, the Plan's sponsor did not possess any power to overrule

Delta Dental's determination, because it was the claim administrator, being Delta Dental, who bore that total responsibility.

Eventually on January 26, 2016, Cave filed a separate medical malpractice lawsuit for negligence and damages, against the provider of services and Coast Dental of Georgia in The State Court of Fulton County Georgia. During the course of discovery, on November 3, 2016, Delta Dental, through a third-party request, was asked to produce Cave's medical / dental records. Delta Dental released Cave's prior dental records (to include x-rays without redactions) from other providers of services, along with sparse records (claim statements) and with no release of x-rays from Coast Dental of Georgia. After Delta Dental's continual refusal to release full medical records, Cave filed a complaint with Department of Health and Human Services ("HHS"), for failure to release full medical records in January of 2018.

**A. Proceedings In The Superior Court Of The State Of California For The County Of San Francisco, CGC-18-563813: Norine Cave, Plaintiff v. Delta And Does 1 Through 200 Inclusive, Defendant(s). January 24, 2018.**

On January 24, 2018, Cave filed a claim against Delta Dental for withholding full medical records, for improper disbursements of benefits and additionally requested for the unauthorized benefits of the fraudulent claim to be restored back to Delta Dental. Cave asserted in her initial complaint in the cause of action, that Delta Dental's denial of her records was in violation of an individual's right of access to their PHI pursuant to HIPAA 45 CFR § 164.524, and Bad Faith.

**B. Proceedings in U.S. District Court for the Northern District of California 3:18-cv-1205 WHO. Norine Cave v. Delta Dental and Does 1 through 200 inclusive.**

In February of 2018, Delta Dental removed the case to the U.S. District Court for the Northern District of California, San Francisco Case No. 3:18-cv-1205 WHO. The district court dismissed Cave's claims in its order on May 30, 2018, but granted Cave leave to amend her complaint under ERISA. Cave filed her First Amended Complaint on June 19, 2018. In a hearing on August 15, 2018 in district court, Delta Dental was finally ordered to release Cave's records within seven days as follows:

"Parties appear for hearing on motion to dismiss. The Court advises Ms. Cave that the only claim likely to survive dismissal is an equitable claim for production of records. Ms. Cave identifies the records she does not have; counsel for Delta Dental represents that to his knowledge they have been provided. The parties are directed to have a telephone conference immediately following the hearing to discuss the specific records sought by Ms. Cave and the production of those records. Defense counsel shall file a declaration within one week (by August 22, 2019) identifying whether the parties continue to disagree about records not provided and, if so, the documents Ms. Cave thinks are missing. Ms. Cave may file a response one week later (by August 29, 2018) if she has any disagreement with defense counsel's declaration."

At the same hearing, on August 15, 2018, Cave requested to address the fraud issues associated with the claim and was told that courtroom was full and the specific issue of fraud may have statute of limitations issues involved, thus requiring further review. Once documents were released from, and by Delta Dental, Cave responded on August 29, 2018, describing in detail the discrepancies and

unresolved issues with the released declaration prepared by counsel for Delta Dental. Specifically, there were approximately 73 additional pages of medical information (from Coast Dental), to include doctor's notes, x-rays, correspondences, etc., that were withheld for more than four years prior to the district court's instructions to release records.

The district court did not request the claim file for review. The district court reasoned that Delta Dental's withholding of records for more than four years (approximately 1,480 days) was an omission. In this case, Cave followed the instructions of the district court stemming from the hearing proceeding and timely filed her response within seven days after the document release from Delta Dental; without resolving remaining issues.

Cave's name/identifier was redacted on the copies of the released x-rays, essentially nullifying the said x-rays. Delta Dental's specific alterations/redactions of the x-rays caused a critical deficiency within the records. Approximately two weeks later, HHS directed Delta Dental to release the designated record set, that was withheld from Cave. The release included additional records that were not included in the declaration from Delta Dental. In September of 2018, Cave filed a correspondence in the district court detailing the disparages, specifically noting the redactions and describing the compounding undue stress of having such an extreme, continued delay of rights to one's own medical records. The said correspondence / email (only indicating facts and not a claim) would eventually be used, in part, against Cave in the forthcoming district court's order to grant the dismissal of the

complaint. The district court reasoned that Cave (“being upset”) alleged, in essence, a claim of injury against Delta Dental that was, and is caused by Coast Dental. This misimpression of the facts caused harm to the merit of Cave’s actual claims that were and are to access full medical records in its entirety and for the unauthorized benefits to be restored to the Plan under the provisions of ERISA 502(a). On October 23, 2018, the district court released an order granting the dismissal, (App. 42a-52a) citing in part, that Cave cannot forge complaint for injuries against Delta Dental. Cave did not directly assert such claims of injuries (caused by Coast Dental) against Delta Dental. The district court also determined the following with respect to Delta’s withholding Cave’s documents:

“The failure to provide plan documents to a plan participant can be an actionable breach of fiduciary duty. See, e.g., *Cultrona v. Nationwide Life Ins. Co.*, 748 F.3d 698, 706-07 (6th Cir. 2014); 29 U.S.C. § 1024(b)(4). The documents required to be produced under this section are documents regarding the plan, maintained by the plan administrator. See *id.* at 706-07 (The documents that “a plan administrator” must furnish to a participant or beneficiary include the plan, the summary plan description, annual or terminal reports, applicable bargaining or trust agreements or other instruments under which the plan is operated).

The documents sought by Cave were not relevant to the creation or operation of the Plan under which she was insured; instead, she sought documents regarding the approval of Dr. Sachdeva’s Claim and grievance investigation by Delta Dental. For this reason, Cave’s request for penalties for failure to produce requested records fails. See 29 U.S.C. § 1132(c)(1)(B); 29 C.F.R. § 2575.502c-1 (increasing statutory damages from \$100 to \$110 a day); see also *Lee v. ING Groep, N. V.*, 829 F.3d 1158, 1162 (9th Cir. 2016) (“Penalties under 29 U.S.C. § 1132(c)(1) can only be assessed against ‘plan administrators’ for failing to produce documents that they are required to produce as plan administrators. 29 C.F.R. § 2560.503-1 (h)(2)(iii) does not impose any requirements on plan administrators, and so cannot form the basis for a penalty under 29 U.S.C. § 1132(c)(1).”).

Even though Cave cannot seek penalties against Delta Dental under Section 502(c), under 29 C.F.R. § 2560.503-1 (h)(2)(iii), it was arguably required to provide Cave documents regarding its approval of Dr. Sachdeva's Claim and investigation of her grievance. See 29 C.F.R. § 2560.503-1 (h)(2)(iii) & (m)(8).<sup>4</sup> Assuming that this is a viable cause of action, the record shows that Delta Dental has, albeit belatedly, complied with Cave's request for the material records regarding Dr. Sachdeva's Claim and her grievance.<sup>5</sup>"

In *Lee v. ING Groep, N. V.*, 829 F. 3d 1158, the appellants claim was based in part, to recover withheld emails and plan documents:

*"while the failure to produce the Plan document was inadvertent, the failure to produce the emails was intentional and the fact that ING North America knowingly ignored the regulation counsels in favor of a larger penalty."*

In *Lee*, the appellant court vacated the penalty award while remanding to the district court to assess a penalty based solely on the failure to timely produce the plan documents.

Holding *Lee*, the dispute was to define whether there was any liability for statutory penalties based on the failure to produce emails and plan documents under 29 U.S.C. § 1132(c)(1) stemming from a failure to follow claims procedures imposed on benefits plans as outlined in 29 C.F.R. 2560.503-1(h)(2)(iii). "Since plan, and plan administrators are considered separate entities with separate definitions under ERISA, penalties under 29 U.S.C. § 1132(c)(1), can only be sought against plan administrators for failing to produce the document that they are required to produce as plan administrators."

Here, Cave solely and repeatedly requested her legal access to full medical records from Delta Dental who, by definition served as a claims administrator,

fiduciary, and trustee of the plan. An error of a description of an administrator does not negate the sole party's responsible for such requests. In the early litigation process Cave referred to Delta Dental, in error as the Plan Administrator, yet the inference was clear from the intended party. Moreover, medical records are a fundamental right that is separate from plan documents as previously argued pertaining to the specific treatment in question; it brings into question whether it became an instrument under which was operated to process the claim, with respect to the treatment.

At all times during litigation, Cave directed repeated requests of access of records to Delta Dental and not the Flex Plan. The district court reasoned that Delta Dental's failure to release the medical records for more than four years as belatedly. More specifically, its actions were reasoned as an omission by the district court. Cave argued that the benefits should have been recouped / restored back to the plan's assets because Delta Dental had a fiduciary duty to protect the Plan's assets. The Plan's assets, in this case were defined as the participant, Cave's spouse's contributions which became plan's assets as soon as it was segregated from his employer's general assets. All fraudulent claims harm the plan as a whole. "Section 1132(a)(2) incorporates § 1109(a), which states that fiduciaries who are found liable for breach of their fiduciary duties must make good to the plan any losses resulting from that breach." 29 U.S.C. § 1109(A), 29 U.S.C. § 32(a)(emphasis added). "Therefore although the Secretary of Labor, participants, beneficiaries, and fiduciaries all have standing to bring a civil action against an ERISA fiduciary, any

resulting awards are paid to the plan as a whole, rather than the party who brings the suite. (*Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134 (1985)). As reargued by Cave, the benefits could be restored back to the plan.

The district court's order did not directly address the referenced deficiencies and issues presented in Cave's response. Instead, it determined that:

"In the affidavit submitted by Delta Dental following the hearing on the motion to dismiss, it attests that it has provided all records regarding Dr. Sachdeva's Claim and Cave's grievance, making its most recent production on August 22, 2018. Dkt. No. 42. In Cave's response and in further correspondence submitted to the court, she identified records that she believes were missing from Delta Dental's most recent production. However, those documents were either in Cave's possession already (as having been sent by her to Delta Dental or to her dentist, or were produced by Delta Dental in 2016) or do not exist or are otherwise not in Delta Dental's possession (e.g., diagnostic quality x-rays from Dr. Sachdeva, clinical notes used by Delta Dental's consultants to approve the Claim or evaluate her grievance). Dkt. No. 43.<sup>6</sup>

Therefore, even if Delta Dental was in violation of ERISA's requirements when it failed to initially provide Cave all of the documents relevant to the Claim and her grievance, it has corrected that omission. As a result, no injunctive relief is appropriate. As noted above, punitive or other damages are not available remedies under ERISA.

Therefore, Cave's claims under ERISA are dismissed WITH PREJUDICE.<sup>7</sup>

**C. Direct Appeal: Proceedings in the U.S. Court of Appeals for the Ninth Circuit 18-17134. November 2, 2018.**

On November 2, 2018, Cave filed a direct appeal to the United States Court of Appeals for the Ninth Circuit, Case No. 18-17134 appealing the district court's order. The opening brief was filed on March 13, 2019, followed by the corrected

opening brief on March 20, 2019. Delta Dental responded with answering brief on May 1, 2019. Cave filed a reply brief on May 20, 2019. In September of 2019, upon discovery, Cave filed correspondence with the Ninth Circuit expressing her concerns about a possible familial conflict of interest, as the district court judge's family firm, Orrick, Herrington and Sutcliffe, LLP, (App. 2a-23a) was representing and settling a class action lawsuit for Delta Dental concurrently with Cave's complaint. In addition, a previous extern from the same judge was, or is, employed with Hinshaw and Culbertson, LLP, who represents Delta Dental of California in this case.

On December 18, 2019, appellant court upheld the district court ruling citing:

“The district court properly dismissed Cave’s breach of fiduciary duty claim because Cave failed to allege facts sufficient to state a plausible claim. See 29 U.S.C. §§ 1132(a)(2), 1132(a)(3); Gabriel v. Alaska Elec. Pension Fund, 773 F.3d 945, 954 (9th Cir. 2014) (“A claim [under § 1132(a)(3)] fails if the plaintiff cannot establish . . . that the remedy sought is appropriate equitable relief . . . .” (citation and internal quotation marks omitted)); Wise v. Verizon Commc’ns, Inc., 600 F.3d 1180, 1189 (9th Cir. 2010) (“To allege a fiduciary breach under § 1132(a)(2), [the plaintiff] must allege that the fiduciary injured the benefit plan or otherwise jeopardize[d] the entire plan or put at risk plan assets.” (citation and internal quotation marks omitted, some alterations in original)).

The district court properly granted summary judgment on Cave’s claim for penalties because Cave failed to raise a genuine dispute of material fact as to whether defendant failed to produce documents that a plan administrator is required to produce. See Lee v. ING Groep, N.V., 829 F.3d 1158, 1162 (9th Cir. 2016) (“Penalties under 29 U.S.C. § 1132(c)(1) can only be assessed against plan administrators for failing to produce documents that they are required to produce as plan administrators.” (citation and internal quotation marks omitted)).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. See Padgett v. Wright, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

We reject as without merit Cave's contentions that counsel for defendant and the district judge had conflicts of interest.  
**AFFIRMED.**"

Cave filed a petition for rehearing En Banc on January 2, 2020. Said petition was denied on March 23, 2020 as follows:

"The panel has voted to deny the petition for panel rehearing. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35. Cave's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 24) are denied."

The Ninth Circuit accepted and upheld the district court's dismissal of Cave's claims and reasoned that the production of documents was not a requirement for a plan administrator to produce. As reargued, the right to access one's own medical information, specifically, unredacted x-rays is a guaranteed right to all with no exception of a beneficiary under the provisions of Erisa. This Court could address the unsettled and gray area surrounding the parameters of a beneficiary's allowance to challenge a wrongfully approved benefit, with the same allowance to challenge a benefit denial under Erisa section 502.

Cave navigated through the technicalities of litigation to the best of her abilities, being pro se, however she fully understood the importance of the protection of her fundamental and perpetual right of access to her own medical information / records. The merit of the claims are grounded in fact, truth and weighted evidence. The pursuit to protect and prevent future conflicts and denial of

such rights should always require further litigation. What is clear, is that perhaps if the grievances had not been an issue of factor, the right of access would, more than likely, not have suppressed and violated. Retaliation is forbidden under ERISA.

These questions have great consequence to human rights, health and safety to the general public. If ERISA health plans are not held to their own guidelines in processing claims, and to the law; then participants could be deprived of the right of adequate or denial of unnecessary medical care and the opportunity to achieve and enjoy good health. The needed advocacy to help achieve the advancement of the ideals of President Franklin D. Roosevelt, many years ago, could bridge the gap to combat the area of health care fraud; an issue that perhaps he never would have imagined that we face today in the medical community. As a whole, the medical community is one of the most esteemed and honorable work in our society. The reality is that the insurance companies could do much more to galvanize against the issues associated with healthcare fraud, by properly addressing the schemes when they are detected. Only then, will the vitally important good work of the dedicated medical community recover from such losses.

*“Let me say up front, I believe many insurance companies are partially responsible for increased fraud. Not that they’re directly involved, but the industry overall isn’t aggressive enough against fraud.”*

<https://www.claimsjournal.com/news/national/2014/08/14/253331.htm> , Consider Your Options When Fighting Back Against Fraud, By Frank Goldstein, Esq. | August 14, 2014.

## IX. Reasons For Granting The Writ

A. To preserve the guaranteed protections under ERISA law of 1974, 29U.S.C. § 1001, to obtain one's own medical records in its entirety without interference from covered entities' unauthorized control associated with the disparities in healthcare or otherwise, this Court could clarify those rights normally protected under federal law and as how it applies to every U.S. citizen, regardless of race, sex or creed.

The protections pertaining to right of access to one's medical information are clear and irrefutable. Unless these protections apply to all, then it becomes meaningless to some. In this case, the request for medical records that should have been considered as a fairly simple process, in contrast, evolved into extraordinarily difficult litigation. This litigation is ongoing due to, in part, of the lower courts' continuation of denial of Cave's legal right to obtain her full medical records (to include unredacted x-rays from Coast Dental through Delta Dental). Although the law in the area of ERISA is constantly evolving, the right of access to one's own medical information is grounded by federal law. The overpayment of the benefit in question deriving from the fraudulent claim, was and is, recoverable. The claim in question was asserted against an identifiable fund that was traced to the benefit paid by the plan. Therefore, it permitted equitable restitution to the fund in support of appropriate equitable relief. These factors were repeatedly argued in the lower courts yet was not addressed appropriately. In this case, the district court did not have the full administrative record before it, when it ruled on the motion to dismiss. The request for full medical records in its entirety (to include unaltered / unredacted x-rays) was and is a clear and succinct notice. However, the matter still remains as a genuine issue of material fact in the lower courts.

**B. To balance the rights of participants/beneficiaries to challenge a retroactive adverse benefit denial under Erisa § 502(a) ; where a claim administrator and/or fiduciary of a Plan refuses to do so.**

This Court should clarify whether a beneficiary has the right under ERISA § 502(a) to challenge an improper approval of benefits within the same spectrum as the right to challenge a denied benefit under the plan. This case presents this Court with the opportunity to clarify the implied rights pertaining to an adverse benefit determination. Further, to sustain the power of right of access to full medical records, without unauthorized redactions / alterations by a covered entity, for all. Prayerfully, this Court will use its authority to continue to promote consistent, fair and equal treatment towards the review of benefit claims under the provisions of ERISA; in turn will provide a non-adversarial platform to resolve such claims.

## **X. Conclusion**

For the foregoing reasons, Cave humbly and respectfully requests that this Court issue a writ of certiorari to review the judgment of the Ninth Circuit.

DATED this 20th day of August 2020.

Respectfully Submitted



Norine Cave  
Petitioner, Pro se

No. \_\_\_\_\_

**Supreme Court of The United States**

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NORINE CAVE

Petitioner,

v.

DELTA DENTAL OF CALIFORNIA,

Respondent.

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT**

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**DECLARATION OF NORINE CAVE**

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I, Norine Cave, declare under penalty of perjury that the foregoing Certificate of Compliance is true and correct. Executed on August 20, 2020.



Norine Cave  
Petitioner, pro se