UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PAUL CAUFIELD and REBECCA M. STALEY, **On behalf of themselves and on behalf of all others similarly situated,** **Plaintiffs,** **- v-** **COLGATE-PALMOLIVE CO., COLGATE-PALMOLIVE CO. EMPLOYEES' RET. INCOME PLAN, LAURA FLAVIN, DANIEL MARSILI, and EMPLOYEE RELATIONS COMMITTEE OF COLGATE-PALMOLIVE CO.,** **Defendants.**	**Case No. 16-cv-4170**

CLASS ACTION COMPLAINT

Plaintiffs, by and through their counsel, allege as follows:

Nature of Action and Basic Facts

1. This is a continuation of the litigation in *In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515 (LGS) (S.D.N.Y), necessitated by Defendants' violation of the Court's July 8, 2014 Final Order and Judgment (Dkt. 162, Ex. 1)[1] approving the October 9, 2013 agreement to partially settle that case (Dkt. 130-1, Ex. 2) and, to a large extent, by Defendants' contempt of the Court's Final Order via their wrongful denial of

[1] All "Dkt." citations hereinafter refer to the docket numbers from *In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515 (LGS) (S.D.N.Y).

benefits under the March 2005 Residual Annuity Amendment (Ex. 3) to the Colgate-Palmolive Company Employees' Retirement Income Plan (the "Plan") to certain members of the certified Class in that case who are also entitled to receive such Residual Annuities.

2. There are approximately 8,600 members of the certified Class in *In re Colgate-Palmolive Co. ERISA Litigation*. The subset of those persons who are also entitled to a Residual Annuity comprises the "putative Class" alleged here and defined in ¶ 398 below. The putative Class is comprised of more than 2,000 individuals.

3. Defendants' denial of Residual Annuity benefits to Plaintiffs and all putative Class members is the product of multiple errors, each of which was caused by and can only be explained by the taint of Defendants' conflict of interest in the outcome. Chief among those errors – and proof of the extent of the taint of Defendants' conflict of interest – is Defendants' willful misreading of the 2005 Residual Annuity Amendment, which, in an effort to save money, Defendants egregiously failed to implement for 10 years, until before being forced to do so in 2014 under the shadow of *In re Colgate-Palmolive Co. ERISA Litigation*.

4. Now, in another egregious breach, Defendants' implementation of the Amendment in August 2014 and more recent denial of Plaintiffs' 2014-2015 claim for benefits (*see* Ex. 8, Staley 7/30/14 Claim Ltr.; Ex. 4, Staley 4/6/15 Claim Appeal Ltr.; *see also* Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr.; Ex. 38, Staley 3/14/16 Requested Documents and Information Ltr.) is based on a crassly manipulative, inherently implausible, and unlawful interpretation of the 2005 Residual Annuity Amendment and Plan Appendices B, C and D, which the Amendment explicitly and repeatedly incorporates by

reference. *See* Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 2-3; Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr. at 4-6.

5. Defendants' claimed "interpretation" of the Amendment and incorporated Appendices directly contradicts, and is irreconcilable with, the clear and unambiguous text of the Amendment and incorporated text of the Appendices. *See* Ex. 4, Staley 4/6/15 Claim Appeal Ltr. at 3-5, 8-16.

6. Defendants disingenuously ignore or rewrite the plain words of the Residual Annuity Amendment and Plan Appendices B, C and D to excise from the Plan a valuable (hence, expensive to Colgate) explicitly-promised component of the new – but retroactively-effective-to-1989 – benefit. *Id.* That was the preordained result of the claims process that Plaintiffs dutifully followed, but that Defendants rendered a sham with their thoroughgoing violations of the governing Department of Labor (DOL) claims regulation, 29 C.F.R. § 2560.503-1. *Id.*

7. Defendants' willful misreading of the amended Plan is the product of Colgate's desire to save itself approximately $150 million dollars in additional benefit payments that it committed itself to paying by adopting the Amendment. Colgate apparently regretted adopting the Amendment after the fact, once it realized the true cost of complying with the Amendment. Nothing else could explain why Defendants waited 10 years to even implement the Amendment – conduct which is inexcusable (and Colgate has never attempted to explain or defend). This course of action would be unthinkable to any honest and loyal fiduciary untainted by conflicts of interest.

8. In addition to not implementing the Amendment for nearly 10 years because of self-interested cost concerns, throughout that time, in further breaches of their duties of loyalty and prudence, Colgate and the other Defendants affirmatively concealed the Amendment's existence from participants (including some elderly retirees) for whose benefit the Amendment was originally adopted and who were entitled to full and frank disclosure as a matter of statute, regulation, the terms of Colgate's Plan, and common decency.

9. Defendants committed additional serious disclosure violations when, in August 2014, Defendants finally made some limited disclosure of the Amendment's existence to a few hundred participants (like Plaintiff Paul Caufield) to whom Defendants granted (incorrectly calculated) Residual Annuities. Defendants had to give these participants *some* explanation for why they would be receiving an additional monthly payment starting in October 2014, plus a make-up payment for missed annuity payments as far back as July 1989. But rather than frank and full disclosure, Defendants made false, misleading, and incomplete disclosures designed to conceal from those participants the true extent of their Residual Annuity entitlements (and the fact that, by Defendants' own uncommunicated-to-participants admission, they should have actually commenced, on a retroactively-effective basis, in 2005, not 2014).

10. At the same time, Defendants continued to keep in the dark thousands of other putative Class members (like Plaintiff Rebecca Staley) whose implicit claims for the additional new benefit (via their original requests for a complete distribution of their entire Plan benefit) Defendants denied in 2014 without informing them of that denial, so that they could not challenge the correctness of that decision.

11. In the case of Plaintiff Paul Caufield, who was one of the few hundred participants who belatedly received a Residual Annuity (as reflected in Defendants' August 2014 letter to him, *see* Ex. 7), Defendants' willful misreading of the Amendment (together with other errors) caused him to receive only a $57.94 per month Residual Annuity commencing in February 1999 (with total back payments of $16,262.54 due him for missing payments from February 1999 through October 1, 2014).

12. In truth, as demonstrated in Plaintiffs' April 6, 2015 appeal letter, Mr. Caufield was and is entitled to a $**367.82** per month Residual Annuity (with total back payments of $**119,671.03** from February 1999 through June 1, 2016). *See* Ex. 4, Staley 4/6/15 Claim Appeal Ltr. at 8 (demonstrating and explaining same).

13. In the case of Plaintiff Rebecca Staley (Mr. Caufield's former spouse who as his beneficiary asserted during the claims process that his Residual Annuity and consequently her survivor annuity should be increased), Defendants' flouting of the Residual Annuity Amendment's terms (together with other errors), caused her to receive no Residual Annuity whatsoever.

14. In truth, Ms. Staley is entitled to a $**157.48** per month Residual Annuity commencing in March 1994 (with total back payments of $**75,648.64** for missing payments from February 1999 through June 1, 2016). *See* Ex. 4, Staley 4/6/15 Claim Appeal Ltr. at 2, 8.

15. Plaintiffs, principally through Ms. Staley, diligently sought these benefits via the Plan's internal claims process in 2014 and 2015. *See* Ex. 8, Staley 7/30/14 Claim Ltr.; Ex. 4, Staley 4/6/15 Claim Appeal Ltr. In claim denial letters dated November 4, 2014 (Ex. 5)

and June 4, 2015 (Ex. 6), Defendants wrongfully denied Plaintiffs and effectively all Class members their rightful Residual Annuities.

16. As explained further below, through this action, Plaintiffs seek to make themselves and the putative Class whole. As also explained below, Plaintiffs seek to hold Defendants in contempt of court for violating the terms of the Court's July 8, 2014 Final Order and Judgment in *In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515 (LGS) (S.D.N.Y) (Ex. 1).

Basic Facts and Allegations Regarding the Applicable Standard of Review

17. Courts review *de novo* a denial of benefits unless the plan grants to a plan fiduciary the discretionary authority to conclusively construe the plan and the designated fiduciary actually exercises that discretion. Here, for numerous reasons, the Court should consider the Plan interpretative questions presented *de novo.*

18. First, as indicated above, Defendants abdicated their responsibilities and were derelict of their fiduciary duties by failing to implement or inform participants of the March 2005 Amendment at any time between March 2005 and August 2014 and failing prior to August 2014 to make current and retroactively-effective Residual Annuity payments that were owed to the hundreds of participants like Mr. Caufield – who by Defendants' own admission should have started receiving his additional benefit 10 years earlier. Defendants' non-implementation of the Amendment and concealment of the existence of the Amendment were such extreme departures from the applicable and exacting fiduciary standards of care so as to bar Defendants from now contending that their 2014 and 2015 claimed interpretations of the Amendment should be entitled to deference.

19. Second, deference depends on discretion. Discretion is only applicable to the terms of an ERISA plan when those terms are arguably susceptible to more than one meaning. That is not the case here.

20. Third, Defendants' claimed interpretation of the Residual Annuity Amendment is entitled to no deference because the operative Plan document does not grant the Plan Administrator – the Employee Relations Committee of Colgate-Palmolive Company (the "Committee") – discretionary authority to conclusively construe the terms of the Plan in the case of any denial of benefits that, as here, is subsequently challenged in court. *See* Ex. 9, 1994 Plan § 8.6.

21. Fourth, Defendants' denial decisions are not entitled to deference because the decisions were not made by the fiduciaries designated by the Plan as having exclusive responsibility for such interpretations (*i.e.*, the Committee members) – they were made by Colgate itself. Colgate is not empowered under the Plan document to construe the Plan. *See Id*. § 8.4(a); *see also id.* § 8. Deferential review cannot be applied where the benefits decisions were *ultra vires* and made by unauthorized persons.

22. Fifth, the challenged denial decisions are not entitled to deference because, as indicated above, Colgate's conflict of interest thoroughly tainted the decision-making process, as the evidence shows and discovery will confirm. The difference between what it cost Colgate to belatedly implement its version of the Residual Annuity Amendment versus what it would cost Colgate to implement the Residual Annuity Amendment it originally enacted is approximately $150 million.

23. The taint of this inherent and significant conflict of interest is readily seen not only in the ultimate outcome (which glaringly and irreconcilably conflicts with the clear and unambiguous Plan text) but also in: (1) the adversarial manner Defendants chose to handle participants' questions during the claims process of how the Amendment was being interpreted and how and why it had previously been unimplemented (including whether there were any undisclosed, inconsistent prior-to-August 2014 interpretations of the Amendment); (2) Defendants' disingenuous reasons justifying their interpretation in denying Plaintiffs' claims; and (3) Defendants' repeated failure to reconcile or even acknowledge their own prior interpretation of the operative Plan provision in the determination of Ms. Staley's and thousands of other putative Class members' benefits (namely, Appendix C § 2(b)(ii)) when calculating Ms. Staley's benefits in 1994. Defendants' 1994 interpretation, which can be seen in black-and-white in the actual calculation of Ms. Staley's Appendix C § 2(b)(ii) entitlement, which paperwork she was given in 1994 and retained a copy of, both confirms the correctness of Plaintiffs' plain meaning reading of the controlling Plan text and shows Defendants themselves (in 1994, before Defendants' conflict of interest regarding the implementation of the 2005 Amendment arose) refuting their current claimed interpretation of the Amendment.

24. Indeed, the Committee forfeited any claim to deference by flagrantly violating the Court's Final Order and Judgment in the *In re Colgate-Palmolive Co. ERISA Litigation* case, which prohibited Defendants from denying any participant's Residual Annuity Amendment claim in whole or in part in any subsequent administrative or judicial proceeding based on any assertion that such claim was released in the partial settlement. Ex. 1, 7/8/14 Final Order and Judgment, Dkt. 162 at 5, ¶¶ 7-8; Ex. 2, Partial Settlement Agreement, Dkt.

130-1, at 17, § 12.D(2). Although the Court's Order is clear that "Defendant and/or Colgate **may not assert** in any future administrative or legal proceeding that the release set forth in this Agreement releases, bars, or precludes any claims under the Residual Annuity Amendment," *id.* (emphasis added), Defendants did just that: in fact, in the 2014-2015 internal claims process, Defendants' **principal defense** against Plaintiffs' claim was that "Ms. Staley's appeal seeks to assert claims that are ***subject to the release*** contained in the settlement agreement that was executed in the case titled In re: Colgate-Palmolive Co. ERISA Litigation (Master File No. 07-cv-9515)." Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr. at 2, Overview of Section III (emphasis added); *see also id.* at 3, Overview of Section V(c); *id.* at 3, Overview of Section V(d); *id.* at 3-4, Section III; *id.* at 10-11, Section V(b); *id.* at 12, Section V(c); *id.* at 13, Section V(f). A court cannot grant deference to the supposedly expert interpretation of allegedly ambiguous plan text from parties who cannot or will not follow the court's own clear and unambiguous orders.

25. Sixth, Defendants are not entitled to deference because, given their disingenuous reading of the Plan text, they have made the parties' interpretive dispute (if not resolved in Plaintiffs' favor based on a plain meaning interpretation of the Plan's text) turn on questions of the law and statutory interpretation as to which Defendants cannot claim any expertise. *See, e.g., infra* ¶ 99.

26. Seventh, Defendants are not entitled to deference because, as also indicated above, they failed to comply with the Department of Labor (DOL)'s claims-procedure regulation, 29 C.F.R. § 2560.503–1, when denying Plaintiffs' 2014-2015 claims for benefits. Defendants denied Plaintiffs any semblance of procedural due process and the required "full

and fair review" of their claims by, among other things, (1) failing to establish and employ "administrative processes and safeguards designed to insure and to verify that benefit claim determinations [were] made in accordance with governing plan documents and that, where appropriate, the plan provisions have been applied consistently with respect to similarly situated claimants," in violation of 29 C.F.R. § 2560.503–1(b)(5); (2) failing to provide Plaintiffs with "[t]he specific reason or reasons for the denial" and "[s]pecific reference to pertinent plan provisions on which the denial is based," in violation of 29 C.F.R. § 2560.503–1(g)(1); (3) directing Plaintiffs to the wrong Plan document and to provisions of the Plan that (as Defendants knew) could not have applied to the determination of Plaintiffs' benefits; (4) denying Plaintiffs access to the documents, records, and other information requested by Plaintiffs that were relevant to their claims, that the DOL regulation required Defendants to produce, and that were critical to Plaintiffs obtaining a full and fair review of their claims, in violation of 29 C.F.R. § 2560.503-1(h)(iii) and § 2560.503-1(j)(3); and (5) missing, and then attempting to conceal the fact that they had missed, a critical, required deadline for responding to Plaintiffs' claims, in violation of 29 C.F.R. § 2560.503–1(f)(1) and the terms of the Plan and SPD.

27. Regardless of the standard of review the Court applies, the applicable Plan text is clear and unambiguous and allows but one interpretation. Defendants' contrary reading is foreclosed by the Plan's plain language.

Jurisdiction and Venue

28. This Court has subject matter jurisdiction over this action by virtue of the Court's July 8, 2014 Final Order and Judgment in *In re Colgate-Palmolive Co. ERISA*

Litigation, Master File No. 07-cv-9515 (LGS) (S.D.N.Y) and by virtue of 28 U.S.C. § 1331 and ERISA § 502(a), 29 U.S.C. § 1132(a).

29. This Court has personal jurisdiction over Defendants by virtue of the Court's July 8, 2014 Final Order and Judgment in *In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515 (LGS) (S.D.N.Y) and because, among other reasons, ERISA provides for nationwide service of process and all Defendants have continuous and systematic general business contacts with the nation as a whole as well as this District. *See* ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

30. Venue here is proper for all Defendants by virtue of the Court's July 8, 2014 Final Order and Judgment in *In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515 (LGS) (S.D.N.Y) and because this District is where the Plan is administered, where some or all of the alleged breaches took place, where all Defendants may be found, and where all Defendants reside. *See* ERISA § 502(e), 29 U.S.C. § 1132(e).

Additional Facts - The Parties

31. Plaintiff Paul Caufield was employed by Colgate for approximately 22 years, from 1977 to 1999. During that time, he participated in the Plan. He remains a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), and has a claim to receive vested benefits under the Plan that the Plan has yet to pay him. Defendants are refusing to correctly calculate his "Appendix C" benefit incorporated by reference in the Residual Annuity Amendment and are otherwise refusing to correct other errors in their administration of his Residual Annuity benefit.

32. Plaintiff Rebecca Staley was employed by Colgate for approximately 15 years, from 1979 to 1994. During that time, she participated in the Plan. She remains a participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), because she has a claim to vested benefits under the Plan that the Plan has yet to pay her. Defendants are refusing to correctly calculate her "Appendix C" benefit incorporated by reference in the Residual Annuity Amendment and are otherwise refusing to correct other errors in their administration of the Residual Annuity Amendment which errors, once corrected, entitle her to a Residual Annuity.

33. In addition to the claims they assert as participants, both Plaintiffs assert claims as beneficiaries of each other. Each Plaintiff – as spouse of the other at the time of their original distributions from the Plan – is each entitled as beneficiary of the other to a Residual Annuity survivor benefit (Mr. Caufield as beneficiary of Ms. Staley), or an increased Residual Annuity survivor benefit (Ms. Staley as beneficiary of Mr. Caufield) that Defendants are refusing to recognize.

34. "Plaintiffs" refers to one or both Plaintiffs. "Defendants" refers to one or more Defendants.

35. Defendant Plan is and was at all relevant times an "employee pension benefit plan" and a "defined benefit plan" within the meaning of ERISA §§ 3(2)(A) and 3(35), 29 U.S.C. §§ 1002(2)(A) and 1002(35).

36. Defendant Colgate-Palmolive Company ("Colgate") is the sponsor of the Plan within the meaning of ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B). Colgate is responsible

for funding the Plan and ensuring that it meets ERISA funding requirements. *See* Ex. 9, 1994 Plan § 7.2.

37. Colgate is also a fiduciary with respect to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because it possesses and/or exercises discretionary authority or discretionary control with respect to management of the Plan and has discretionary authority or discretionary responsibility in the administration of the Plan.

38. Colgate possesses and has the duty to exercise its assigned power to appoint, remove, approve, and monitor the performance of the individual members of the Plan Administrator-Employee Relations Committee, all of whom are Company employees who serve at the pleasure of the Board. *See* Ex. 9, 1994 Plan § 1.16.

39. Colgate is also fiduciary with respect to the Plan because it communicates with Plan participants with respect to the Plan and Plan benefits.

40. Defendant Employee Relations Committee of Colgate-Palmolive Company is the "Plan Administrator" or administrator of the Plan as the term is defined in ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A). *See* Ex. 9, 1994 Plan § 1.16; 8.1.

41. The Committee is also a named fiduciary of the Plan, within the meaning of ERISA § 402(a), 29 U.S.C. § 1102(a). *See* Ex. 9, 1994 Plan § 1.16; 8.1. Under ERISA, a "named fiduciary" has the "authority to control and manage the operation and administration of the plan." ERISA § 402(a), 29 U.S.C. § 1102(a)(1).

42. The members of the Committee are Company officials designated by the Company or the Company's Board of Directors. *See* Ex. 9, 1994 Plan § 1.16; 8.1.

43. The Committee and its members had a significant and inherent conflict of interest in this matter. Because the Plan is a defined benefit plan, every payment of increased benefits by the plan increases Colgate's contribution obligation. As noted, an interpretation of the Residual Annuity Amendment favored by Plaintiffs would have cost Colgate some $150 million in additional contributions. Such a monumental decision could not be arrived at without a conflict of interest by the Company employees charged with the responsibility to review Plaintiffs' claims.

44. The Committee was well aware of the impact that its decision would have on Plaintiffs' claims as well as those of thousands of similarly situated participants. Any employee sitting on the Committee, conscious of her own self-interest and protective of her own professional well-being, would have been reluctant to make a decision adverse to her employer that could have cost the Company well over $100 million that the Committee member knew the Company did not wish to pay.

45. Here, the Committee members each succumbed to this conflict, and among other things, adopted whatever positions and rationales Colgate and its lawyers involved in the claims process put in front of them, without regard to the actual language of the Residual Annuity Amendment.

46. Defendant Laura Flavin was and is Colgate's Vice President for Global Compensation and Benefits and a member of the Committee. Defendants contend that the Committee delegated its exclusive right to determine initial claims for benefits to Ms. Flavin and that she acted as the "initial claims reviewer" with respect to Ms. Staley's claim for benefits. *See* Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 1; Ex. 10, Def. 3/5/15 Requested

Documents and Information Denial Ltr. at 1, Item 1. Like the other members of the Committee, Ms. Flavin labored under and succumbed to the same significant and inherent conflict of interest outlined in the preceding paragraphs and detailed elsewhere in this Complaint.

47. Defendant Daniel Marsili was and is Colgate's Senior Vice President, Global Human Resources and a member of the Committee. Mr. Marsili signed the June 4, 2015 denial of Ms. Staley's appeal from the denial of her claims. He did so as a Company official – "Senior Vice President, Global Human Resources" – rather than as a member of the Committee. *See* Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr. at 16. Like the other members of the Committee, Mr. Marsili labored under and succumbed to the same significant and inherent conflict of interest outlined in the paragraphs above and elsewhere in this Complaint.

48. Under the Plan, the Committee – not Colgate – is assigned exclusive responsibility for granting or denying benefit claims and interpreting and applying the Plan's terms. *See* Ex. 9, 1994 Plan § 8.4(a).

49. In this instance, however, Colgate itself controlled the outcome and rationale of the Committee's (and the initial claim reviewer's) decision-making process and was the *de facto* decision maker of the denied claims at issue in this suit. In other words, the Committee had the final and exclusive authority to make claims decisions and interpret the Plan, but only nominally exercised that authority because Colgate usurped the Committee's authority in deciding to deny benefits to the named Plaintiffs and the putative Class.

50. Colgate accomplished this usurpation of the Committee's authority by controlling the claims and appeal presentations made to the initial claim reviewer and the

Committee; by failing to present the Committee members with the pertinent Plan provisions bearing on the claims and appeal; by concealing from Committee members other information known to Colgate and its lawyers (including its litigation counsel in *In re Colgate-Palmolive Co. ERISA Litigation*), which would have precluded the outcome Colgate desired; by controlling the rationale for decisions nominally made by the initial claim reviewer and the Committee; and by failing to fairly present Plaintiffs' positions to the initial claim reviewer and the Committee.

51. Colgate's *de facto* exercise of control of the decisions of the initial claim reviewer and the Committee was *ultra vires*, and for that reason alone, those decisions are not entitled to any deference because they exceeded Colgate's authority.

52. The decision to not change the interpretation of the Residual Annuity Amendment that Defendants used in calculating Residual Annuities for participants like Mr. Caufield and to deny Residual Annuities to participants like Ms. Staley was made long before the Committee heard and decided Plaintiffs' claim appeals. That appeal came too late to receive good faith consideration because Colgate and/or the remaining Defendants had predetermined that any attempt to challenge the correctness of the August 2014 implementation of the Amendment would be rejected.

53. As a result, the denial decisions here had nothing to do with a reading of the Plan document or any other kind of determination that a loyal and prudent fiduciary would make in the course of discharging its duty to administer a plan in accordance with its terms.

Further Averments

I. Defined Benefit Plan Basics

54. A defined benefit plan consists of a general pool of assets, which may be funded by employer or employee contributions, or a combination of both. A defined benefit plan guarantees a defined level of benefits, known as accrued benefits.

55. A defined benefit plan participant's "accrued benefit" means "in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and . . . expressed in the form of an annual benefit commencing at normal retirement age [here, age 65]." ERISA § 3(23)(A), § 1002(23)(A). In other words, an employee's pension benefit is the amount she would receive annually as an annuity upon reaching age 65.

56. An employer may offer a departing employee the option of either an annuity or a lump sum (either immediately payable, or deferred to some later date).

57. Any lump sum payout (that represents the entire benefit owed to the participant) offered to a departing employee must be worth at least as much, in present terms, as the annuity payable at age 65 using statutorily mandated assumptions. In other words, pension plans are not required to offer participants a lump-sum distribution, but if they do, they cannot deprive the participants of any of the value (calculated using statutory assumptions) of the annuity payable at normal retirement age.

II. Background to the Residual Annuity Amendment

58. Prior to July 1, 1989, the Plan was a final average pay plan.

59. Effective July 1, 1989, Colgate changed the Plan to be a career average pay plan.

60. Recognizing that the benefits provided under the new plan formula would in some circumstances be less valuable than the benefits provided under the prior plan formula, Colgate offered employees with pre-July 1, 1989 benefits certain enhanced benefits and enacted special Plan provisions applicable only to them.

61. These enhanced benefits and protective Plan provisions for employees with pre-July 1, 1989 benefits are set forth in Plan Appendices B, C and D. *See* Ex. 9, 1994 Plan, Appendices.[2]

62. Under Appendices B, C and D, all members of the putative Class are entitled to whichever benefit that they qualify for and is the greatest between: (1) Appendix C § 2, (2) Appendix C § 3, and (3) Appendix D § 2. The details of these Appendix benefits are set forth in the following paragraphs. As also shown further below, the terms of these Appendix benefits were incorporated by reference, and hence effectively re-enacted, in the 2005 Residual Annuity Amendment, which was expressly made retroactively effective as of July 1, 1989.

63. *Appendix C § 2 benefits*. Employees with pre-July 1, 1989 benefits who elected to make employee contributions post-July 1989 (such as Plaintiffs here) are entitled to an annuity benefit under Appendix C § 2 that is the "larger of" their Appendix C § 2(b)(i) benefit or their Appendix C § 2(b)(ii) benefit. *See* Ex. 9, 1994 Plan Appendix C § 2(b) (participant entitled to receive "the larger of" two annuities, defined in § 2(b)(i) and § 2(b)(ii), respectively).

[2] Appendix B does not in and of itself provide for benefit entitlements as does Appendix C and Appendix D. Appendix B contains "Special Rules Applicable to Certain Employees Who Become

64. The Appendix C § 2(b)(i) benefit is an annuity calculated using the Plan's pre-July 1, 1989 formula, continued in effect post-July 1, 1989 until the employee ceases work for the employer (referred here as the "Dynamic Grandfather benefit").

65. The Appendix C § 2(b)(ii) benefit is an annuity calculated as the sum of the annuity calculated using the Plan's post-July 1989 Plan § 1.2 formula, *plus* the annuity calculated based on the employee's post-July 1989 contributions (referred here as the "PRA-plus-Employee Contribution benefit").

66. *Appendix C § 3 benefits*. Employees with pre-July 1, 1989 benefits who did *not* elect to make employee contributions after July 1989 are entitled to an annuity benefit under Appendix C § 3 that is the "larger of" their Appendix C § 3(b)(i) benefit or their Appendix C § 3(b)(ii) benefit. The Appendix C § 3(b)(i) benefit is an annuity calculated using the Plan's pre-July 1, 1989 formula through that date (referred here as the "Static Grandfather benefit"). The Appendix C § 3(b)(ii) benefit is an annuity calculated using the Plan's post-July 1989 Plan § 1.2 formula (referred here as the "PRA benefit").

67. *Appendix D benefits*. Employees with pre-July 1, 1989 benefits who did not elect to make employee contributions post-July 1989 are entitled to a greater benefit under Appendix D than their Appendix C § 3 (Static Grandfather) benefit if they met certain age plus service requirements. This Appendix D benefit (referred here as the "Transition benefit") entitled eligible participants to a benefit that is the "larger of" their Appendix D § 2(a)(ii)(A) Transition formula benefit (determined under a slightly lower plan formula than

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Eligible for Benefits After January 1, 1989 and to Bargained Employees Hired Before December 1, 1988" that are used in the determination of Appendix C and D benefits.

the formula from Appendix B used in Appendix C) or their Appendix D § 2(a)(ii)(B) PRA benefit.

68. By March 2005, Colgate acknowledged internally that, since July 1989, Defendants had been paying lump sum benefits to participants covered by Plan Appendices B, C and D in violation of law and that caused employees to suffer forfeitures of their nonforfeitable pension benefits because the lump sums they had received were less than the legally mandated minimum lump sums to which they were statutorily entitled.

69. Colgate sought to fix this serious problem – which not only deprived participants of their lawful and rightful benefits, but potentially jeopardized the tax qualification of the Plan – through the enactment of a Plan amendment that granted an additional annuity benefit to any participant covered by Appendices B, C or D whose Appendices B, C or D benefit was greater than her Plan § 1.2 benefit and who elected (or had previously elected) a lump sum. *See* Ex. 3, Residual Annuity Amendment.

70. The Residual Annuity Amendment (also referred to below as the "March 2005 Amendment" or simply the "Amendment") was and is retroactively effective to July 1, 1989, as if it had been in effect and part of the Plan throughout that entire time period.

71. The March 2005 Amendment reads as follows:

> Effective as of July 1, 1989, a Member who, under any of Appendices B, C or D, is entitled to a greater benefit than his Accrued Benefit (as defined in Section 1.2), and who chooses to receive his benefit under this Lump Sum Payment Option, which is the Actuarial Equivalent of his Accrued Benefit (as defined in Section 1.2), shall receive in addition to such lump sum payment an additional benefit, commencing at the same time and payable in the standard form applicable to such Member under Sections 6.2 or 6.3. A Member may not elect any other form of payment option with respect to this additional benefit.

> Such additional benefit shall be computed by subtracting the age 65 single life annuity Actuarial Equivalent amount of the Member's lump sum payment from the age 65 single life annuity benefit otherwise payable to the Member under Appendices B, C or D, as applicable, and applying to such remainder early retirement reductions applicable to the Member's benefit based on the Member's age at benefit commencement. For purposes of this paragraph, the early retirement reductions will be based upon factors calculated using the basis described below in subsection (A) below.
>
> (A) For purposes of determining the early retirement reduction factors to be used in the calculation of the benefit defined in the immediately preceding paragraph, the following definition of actuarial equivalence shall be used: the Applicable Interest Rate and the Applicable Mortality Table in effect on the date that the additional life annuity benefit commences.

Ex. 3, Residual Annuity Amendment.

72. As is clear on its face, the retroactively-effective Amendment created an additional benefit (in addition to the otherwise-available lump sum benefit) in the form of an annuity that starts (or "commences") at the same time that the participant receives or received her lump sum.

73. As is also clear on its face, the retroactively-effective Amendment ensures that participants with Appendices B, C or D benefit entitlements receive a total benefit – lump sum plus residual annuity – that is no less than the present value using "the Applicable Interest Rate and the Applicable Mortality Table" (a reference to the IRC § 417(e) minimum lump sum assumptions) of their benefit under Appendix B, C or D payable as an annuity at age 65. Defendants admitted this in their June 4, 2015 claims appeal denial letter, saying:

> the Plan was amended to provide that the lump sum paid plus the present value of the Residual Annuity valued at age 65 would always at least equal the present value, determined using statutory actuarial assumptions, of the annuity benefit under Appendix B, C or D, as applicable, valued at age 65.

Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr. at 5.

74. Notably, under the Plan, the only time when the Company is authorized to enact an amendment that is retroactively effective is if such action is "deemed advisable in order to meet the requirements of the Code." Ex. 9, 1994 Plan § 10.1(A). Hence, by its action, Colgate recognized that the corrective, retroactively effective additional benefit grant effected by the Amendment was required in order to satisfy the requirements of the law.

75. Of particular note in light of Colgate's disingenuous claimed interpretation of the Amendment and Plan text, *see infra* ¶¶ 99-100, 102-03, 172-87, while the 2005 Residual Annuity Amendment retroactively inserts the Residual Annuity provision into the Plan retroactive to 1989, it makes no other amendment to the Plan. In particular, it makes no change to the definition of Accrued Benefit in Plan § 1.2 (the "PRA benefit") or to the Plan § 1.3 definition of Actuarial Equivalence used in the determination of the Plan § 1.2 PRA benefit. To the contrary, the 2005 Amendment effectively re-enacts and endorses those definitions as applicable in prior versions of the Plan coinciding with participants' benefit commencement dates as well as all the previously effective definitions of participants' "larger of" Appendix benefits described in ¶¶ 61-67 above. This is of particular relevance because it refutes Defendants' factually unsupported and contrary-to-law reading of the Amendment (as reflected in their June 4, 2015 Claims Appeal Denial Ltr. (Ex. 6) as intending to strip participants of the benefits of those re-enacted and endorsed provisions and protections, as shown further below.

III. Residual Annuity Amendment Determination Requirements and Summary of Defendants' Residual Annuity Amendment Calculation Errors

76. As indicated above, the retroactively-effective March 2005 Amendment provides in its first sentence, "a Member who, under any of Appendices B, C or D, is entitled

to a greater benefit than his Accrued Benefit (as defined in Section 1.2) . . . shall receive . . . an additional benefit." Ex. 3, Residual Annuity Amendment.

77. Thus, the first step (Step One) in the determination of Residual Annuities under the Plan is a threshold eligibility test. Employees who accrued pre-July 1, 1989 Plan benefits are eligible to receive a Residual Annuity when their Appendix B, C or D benefit (referred to here as their "Appendix benefit") is "greater" than their Plan § 1.2 benefit. Step One, concerning gateway eligibility, is thus a binary yes-no inquiry, answered by comparing one (annuity) benefit against another.

78. The threshold inquiry asks: Is the participant's Appendix benefit greater than her Plan § 1.2 benefit? The Amendment directs the Plan Administrator to grant the participant a Residual Annuity when the answer to this question is yes – *i.e.*, when the participant's highest available age-65 annuity benefit under the terms of the Appendix is greater than the participant's Plan § 1.2 age-65 annuity benefit.

79. The comparison of these two annuities has nothing to do with the *amount* of the Residual Annuity due – that is addressed in the second step (Step Two), set forth in sentence three of the Amendment. Sentence one simply establishes that if the Appendix benefit is greater than the Plan § 1.2 benefit, then the Amendment directs that the participant receive an additional annuity, provided that the resulting amount after applying sentence three is greater than $0.

80. The second step (Step Two) in the determination of Residual Annuities under the Plan is to calculate the amount of the Residual Annuity per sentence three of the Amendment. Sentence three directs the Administrator to determine that amount by

subtracting one (annuity) benefit from another: "Such additional benefit shall be computed by subtracting the age 65 single life annuity Actuarial Equivalent amount of the Member's lump sum payment from the age 65 single life annuity benefit otherwise payable to the Member under Appendices B, C or D, as applicable." Ex. 3, Residual Annuity Amendment.

81. What this means is that for the Administrator to know the amount of the Residual Annuity it must pay any eligible participant, the Administrator must subtract from the participant's Appendix benefit – *i.e.*, her highest benefit under Appendix B, C or D – the annuity equivalent (using statutorily mandated assumptions) of the lump sum that she originally received. This requires the Administrator to pretend that the lump sum originally paid was an age-65 annuity (using statutorily required assumptions), and to then subtract that annuity from the participant's greatest age-65 annuity available under the Appendix.

82. The result is the Residual Annuity that must be paid, with one caveat. A third and final step (Step Three) is required for pre-age-65 original distributions (the same date from which the Residual Annuity must start to be paid, *see* Ex. 3, March 2005 Residual Amendment, sentence one). In order to reflect the fact that the annuity is starting earlier than age 65, as set forth in the second half of the third sentence of the Amendment and in the fourth and fifth sentences of the Amendment, the Administrator must adjust the age-65 Residual Annuity by a specified early retirement reduction factor. *See* Ex. 3, March 2005 Residual Amendment, third-fifth sentences (calculation requires "applying to such remainder early retirement reductions applicable to the Member's benefit based on the Member's age at benefit commencement" using assumptions "in effect on the date that the additional life annuity benefit commences").

83. The form of the benefit is an annuity for the life of the participant (if the participant was not married at the time the benefit commenced), or a reduced annuity payable for the life of the participant with 50% of the annuity continuing for the life of the participant's spouse. *See* Ex. 3, March 2005 Residual Amendment, end of first sentence and entire second sentence; Ex. 9, 1994 Plan §§ 6.2 and 6.3 (which are referenced at the end of the first sentence of the March 2005 Amendment).

84. In sum, in order to determine Residual Annuities, the Administrator must properly determine the participant's Appendix benefit for two of the three required steps of the determination. For Step One, the participant's Appendix benefit is used to determine eligibility (by comparing it against the Plan § 1.2 benefit), and for Step Two, the Appendix benefit is used to calculate the amount of the Residual Annuity (by finding out how much of the Appendix benefit "remain[s]" after the prior payment is annuitized using statutorily required assumptions and subtracted from the Appendix benefit).

85. As indicated above, under Appendices B, C and D, employees with pre-July 1, 1989 benefits are entitled to the greater-of of their Appendix C § 2, Appendix C § 3, or Appendix D § 2 benefits (to the extent they qualify for more than one of them), and each of those three benefits is in turn itself the greater of (or "larger of") two distinct benefits.

86. Employees like Plaintiffs Caufield and Staley who elected to make employee contributions are entitled to an Appendix C § 2 benefit equal to "the larger of" two benefits, namely, the Dynamic Grandfather benefit or the PRA-plus-Employee Contributions benefit.

87. The "larger of" determination under Appendix C § 3 provides the better of the Static Grandfather and the PRA benefits, while the Appendix D § 2 benefit yields the greater of a modified version of the Dynamic Grandfather benefit and the PRA benefit.

88. For Residual Annuity eligibility purposes, under Step One of the Amendment, in the case of employees like Plaintiffs Caufield and Staley who made employee contributions after July 1, 1989 to maintain the prior plan formula, their Appendix C benefit – specifically, their Appendix C § 2(b)(ii) PRA-plus-Employee Contributions benefit – will always exceed their Plan § 1.2 PRA benefit. That is true because the PRA benefit (the Accrued Benefit as defined in Plan § 1.2) excludes the value of any Employee Contributions to Maintain Prior Plan Benefits with interest. *See* Ex. 9, 1994 Plan § 1.2.

89. The Appendix confirms this. The benefit under Appendix C § 2(a) and the benefit under Appendix C § 2(b)(ii) are both set as equal to the benefit based upon the Accrued Benefit (as defined in Section 1.2) ***plus*** the Employee Contributions to Maintain Prior Plan Benefits with interest. Participants who elected to make employee contributions were entitled to the greater of their PRA Accrued *plus* the Employee Contributions to Maintain Prior Plan Benefits or their Dynamic Grandfather formula benefit. In either case, their benefit was not less than their PRA-plus-Employee Contribution benefit, which would have necessarily been greater than their PRA Accrued Benefit because the Employee Contribution benefit would have been more than zero.

90. Also, for Residual Annuity eligibility purposes, under Step One of the Amendment, in the case of some employees not making employee contributions after July 1,

1989, their Appendix C or D benefit also exceeded their Plan § 1.2 benefit because their Static Grandfather benefit exceeded their Plan § 1.2 benefit.

91. In the case of all Residual Annuity-eligible participants described in the preceding two paragraphs, all or almost all of them are entitled to a Residual Annuity.

92. However, as discussed in more detail below, in "**the Company's**" mid-2014 "review" of Defendants' "administration" of the Amendment, *see* Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr. at 1 (emphasis added), and again in the November 2014 and June 2015 decisions rendered during the internal claims process at issue here, the Committee and its members at the Company's direction denied thousands of putative Class members such as Ms. Staley a Residual Annuity. Following that misreading of the Amendment by "the Company" -- which has no right under the Plan document to construe the Plan -- the Committee and its members underpaid several hundred remaining Class members such as Mr. Caufield the full Residual Annuities to which they are entitled.

93. As detailed below and/or as detailed in Plaintiffs' April 6, 2015 claim appeal letter, Defendants committed four basic errors in their 2014-2015 determinations.[3]

Error 1 – Ignoring the Amendment's Incorporation of the Appendix C Benefit to Determine Both Residual Annuity Eligibility and Residual Annuity Amounts

94. Defendants' most fundamental error is to pretend that the Residual Annuity Amendment's repeated incorporation of participants' "Appendix C" benefit – once, to establish Residual Annuity eligibility and a second time, to determine the Residual Annuity

amount – somehow does not mean what it says and that in the case of participants making employee contributions, both eligibility and amounts are to be determined solely by reference to a participant's Appendix C § 2(b)(i) benefit but not the participant's Appendix C § 2(b)(ii) benefit, if greater.

95. This willfully ignores that, under Appendix C, employees making contributions after July 1, 1989 are explicitly entitled to the "larger of" their Appendix C § 2(b)(i) benefit or their Appendix C § 2(b)(ii) benefit, *i.e.*, an annuity calculated as the sum of the annuity calculated using the Plan's post-July 1989 Plan § 1.2 formula, *plus* the annuity calculated based on the employee's post-July 1989 contributions.

96. As noted above, the difference in cost to Colgate of an interpretation of the Amendment and related Plan provisions under which participants' Residual Annuities must be calculated using the greater of their (1) Appendix C § 2(b)(i) benefit or (2) Appendix C § 2(b)(ii) benefit (as Plaintiffs argue) versus just using their Appendix C § 2(b)(i) benefit (as Defendants contend) is approximately $150 million.

97. Defendants' attempt (as reflected in their November 4, 2014 and June 4, 2015 denial letters) to exclude participants' Appendix C § 2(b)(ii) benefit from the determination of their Appendix C benefit defies any unbiased, common sense reading of the plain language of the Amendment's repeated incorporation of participants' "Appendix C" benefit.

98. Defendants' fallback position (reflected for the first time in their June 4, 2015 denial letter) that Plaintiffs' Appendix C § 2(b)(ii) benefit is no greater than the age-65

[3] There are actually multiple errors comprising each group of errors labeled "Error 1," "Error 2," "Error 3" and "Error 4." They are grouped and presented as a single "Error" solely for ease of presentation.

annuity equivalent (using statutorily required assumptions) of the lump sum payment they received at the time of initial distribution is contradicted by Defendants' own calculations of Plaintiffs' Appendix C § 2(b)(ii) benefit from before the current controversy. Although Plaintiffs explicitly pointed this out to Defendants, *see* Ex. 4, Staley 4/6/15 Appeal Ltr. at 4-25, and Defendants were independently required to have been aware of their own prior inconsistent interpretations of Plaintiffs' Appendix C § 2(b)(ii) benefit, *see* 29 C.F.R § 2560.503–1(b)(5), Defendants' June 4, 2015 denial letter literally and impertinently ignores their own prior acknowledgment of Ms. Staley's minimum Appendix C entitlement.

99. Worse still, Defendants' argument that insertion of Plaintiffs' correctly calculated Appendix C § 2(b)(ii) benefit into the Residual Annuity Amendment equation will always result in $0, *see* Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr. at 13-14, depends not only on ignoring their own prior calculation of that benefit but on Defendants' knowingly false assertion that the assumptions set forth in the Plan document as of the date of Plaintiffs' original distributions (1994 and 1999) are the same as those in the subsequent 2003 and 2010 versions of the Plan. The argument is both crass and desperate. As Defendants are aware, those Plan versions by their terms do not replace the controlling 1994 Plan's assumptions nor as a matter of law could they because to retroactively apply to participants' detriment plan provisions enacted after the participants terminated and were paid would be illegal both under the Plan document, *see* Ex. 9, 1994 Plan § 10.1, and ERISA's anti-cutback clause, ERISA § 204(g), 29 U.S.C. § 1054(g); *see also* 26 U.S.C. § 411(d)(6). The fact that Defendants would make such an argument – effectively advocating an egregious violation not just of the controlling Plan provisions but the law – not only shows how weak they know their position

to be but also shows how thoroughly Colgate's $150 million conflict of interest tainted Defendants' decision and the decision making process here.[4]

Error 2 – Miscalculating the Appendix C § 2(b)(i) benefit (PIA Issue)

100. As shown below, Defendants improperly determined Plaintiffs' Residual Annuity entitlements by incorrectly determining Plaintiffs' Appendix C § 2(b)(i) benefits (or in the case of employees not making employee contributions after July 1, 1989, Plaintiffs' Appendix C § 3(b)(i) benefits or Plaintiffs' Appendix D § 2(a)(ii)(A) benefits). Specifically, Defendants applied the wrong Plan provision to determine participants' applicable Estimated Social Security Primary Insurance Amount ("PIA") (the higher the PIA is, the lower the Appendix benefit) based on their interpretative insertion of a requirement into the governing PIA provisions (Appendix A § 7) that is simply not there. *See* Ex. 4, Staley 4/6/15 Claim Appeal Ltr. at 6, 26-31.

101. Even ignoring Defendants' improper exclusion of participants' Appendix C § 2(b)(ii) benefit from the determination of the Appendix C benefit, this one correction to the determination of participants' Appendix C § 2(b)(i) benefits (or in the case of employees not making employee contributions after July 1, 1989, their Appendix C § 3(b)(i) benefits or their Appendix D § 2(a)(ii)(A) benefits) would yield Residual Annuities for Ms. Staley and many other putative Class members, and would yield increased Residual Annuities for Mr. Caufield and many other putative Class members.

[4] In that regard, as noted above, while the Residual Annuity Amendment inserts the Residual Annuity provision into the Plan retroactively to 1989, it makes no other amendment to the Plan. It makes no change to the definition of Accrued Benefit in Plan § 1.2 or to the definition of Actuarial Equivalence in Plan § 1.3.

Error 3 - Miscalculating the Appendix C § 2(b)(i) benefit (Survivorship/Pre-Retirement Mortality Issue)

102. Again ignoring Defendants' improper exclusion of participants' Appendix C § 2(b)(ii) benefit from the determination of their Appendix C benefit and their improper determination of Plaintiffs' Appendix C § 2(b)(i) benefit (or in the case of employees not making employee contributions after July 1, 1989, their Appendix C § 3(b)(i) benefit or Appendix D § 2(a)(ii)(A) benefit), Defendants also erred by improperly using survivorship in determining the annuity attributable to the lump sum originally paid and using a pre-retirement mortality discount ("PRMD") in determining the early retirement factor ("ERF") to apply to the difference between the annuity attributable to the originally paid lump sum and the annuity payable under Appendix B, C or D.

103. Use of a mortality discount in these two calculations was improper because the Plan pays a substantial death benefit, *see* 1994 Plan §§ 4.2(b) and 5.1; 1994 Plan Appendix B § 11. *See also* Ex. 4, Staley 4/6/15 Claim Appeal Ltr. at 6-7, 31-33. The use of survivorship overstated the value of the lump sum payment and thus understated the age-65 Residual Annuity participants are owed, while the use of a PRMD understated the immediately payable Residual Annuity. *Id.*

104. Ignoring all other errors, making this one correction to the determination of participants' Appendix benefit would yield Residual Annuities for Ms. Staley and many other putative Class members, and would yield increased Residual Annuities for Mr. Caufield and many other putative Class members. *Id.*

Error 4 – Improper Offset Calculation

105. A final set of errors concerns Defendants' use of the payments that Ms. Staley and Mr. Caufield received as a result of the partial settlement to lower their Residual Annuity entitlement by overstating the value of the lump sum previously paid: while the agreement allowed for an offset of the Residual Annuity due to the partial settlement, the Plan document was not amended to implement this offset, and once the payments due to the partial settlement were made, it would be an impermissible cutback in benefits under ERISA § 204(g), 29 U.S.C. § 1054(g); IRC § 411(d)(6) to amend the Plan retroactively to implement the offset. *See* Ex. 4, Staley 4/6/15 Claim Appeal Ltr. at 7, 36-40.

106. Further, even if the offset were allowed, Defendants calculated the offset incorrectly: the payment under the partial settlement should be discounted from the date it was paid (*i.e.*, November 2014), not from July 1, 2013. *Id.*

IV. Colgate Enacts But Then Prevents the Implementation of the Residual Annuity Amendment; Defendants Conceal Their Breaches and the Amendment's Very Existence from Participants

107. As confirmed by its action in adopting the retroactively-effective Residual Annuity Amendment, Colgate recognized in March 2005 that it needed to correctly calculate and pay participants' benefits under the Plan, including by fixing past legally insufficient payments. *See* Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr. at 4-6; Ex. 9, 1994 Plan § 10.1.

108. However, Colgate had second thoughts about implementing the Amendment once it realized that doing so could cost the Company many tens of millions of dollars. But this did not entitle Defendants to avoid implementing the Amendment or communicating it to eligible participants.

109. ERISA is designed to promote and protect the interests of plan participants who depend on benefits from private employee benefit plans by ensuring that participants receive the contractually defined benefits to which they are entitled under such plans. 29 U.S.C. 1001(b). To that end, ERISA sets standards for those entrusted with administering plans.

110. ERISA defines a fiduciary as encompassing any person who, among other things, has or exercises "any discretionary authority or discretionary control" or "responsibility" with respect to plan management or administration. ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

111. Here, each Defendant owed participants fiduciary duties with respect to the administration of the Plan as amended by the Residual Annuity Amendment, or in the case of Colgate, its oversight of the Committee and its members with respect to their administrative actions.

112. ERISA requires that a fiduciary "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries," (1) "for the exclusive purpose of [] providing benefits to participants and their beneficiaries" and "defraying reasonable expenses of administering the plan"; (2) "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent [person] acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims"; and (3) unless doing so would violate ERISA, "in accordance with the documents and instruments governing the plan." ERISA §§ 404(a)(1)(A),(B) and (D), 29 U.S.C. §§ 1104(a)(1)(A),(B) and (D).

113. An ERISA fiduciary is not permitted to balance the interests of plan participants and the plan's sponsor: the focus on participants must be "exclusive." ERISA § 404(a)(1). In other words, the standards that governed here were ERISA's strict fiduciary standards – the highest known to law – not those governing a relationship at arms' length.

114. In a flagrant breach of its duties, Colgate directed the Committee to not implement the March 2005 Amendment. And in breach of their duties, the Committee and Committee members agreed: they did as Colgate directed and failed to implement the March 2005 Amendment until nearly 10 years later, when they and Colgate had no other choice, as outlined above and described further below.

115. In another egregious breach, soon after the March 2005 Amendment was adopted, the Committee, along with Colgate, actively concealed the Amendment's existence from Plan participants by issuing false and misleading plan communications that by omission effectively told participants that no right to a Residual Annuity existed and by failing to correct pre-March 2005 plan communications to that same effect.

116. Under ERISA, the Committee was required to issue to participants no later than July 1, 2006 either an updated summary plan description (SPD) or a summary of material modifications (SMM) describing the new, additional benefit. *See* ERISA § 104(b), 29 U.S.C. § 1024(b)(1); 29 C.F.R. § 2520.104b-3.

117. However, acting at the direction of Colgate, the Committee did not timely update the Plan's SPD or issue an SMM disclosing or describing the new benefit to participants.

118. To this day, the Plan Administrator has never issued an updated SPD or an SMM disclosing or describing participants' rights to a Residual Annuity. The SPD in effect as of and prior to March 2005 – the 2005 SPD, issued in late 2004 (Ex. 11) – describes participants' pension benefits as not including the right to a Residual Annuity. That SPD became false and misleading not later than July 1, 2006, when the Committee failed to issue an updated SPD (and did not issue a corrective SMM).

119. When the Committee issued the next SPD after the one in existence prior to the adoption of the Residual Annuity Amendment – an SPD dated January 1, 2009, effective September 1, 2010 (Ex. 12) – the Committee again purposefully omitted disclosure of participants' right to a Residual Annuity and/or any corrective reference to the right to a Residual Annuity.

120. The Committee also concealed the existence of participants' right to a Residual Annuity prior to August 2014 in annual or other periodic individualized statements regarding their benefits or benefits rights, including in response to requests under ERISA § 105, 29 U.S.C. § 1025.

121. When the Committee finally implemented the Amendment in or about August 2014 (in violation of its terms, as shown in Ms. Staley's April 6, 2015 Claims Appeal Ltr. (Ex. 4) and throughout this Complaint), it failed to disclose the Amendment's actual terms or to accurately describe its provisions to participants like Mr. Caufield so that he and others like him might determine whether the benefit they were and are belatedly receiving is in fact the benefit to which they are entitled. *See* Ex. 13, 8/11/14 Colgate Ltr. to Paul Caufield at 1-4.

122. Moreover, the Committee's communications with participants like Mr. Caufield were affirmatively misleading in that they implied that the Amendment changing the Plan in these participants' favor had just been adopted. *Id.* at 1. The communications did not reveal that the Amendment had actually been adopted almost 10 years earlier but had not been implemented. *Id.* Defendants knew that if participants were to learn that the Amendment in question had been adopted 10 years earlier but not implemented, that would have immediately made participants suspicious, prompting inquiries and perhaps challenges to Defendants' preferred method of calculating Residual Annuities.

123. Although the Committee knew that there were thousands of participants like Ms. Staley with pre-July 1, 1989 benefits entitled to a benefit under Appendices B, C or D who were eligible for a benefit under the Amendment but whom the Committee had (improperly) determined were not entitled to such benefit, the Committee failed to inform her and other participants of the Amendment's existence and that the Committee had determined that they were not entitled to such additional benefit, even though they were potentially eligible.

124. To the contrary, the Committee's communications with such participants continued to misleadingly imply that they had no potential claim to an additional benefit and no reason to request review of the Committee's determinations when they were sent a notice informing them of their right to receive a lump sum payment as a result of the partial settlement – misleadingly described as a complete settlement – in *In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515 (LGS) (S.D.N.Y). *See* Ex. 14, 9/10/14 Colgate Ltr. to Rebecca Caufield [Staley] at 1.

125. In letters to participants like Mr. Caufield, the Committee informed him of the offset that it (wrongfully) applied as a result of the partial settlement in *In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515 (LGS) (S.D.N.Y), *see* Ex. 13, 8/11/14 Colgate Ltr. to Paul Caufield at 3, but in letters to participants like Ms. Staley, the Committee discussed the amount and legal status of the lump sum payment that participants would be receiving without mention of the fact that, under the terms of the (partial) settlement, the lump sum payment would reduce the size of any Residual Annuity the participant might later be awarded in the event the Committee changed its initial decision not to award Residual Annuities or if that determination were overturned by the Court. *See* Ex. 14, 9/10/14 Colgate Ltr. to Rebecca Caufield [Staley] at 1.

126. In proceedings during the active pendency of *In re Colgate-Palmolive Co. ERISA Litigation*, whenever the matter was discussed with the Court, Defendants avoided providing any explanation as to why the retroactively-effective Amendment had not been implemented for previously-paid participants. *See* Ex. 15, Dkt. 153, 4/4/13 Hearing Tr. at 5:8-6:7 (also referencing an earlier 11/19/12 hearing during which the amendment was raised by Plaintiffs, but Defendants did not provide an explanation). Moreover, Defendants left uncorrected the plaintiffs' counsel's pre-August 2014 statements to the Court that Defendants had implemented the Amendment and paid Residual Annuities to participants who were then requesting a cash-out of their Plan benefits. *Id.* At the time those statements were made, they

were incorrect, because the first time the Committee ever paid a participant a Residual Annuity was October 2014.[5]

V. Colgate Attempts But Fails to Bury Defendants' Residual Annuity Amendment Violations in *In re Colgate-Palmolive Co. ERISA Litigation* and, to Save Money, It Has the Committee Adopt a Willful Misreading of the Amendment Backed-Up By a Sham Claims Process Designed to Reach a Predetermined Outcome

A. Colgate Attempts But Fails to Bury Defendants' Residual Annuity Amendment Violations in *In re Colgate-Palmolive Co. ERISA Litigation*

127. In February 2007, August 2007, and October 2007, three different sets of plaintiffs – each unaware of the existence of the Residual Annuity Amendment – sued Defendant Plan for underpaying them benefits they were due under the Plan. *See* Ex. 17, 7/8/14 Order, Dkt. 161 at 1 ("This ERISA case began in 2007 as three separate suits, filed in three jurisdictions, alleging that Defendant Colgate-Palmolive Company Employees' Retirement Income Plan, sponsored by Colgate-Palmolive Company miscalculated the pension benefits of several thousand participants from July 1, 1989 to the present").

128. In May 2010, after three years of litigation and with the assistance of a private mediator, the parties reached an agreement in principle to settle that case in its entirety. Ex. 18, Class Notice, Dkt. 130-2 at 4 ¶ 5; Ex. 19, Pl. 10/9/13 Br., Dkt. 131-1 at 1, 6.

129. At no time prior to the negotiated agreement in principle to settle the case in its entirety did Defendant produce to the named plaintiffs or their counsel the Residual Annuity Amendment in response to formal discovery requests. *See* Ex. 16, Dkt. 157-1, 4/4/14 Hearing

[5] Alternatively, if those statements were not incorrect or not entirely incorrect, Defendants' June 4, 2015 claims appeal denial letter is misleading. It states: "It should be noted that the Company conducted a review of the administration of the 2005 residual annuity amendment **and paid those individuals determined to be entitled to receive a residual annuity**, including Mr. Caufield, the former spouse of Ms. Staley." Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr. at 1-2.

Tr. at 31; *see also* Ex. 15, Dkt. 153, 4/4/13 Hearing Tr. at 5 (referencing discussion before the Honorable Barbara S. Jones, on 11/19/12).

130. Colgate knew that counsel for the named plaintiffs were not aware of the existence of the Residual Annuity Amendment at the time the May 2010 settlement in principle of the case in its entirety was reached. *See* Ex. 16, Dkt. 157-1, 4/4/14 Hearing Tr. at 31-32; *see also* Ex. 15, Dkt. 153, 4/4/13 Hearing Tr. at 5 (referencing discussion before the Honorable Barbara S. Jones, on 11/19/12).

131. Subsequently, in the course of exchanges of additional information that took place in the three additional years prior to the conclusion of a *partial* settlement agreement, the existence of the Residual Annuity Amendment became known to counsel. *See* Ex. 16, Dkt. 157-1, 4/4/14 Hearing Tr. at 32. Neither Colgate nor Defendant Plan provided named plaintiffs' counsel a copy of the Residual Annuity Amendment until July 2011. *Id.*

132. Once aware of the Residual Annuity benefit and the fact that Defendants failed to have ever implemented it, counsel for the named plaintiffs insisted that all Residual Annuity Amendment claims be carved out of the settlement agreement; eventually, Colgate and the Plan agreed. *See* Ex. 20, Def. 10/21/13 Ltr. to Court, Dkt. 132 at 2 (undersigned counsel insisted on carve-out, would not agree to a settlement on a basis Defendants found acceptable); Ex. 17, 7/8/14 Order, Dkt. 161 at 2, 11, *reported as In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515, 36 F. Supp. 3d 344, 347, 352 (S.D.N.Y. 2014) ("claims known as the Residual Annuity Claims were excluded from the scope of the settlement" and "Class Counsel preserved and *did not compromise* a group of claims arising under the 'Residual Annuity Amendment'") (emphasis added); Ex. 21, Pl. 3/11/14 Br., Dkt.

139, at 26 ("Closure was only obtained because Class Counsel was aggressively pushing to get the case back onto a full litigation track and was willing to risk the (undocumented) gains obtained in the 2010 mediation if Defendants did not accede to Plaintiffs' requirement that there be a complete carve-out of the residual annuity claims").

B. Colgate and the Plan's Agreement to the Residual Annuity Carve-out and the Court's Order Forbidding Colgate and the Plan From Asserting that Any Residual Annuity Claims Had Been Released in the Partial Settlement

133. The October 9, 2013 Partial Settlement Agreement carved out Class members' Residual Annuity Amendment claims from those claims being settled and released.

134. With Colgate's and the Plan's approval, the partial settlement explicitly excluded all claims arising under the Residual Annuity Amendment. *See* Ex. 1, Partial Settlement Agreement, Dkt. 130-1, at 1, Second Preamble ("WHEREAS, the Parties desire to promptly and fully resolve and settle with finality the Lawsuit, with the exception of claims arising under the Residual Annuity Amendment defined below").

135. The Partial Settlement Agreement was expressly "predicated on" "the exclusion from this Agreement of Class Members' claims arising under the Residual Annuity Amendment." Ex. 2, Partial Settlement Agreement at 10, § 4A.

136. The exclusion from the Class's release of claims of their Residual Annuity Amendment claims is reflected in multiple provisions of the Partial Settlement Agreement. For example, in Partial Settlement Agreement § 4A(8), Colgate agreed to support Plaintiffs' motion asking the Court to find that as part of its final approval order and judgment "that Plaintiffs and Class Members preserve all claims, rights and interests under the Residual

Annuity Amendment" and that their release accordingly did not encompass those claims. *Id.* at 11, § 4A(8).

137. Colgate's agreement to the exclusion of Residual Annuity Amendment claims is also reflected in Partial Settlement Agreement § 4(A), which reflects Colgate's agreement that the Court's declaration of the Agreement's preclusive effect would be "subject to the Residual Annuity Amendment Exclusion." *Id.* at 10-11, § 4(A).

138. Colgate's agreement to the exclusion of Residual Annuity Amendment claims is also reflected multiple times in Partial Settlement Agreement § 12 entitled "Releases and Exclusions," which are described in the following three paragraphs.

139. Partial Settlement Agreement § 12.A(1) contains a description of the released claims and concludes with the statement: "For avoidance of doubt, the foregoing does not include any claims arising under the Residual Annuity Amendment." *Id.* at 15, § 12.A(1).

140. Partial Settlement Agreement § 12.D details the Residual Annuity Amendment Exclusion. In particular, Partial Settlement Agreement § 12.D(1) specifies: "Notwithstanding anything else herein that could potentially be construed to the contrary, Plaintiffs and Class Members fully retain any and all past, present and future causes of action, claims, entitlements, benefits, damages, awards, equitable, legal, and administrative relief, interest, demands or rights that are based upon, or arise under the Residual Annuity Amendment." *Id.* at 16-17, § 12.D(1).

141. In Partial Settlement Agreement § 12.D(2), Colgate agreed that "Defendant and/or Colgate **may not assert** in any future administrative or legal proceeding that the

release set forth in this Agreement releases, bars, or precludes any claims under the Residual Annuity Amendment." *Id.* at 17, § 12.D(2) (emphasis added).

142. Colgate also agreed that the notice to the proposed Class would inform them explicitly that "[t]he released claims do not include any and all past, present and future causes of action, claims, entitlements, benefits, damages, awards, equitable, legal, and administrative relief, interests, demands or rights that are based upon, or arise under the Residual Annuity Amendment." Ex. 18, Class Notice, Dkt. 130-2 at 8 ¶ 11; *see also id.* at 1 (referencing same).

143. Colgate admitted that "the proposed notice that has been filed with the Court clearly explains to recipients that any claims under the residual annuity amendment ***are not*** being released under the current settlement." Ex. 20, Def. 10/21/13 Ltr. to Court, Dkt. 132 at 3 (Colgate's emphasis).

144. In its Final Order and Judgment, this Court explicitly made the Settlement Agreement part of the order and judgment, *id.* at 5, ¶ 7, including § 12.D(2)'s provision barring Defendant Plan and/or Colgate from asserting in any future administrative or legal proceeding that Class members' release precluded their claims under the Residual Annuity Amendment. The Court separately specified that "**Section 12 of the Settlement Agreement ('Releases and Exclusions') is expressly incorporated herein by reference**." Ex. 1, 7/8/14 Final Order and Judgment, Dkt. 162 at 5, ¶ 8 (emphasis added).

145. The Court's July 8, 2014 Final Order and Judgment decrees that the Agreement "shall be effective, **binding and enforced according to its terms** and conditions," Ex. 1, 7/8/14 Final Order and Judgment, Dkt. 162 at 4, ¶ 6 (emphasis added), and specifies that the Court "shall retain exclusive jurisdiction to resolve any disputes or

challenges that may arise as to the performance of the Settlement Agreement or any challenges as to the performance, validity, interpretation, administration, enforcement, or enforceability of . . . this Final Order and Judgment, or the Settlement Agreement." *Id.* at 6 ¶ 10.

146. Citing the second preamble and §§ 4A, 4A(2), 4A(8), and 12 of the incorporated Partial Settlement Agreement, the Court's July 8, 2014 Final Order and Judgment declared that "Plaintiffs and Class Members preserve all claims, rights and interests under the Residual Annuity Amendment as set forth in the Settlement Agreement, and their incorporated release, effective as of the date of Final Approval, is subject to the Residual Annuity Amendment Exclusion." Ex. 1, 7/8/14 Final Order and Judgment, Dkt. 162 at 4, ¶ 6(c). In paragraph 8, the Court separately noted that Class members' releases were "[s]ubject to the Residual Annuity Amendment Exclusion." *Id.* at 5, ¶ 8.

147. Accordingly, as specified in its Final Order and Judgment, the Court only dismissed the individual and Class claims that were not encompassed by the Residual Annuity Amendment Exclusion. Ex. 1, 7/8/14 Final Order and Judgment, Dkt. 162 at 6, ¶ 10 ("This action, including all individual and Class claims asserted in it subject to the Residual Annuity Amendment Exclusion, is hereby dismissed").

148. Both in its July 8, 2014 Final Order and Judgment and in its December 16, 2013 Preliminary Approval Order, the Court approved the issuance of notice to the Class that Colgate conceded "clearly explains to recipients that any claims under the residual annuity amendment ***are not*** being released under the current settlement," Def. 10/21/13 Ltr. to Court, Dkt. 132 at 3 (Colgate's emphasis). *See* Ex. 1, 7/8/14 Final Order and Judgment, Dkt. 162 at

3, ¶ 5; Ex. 22, 12/16/13 Preliminary Approval Order, Dkt. 135 at 5 ¶ 6 (expressly finding that the notice fairly and adequately "describes the terms and effects" of the partial settlement agreement).

149. Along with the July 8, 2014 Final Order and Judgment, the Court issued a separate order the same day ruling on Class counsel's request for attorney's fees and costs. Ex. 17, 7/8/14 Order, Dkt. 161, *reported as In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515, 36 F. Supp. 3d 344 (S.D.N.Y. 2014). In so doing, the Court remarked that "claims known as the Residual Annuity Claims were excluded from the scope of the settlement" and that "Class Counsel preserved and *did not compromise* a group of claims arising under the 'Residual Annuity Amendment.'" Ex. 17, 7/8/14 Order, Dkt. 161 at 2, 11; 36 F. Supp. 3d at 347, 352 (emphasis added).

C. Colgate Preempts an Implementation of the Residual Annuity Amendment According to Its Terms

150. Colgate and the Plan agreed to the Residual Annuity Amendment carve-out even though it knew prior to signing the October 9, 2013 Agreement that undersigned counsel intended to pursue the Residual Annuity Amendment claims on behalf of putative Class members. *See* Ex. 20, Def. 10/21/13 Ltr. to Court, Dkt. 132 at 1. Colgate accepted this result because Colgate and its litigation counsel had formulated an interpretation of the Residual Annuity Amendment that, when implemented, would only cost Colgate and the Plan a fraction of what they recognized true implementation of the Amendment as written would cost.

151. Under this new interpretation that Colgate and its litigation counsel devised (in conflict with the plain terms of the Amendment and the Plan and with the way the Plan itself

had previously calculated benefits), thousands of participants would no longer be entitled to a Residual Annuity and those few hundred participants who would receive a Residual Annuity would in most cases have the most valuable component of the benefit removed from the calculation.

152. In 2013, in the course of seeking undersigned counsel's disqualification from bringing Residual Annuity claims, Colgate did not dispute undersigned counsel's assertion in a solicitation letter to a participant (unconnected to either Mr. Caufield or Ms. Staley), that during settlement negotiations in response to Plaintiffs' counsel's attempt to get Colgate to include the unpaid Residual Annuities included in the settlement, "Colgate indicated that it intended to calculate [Residual Annuities] in a way that would (again) improperly leave" a participant underpaid vis-à-vis what the Residual Annuity Amendment required. Ex. 20, Def. 10/21/13 Ltr. to Court, Dkt. 132, at 2. What Colgate found objectionable instead was that "Plaintiffs' counsel *refused to make a demand to settle*" the parties' dispute on a basis that Colgate deemed acceptable. *Id.* (emphasis added).

153. Colgate believed that either by disqualifying undersigned counsel and/or by making the improperly-limited disclosures it planned to make and did make to Residual Annuity recipients upon implementation and/or by making no disclosures to those participants that it intended to find were not entitled to a Residual Annuity, it might avoid any court challenge to its preferred reading of the Amendment. Colgate also believed that if such a challenge were made, it would be best positioned to overcome such challenge by implementing the Amendment as soon after the Court gave final approval to the partial settlement as practicable, before any such suit could be filed, which would allow it to

emphasize the payments it had "voluntarily" made. Colgate deemed the alternative – construing and implementing the Amendment according to its terms – financially unacceptable.

154. In breach of its fiduciary duties and exceeding its authority under the terms of the Plan, Colgate directed the Committee to adopt and implement its preferred interpretation and to resist any deviation from that interpretation as might be sought by a participant who did not receive a Residual Annuity and requested that the Committee reconsider that interpretation or by a participant who received a Residual Annuity and requested that the Committee reconsider the method and amount of the Residual Annuity it awarded.

155. In breach of its fiduciary duties, the Committee and its members acceded to Colgate's request.

VI. Defendants Deny Plaintiffs Their Rightful Benefits and a Full and Fair Review of Their Claims

156. A key component of ERISA's statutory plan is Section 503, which requires that, "[i]n accordance with regulations of the [Department of Labor], every employee benefit plan shall" do two things: First, "provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant"; and second, "afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim." ERISA § 503, 29 U.S.C. § 1133.

157. The Department of Labor first issued a regulation governing claims procedures for employee benefit plans under its ERISA Section 503 authority in May 1977. *See* Claims Procedures for Employee Benefit Plans, 42 Fed. Reg. 27,426 (May 27, 1977) (codified at 29 C.F.R. § 2560.503–1).

158. Following a notice-and-comment period, the DOL issued its revised claims-procedure regulation in November 2000. *See* ERISA Rules and Regulations for Administration and Enforcement; Claims Procedures, 65 Fed. Reg. 70,246 (Nov. 21, 2000). The regulation's preamble, or statement of basis and purpose, explains that "[t]he new standards are intended to ensure more timely benefit determinations, to improve access to information on which a benefit determination is made, and to assure that participants and beneficiaries will be afforded a full and fair review of denied claims." *Id.* at 70,246.

159. Taking into consideration "the purely voluntary nature of the system through which these vital benefits are delivered," the DOL concluded "that the procedural reforms contained in [the] regulation [were] necessary to guarantee procedural rights to benefit claimants." *Id.*

160. Among the many changes to the regulation was the addition of subsection (*l*), addressing the consequences for the "[f]ailure to establish and follow reasonable claims procedures." 29 C.F.R. § 2560.503–1(*l*). That subsection provides:

> In the case of the failure of a plan to establish or follow claims procedures consistent with the requirements of this section, a claimant shall be deemed to have exhausted the administrative remedies available under the plan and shall be entitled to pursue any available remedies under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim.

Id.

161. The Department explained in the regulation's preamble that its "intentions in including this provision in the proposal were to clarify that the procedural minimums of the regulation are essential to procedural fairness and that a decision made in the absence of the mandated procedural protections *should not be entitled to any judicial deference*." 65 Fed. Reg. at 70,255 (emphasis added). In other words, a plan's failure to establish or follow the claims-procedure regulation entitles the claimant to have his or her claim reviewed *de novo* in federal court.

A. Ms. Staley's July 2014 Claim for Benefits

162. On July 30, 2014, Ms. Staley, using her own personal stationary, sent the Plan a simple 1-page letter saying that it had come to her attention that she should be receiving an annuity benefit from the Plan in addition to the lump sum payment she had previously been paid. *See* Ex. 8, Staley 7/30/14 Claim Ltr.

163. In that July 30, 2014 letter, Ms. Staley requested that the Plan correct its failure to pay that additional annuity benefit and to commence annuity payments as well as provide back payments with interest dating back to the original date upon which the annuity should have commenced. *Id.*

164. Ms. Staley sent her letter by certified mail. *See* Ex. 23, U.S. Postal Service Form 3811.

165. On August 5, 2014, the Plan Administrator received Ms. Staley's letter and through a representative, signed for the letter on a U.S. Postal Service Form 3811, which the Postal Service provided as proof of delivery to Ms. Staley. *Id.*

B. The Committee's November 2014 Denial of Ms. Staley's Claim

166. On November 4, 2014, on behalf of the Committee, Committee member and Colgate Vice President for Global Compensation & Benefits Laura Flavin denied Ms. Staley's claim for benefits. *See* Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 1-4.

(1) The Denial Letter Shows The Denial Decision Was Not Made By Ms. Flavin or Ms. Flavin Alone

167. Ms. Flavin's November 4, 2014 letter started by saying "I am writing you in my capacity as initial claims reviewer under the Colgate-Palmolive Employees' Retirement Income Plan ('ERIP' or 'Plan') regarding your inquiry about eligibility for an annuity benefit from the Plan in addition to the lump sum you already received on March 14, 1994." Ex. 5, Def. 11/4/14 Ltr. at 1.

168. Ms. Flavin thereafter switched from the first person singular to the first person plural, asserting that "**[w]e** analyzed your benefit history" and "**[w]e** . . . determined you are not eligible for an additional annuity benefit" and "[t]he following is a summary of 'our' analysis." *Id.* (emphasis added).

169. When Ms. Staley subsequently asked Ms. Flavin to disclose who else "determined that she [is] not eligible for an additional annuity benefit," *see* Ex. 24, 1/6/15 Staley Ltr. at 4, Ms. Flavin refused to respond. *See* Ex. 10, Def. 3/5/15 Requested Documents and Information Denial Ltr. at 1. This improper refusal was reiterated by Defendants in their letters dated June 4, 2015 (Ex. 6) and April 25, 2016 (Ex. 25).

170. "'[O]ur' analysis" was not Ms. Flavin's or the Committee's in whole or in part, but instead that of Colgate and/or its lawyers, having made that determination prior to receiving Ms. Staley's claim, as set forth above. Alternatively, the analysis was one that was

almost entirely that of Colgate and its lawyers, and not an analysis that Ms. Flavin or the Committee could have performed or did perform on their own, and not one that Ms. Flavin or the Committee understood, at least not entirely.

171. Because it was a joint or shared decision to deny Ms. Staley's claim and not a decision made solely by Ms. Flavin as required by the Committee's delegation of authority to which she referred, the denial of Ms. Staley's claim violated that delegation, Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 1, 3; Ex. 10, Def. 3/5/15 Requested Documents and Information Denial Ltr. at 1, which in turn was a violation of the claims process established by the Committee and the Plan and required by the DOL claims regulation.

(2) Defendants Disingenuously Ignored or Rewrote the Plain Words of the Residual Annuity Amendment and Plan Appendices B, C and D, which the Amendment Repeatedly Incorporates Without Change or Reservation

172. The Flavin letter begins by setting forth the text of the Residual Annuity Amendment. *See* Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 1. It then states (correctly) that Ms. Staley elected to contribute to the Plan in 1989 and was entitled to benefits under Appendix C. *Id.* at 2.

173. Defendants show, however, that they misread and misunderstand the Appendix when they assert (through Ms. Flavin) that it was *because* Ms. Staley made employee contributions that she was entitled to a benefit under Appendix C. *Id.* at 2 ("Our records indicate and your July 30, 2014 letter confirms that you elected to contribute to the Plan in 1989. **As such**, you were entitled to benefits under Appendix C of the ERIP") (emphasis added). That is false: Ms. Staley's Plan benefit would still have been exclusively determined under Appendix C *whether or not* she made employee contributions.

174. As demonstrated above in ¶ 66 above, the benefits of employees with pre-July 1, 1989 benefits who did not make employee contributions are controlled by Appendix C § 3, which provides that they are to receive a benefit that is the "larger of" their Appendix C § 3(b)(i) Static Grandfather benefit or their Appendix C § 3(b)(ii) PRA benefit.

175. After setting forth the text of the Residual Annuity Amendment, the Flavin letter continues with the following non-sequitur: "Additional annuities under the 2005 Amendment are determined by a comparison of the Appendix C prior Plan formula annuity to the Personal Retirement Account ('PRA') formula benefit." Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 1. Each constituent part of this unsupported assertion directly conflicts with the text of the Residual Annuity Amendment, as does the assertion taken as a whole.

176. *First*, the Residual Annuity is **not** determined by comparing one annuity to the other: as the Amendment's text (sentence one) clearly states, and as demonstrated above in ¶¶ 77-91, the annuity comparison (between the Appendix benefit and the PRA benefit) determines **eligibility** for the additional benefit and is decidedly not how that additional (or residual) benefit's **amount** is determined. The additional (or residual) benefit amount is determined (as set forth in sentence three) by calculating the immediate annuity that remains once the age-65 benefit equivalent of the lump sum benefit that was paid has been subtracted from the age-65 Appendix benefit otherwise payable.

177. *Second*, the Amendment does not determine eligibility or calculate the Residual Annuity by reference to the "prior Plan formula annuity." Indeed, there is no such thing as the "Appendix C prior Plan formula annuity" in the Plan document. Defendants' reading of the repeated language (in Residual Annuity Amendment sentences one and three)

"Appendices B, C or D," to mean the benefit under Appendix C § 2(b)(i) (the Dynamic Grandfather benefit), rather than all of Appendix C, *i.e.*, encompassing whichever provision in Appendix C entitles the participant to his or her "larger of" benefit (which in Plaintiffs' cases is their Appendix C § 2(b)(i) (PRA-plus-Employee Contributions) benefit) is simply not a reasonable reading.

178. When the third sentence of the Residual Annuity Amendment (governing the calculation of the amount of the Residual Annuity due) says that the Plan Administrator shall subtract the annuity equivalent of the lump sum already paid from the "age 65 single life annuity benefit otherwise payable to the Member under Appendi[x] . . . C," that simply means that, under the terms of the Plan, the partial payment is to be subtracted from the highest amount payable to the participant at age 65 under Appendix C. That plain reading is compelled by the Amendment's clear and unambiguous terms as well as by the fully-corrective nature of this March 2005 amendment, which announces that it is "Effective as of July 1, 1989" – *i.e.*, that the Amendment intends to reach back to encompass thousands of payments made over a nearly 16-year period, in recognition that those original payments were less than the legally-required minimum payments. *See* Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr. at 5 ("the Plan was amended to provide that the lump sum paid plus the present value of the Residual Annuity valued at age 65 would always at least equal the present value, determined using statutory actuarial assumptions, of the annuity benefit under Appendix B, C or D, as applicable, valued at age 65"); *see also* Ex. 9, 1994 Plan § 10.1(A) (retroactively effective amendments are authorized only when "deemed advisable in order to meet the requirements of the Code").

179. At best, it would be irrational and arbitrary for the Amendment to direct that the corrective make-up payment it calls for to be calculated by reference to an amount payable that was less than the amount that should have originally been paid. Whereas here, given a plain meaning interpretation of the terms of a corrective amendment that corrects the underpayments made to all covered participants, it is impermissible, particularly given that the retroactive effective 2005 Amendment made no changes to text of the Appendix benefit and associated provisions and effectively re-enacted and endorsed them, to suppose that the drafter's actual goal was to intentionally make only a partial correction of prior Appendix benefit underpayments.

180. Nor would it be lawful for a sponsor to amend a plan document to correct some impermissible benefit forfeitures by amending the offending plan provision but intentionally leaving unaltered through re-enactment other aspects of the provision that (under this same bizarre, subsequent interpretation of the amendment) cause or ratify other impermissible forfeitures no less deserving of and requiring correction. Rather than suppose in the absence of any supporting evidence that a plan sponsor determined to undo unlawful plan forfeitures intended its enactment to only be a partial correction, the presumption should be – particularly in a plan that intends to comply with ERISA and the Code – that an enactment intended to correct past illegality was itself meant to be construed to reach no such unlawful results.

181. When Ms. Staley made these very points to Defendants in her April 6, 2015 claims appeal, *see* Ex. 4, Staley 4/6/15 Claim Appeal Ltr. at 14, Defendants had no response, *see* Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr.

182. For participants like Plaintiffs (and well over 1,000 putative Class members) who made employee contributions, the benefit "payable to the Member under Appendices B, C or D," is always the annuity at any point in time that is "the larger of" their Appendix C § 2(b)(i) Dynamic Grandfather benefit or Appendix C § 2(b)(ii) PRA-plus-Employee Contributions benefit.

183. For other participants/putative Class members who did not make employee contributions, the benefit "payable to the Member under Appendices B, C or D," is always the annuity at any point in time that is "the larger of" their Appendix C § 3(b)(i) Static Grandfather benefit or Appendix C § 3(b)(ii) PRA benefit, or, if greater (and the participant is eligible), the annuity at any point in time that is "the larger of" their Appendix D § 2(a)(ii)(A) Transition benefit or Appendix D § 2(a)(ii)(B) PRA benefit.

184. Thus, "the age 65 single life annuity benefit otherwise payable to the Member under Appendices B, C or D" is the **greater of** the applicable Grandfather benefit payable at age 65 or the PRA (plus Employee Contributions, if applicable) benefit payable at age 65 (*i.e.*, not just the Grandfather benefit, as the Flavin letter incorrectly states, to the extent that the Grandfather benefit and the "Prior Formula annuity" are synonymous).

185. *Third*, also contrary to Defendants' assertion, the Residual Annuity Amendment does not determine eligibility or calculate the Residual Annuity by reference to the "Personal Retirement Account ('PRA') formula benefit," which could include reference to not just the PRA Accrued Benefit defined in Plan § 1.2 (to which the Amendment *does* make reference) but also the Appendix C § 2(b)(ii) PRA-plus-Employee Contribution benefit.

186. Contrary to Defendants' assertion, the Residual Annuity Amendment does not define the benefit or eligibility for the benefit by means of any comparison between one Plan "formula" versus another. Rather, the Residual Annuity Amendment (consistent with the way the Plan document is structured and written) creates eligibility for and entitlement to a residual annuity when the Appendix *benefit* (regardless of the "formula(s)" upon which that *benefit* may be based) exceeds the participant's PRA "*Accrued Benefit (as defined in Section 1.2)*" and the amount of the benefit is the amount by which the Appendix benefit exceeds the benefit that is actuarially equivalent to the lump sum paid.

187. Defendants acknowledged that Ms. Staley was entitled to benefits under Appendix C, stating in their claim denial letter: "you were entitled to benefits under Appendix C." Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 2. That is a concession that Ms. Staley was entitled to the larger of her Dynamic Grandfather benefit or her PRA-plus-Employee Contributions benefit because the entitlement of any participant making employee contributions is, under Appendix C, the larger of her Dynamic Grandfather benefit or her PRA-plus-Employee Contributions benefit. Nevertheless, Defendants denied Ms. Staley her right to her Appendix C § 2(b)(ii) PRA-plus-Employee Contributions benefit and consequently denied her a Residual Annuity based on her properly-calculated Appendix C § 2(b)(ii) benefit (and also denied her a Residual Annuity based on her Appendix C § 2(b)(i) Dynamic Grandfather benefit, which is discussed separately below).

(3) Substantively and Procedurally, Defendants and Defendants' Denial Letter Violated the Governing Claims Regulation

188. The governing claims regulations requires that whenever a plan administrator denies a participant's claim for benefits, it must provide the participant a written notice that

sets forth "in a manner calculated to be understood by the claimant," the "specific reason or reasons for the denial," and "[s]pecific reference to pertinent plan provisions on which the denial is based." 29 C.F.R. § 2560.503–1(g)(1). Defendants' claim denial letter fails each of these requirements.

(a) The Denial Letter Provides No Explanation for How or Why Ms. Staley Was Denied a Residual Annuity Based on Her Appendix C Entitlement to "the Larger of" Her Appendix C § 2(b)(i) Or Her Appendix C § 2(b)(ii) Benefits

189. The denial of Ms. Staley's claim for a Residual Annuity cannot be considered to have been written in a manner calculated to be understood by the average participant because it provides no explanation whatsoever of how or why Defendants concluded that Ms. Staley could be denied a determination of a Residual Annuity despite her being entitled to an Appendix C § 2(b)(ii) benefit and it provides no reason or reference to any Plan provision that disentitled her to a Residual Annuity based on her Appendix C § 2(b)(ii) benefit.

190. Defendants' denial letter references the Residual Annuity Amendment, which in turn twice explicitly incorporates a determination using the participant's Appendix C benefit. *See* Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 1-2; Ex. 3, Residual Annuity Amendment ("Appendi[x] . . . C . . . benefit," in first sentence; "age 65 single life annuity benefit otherwise payable to the Member under Appendi[x] . . . C," in third sentence). But the reasonable participant in Ms. Staley's shoes looking at Appendix C would have had little difficulty finding the part that applied to her (namely, § 2 entitled "If a Member Elects to Make Contributions to Maintain Prior Plan Benefits") and seeing under § 2(b) that she was entitled to "the larger of" two distinctly differently calculated amounts (under § 2(b)(i) and § 2(b)(ii)).

191. Defendants' November 4, 2014 claim denial letter may provide an explanation for why they determined that Ms. Staley is not entitled to a Residual Annuity based on her Appendix C § 2(b)(i) entitlement. But it provides no explanation, in a manner calculated to be understood by the average plan participant or otherwise, of how or why they denied her a Residual Annuity based on her Appendix C entitlement to "the larger of" her Appendix C § 2(b)(i) benefit *or* her Appendix C § 2(b)(i) benefit. That would be a complete mystery even to a participant of above average intelligence with legal training, extensive experience with ERISA plans, and pension benefit calculations. Ms. Staley could not have figured out how or why Defendants determined she was not entitled to a Residual Annuity given that, using her larger Appendix C § 2(b)(ii) entitlement and even accepting everything else Defendants did in or around August 2014 in determining Residual Annuities, she is entitled to one.

192. On page 3 of Defendants' claim denial letter, after concluding their "analysis" (limited to showing how Ms. Staley had no Residual Annuity based on her Appendix C § 2(b)(i) entitlement), Defendants assert incorrectly that the Committee's decision and interpretation is "'conclusive and binding,'" Ex. 5, Def. 11/4/14 Ltr. at 3 – without any specific reference to the provenance of the quoted language and misleadingly omitting tha,t under Plan § 8.6, such decisions are *not* conclusive and binding in the case of any denial of benefits that is subsequently challenged in court.

(b) The Denial Letter Invokes and Encloses the Wrong Plan

193. The letter then states "Enclosed herewith are the following documents" – listing five items, the first of which is identified solely as "The Plan document," with no

explanation as to why it was provided or what relationship the enclosed "Plan document" had to Defendants' denial decision. *Id.* at 3.

194. What Defendants enclosed as "The Plan document" was in fact (1) a 201-page document entitled "Colgate-Palmolive Company Employees' Retirement Income Plan As Amended and Restated Effective as of September 1, 2010 (Except where otherwise provided herein)," that was apparently signed on December 28, 2010; and (2) an undifferentiated set of 35 pages comprising what are apparently amendments to the 2010 version of the Plan that were adopted in 2010 and subsequent years through early 2014. *See* Ex. 26, 2010 Plan (as provided to Ms. Staley); Ex. 27, 2010-2014 Amendments (as provided to Ms. Staley).

195. These disclosures did not provide Ms. Staley with a copy of the 2005 Residual Annuity Amendment because the version of the Amendment reflected in the 2010 Plan document is not the same as the version enacted in 2005, nor could it have been applied against her when the controlling version was more favorable. *See* ERISA § 204(g), 29 U.S.C. § 1054(g).

196. To the extent that Defendants based their denial decision in whole or in part on "The Plan document," they failed to state that "in a manner calculated to be understood by the claimant," or provide a "[s]pecific reference" to the provisions of the 2010 Plan document upon which their denial was based. If they did not base their decision to deny Ms. Staley a Residual Annuity in whole or in part on the provisions of the 2010 Plan document, then providing her with that as "The Plan document" necessarily rendered their notice of her claim denial not written in a manner calculated to be understood by the average plan participant – it makes the notice misleading because it directs Ms. Staley to the wrong plan provisions.

197. Defendants cited to the operative 2005 Residual Annuity Amendment and its text, but they failed to identify the version of Appendix C upon which they based their denial decision. If the denial decision was based on the 2010 Plan's version of Appendix C or provisions of the Plan referenced in Appendix C, then the determination without more was necessarily flawed and unlawful because the subsequently-amended provisions of a Plan document put into effect after a participant has terminated employment and commenced her benefit cannot be retroactively applied against that participant to her detriment, which was or potentially would be the case here. *See* ERISA § 204(g), 29 U.S.C. § 1054(g).

198. To the extent Defendants referred to or relied on the 2010 Plan version of Appendix C or provisions of the Plan referenced in Appendix C, doing so could only have been a result of bad faith (reflecting the extent to which Defendants' self-interest tainted their decision and decision-making process) or gross incompetence. The Foreword to the 2010 Plan document states that "[t]he provisions of this amended and restated Plan are generally applicable **only** to Employees with Accounts under the Plan on September 1, 2010, or whose Benefit Commencement Date did not occur before September 1, 2010. **All other Members are subject to the terms of the Plan as in effect on their Benefit Commencement Date**." Ex. 26, 2010 Plan, Foreword at 1 (emphasis added).

199. Defendants' invocation of the 2010 Plan document – and ***only*** the 2010 Plan document – demonstrates Defendants' violation of the DOL claims regulation in an equally fundamental way: ERISA requires the Plan to "establish and maintain a procedure by which a claimant shall have a reasonable opportunity to appeal an adverse benefit determination . . .

under which there will be a full and fair review of the claim and the adverse benefit determination." 29 C.F.R. § 2560.503–1(h)(1).

200. In order for the claims procedures to be reasonable, ERISA requires that they must "contain administrative processes and safeguards designed to insure and to verify that benefit claim determinations are made in accordance with governing plan documents and that, where appropriate, the plan provisions have been applied consistently with respect to similarly situated claimants." 29 C.F.R. § 2560.503–1(b)(5).

201. Defendants could not possibly have had "administrative processes and safeguards designed to insure and to verify that benefit claim determinations are made in accordance with governing plan documents" if, as occurred here, they provided Ms. Staley with the wrong Plan document.

202. Defendants also provided Ms. Staley with the wrong summary plan description (SPD). The SPD that Ms. Flavin's letter enclosed was the SPD accompanying the 2010 Plan (*see* Ex. 12) and that 2010 SPD, as shown above in ¶¶ 15-19, contained no disclosure or description of the Residual Annuity Amendment and was therefore false and misleading as to Ms. Staley's rights under the Plan.

203. In order to determine the Appendix C benefit used in the determination of the Residual Annuity, it is necessary to determine the single life annuity payable at age 65 attributable to the PRA-plus-Employee Contributions. *See* Ex. 4, Staley 4/6/15 Claim Appeal Ltr. at 4-6. This information was never contained in any SPD or SMM and has not been provided to participants even to this day. Moreover, while a method to determine that benefit was provided in the Plan document that Defendants furnished to Ms. Staley, that was not the

method that controls the determination of her benefit, which is set forth in the controlling 1994 Plan document that was not provided to Ms. Staley. The method to determine the single life annuity payable at age 65 attributable to the PRA-plus-Employee Contributions is significantly different under the 2010 Plan than it was in 1994.

(c) The Denial Letter Fails to Tell Ms. Staley What the Right Plan Document Is and That She Needs It to Perfect Her Claim

204. Defendants' failure to inform Ms. Staley of the existence of a different and more favorable controlling Plan document and provisions governing the proper determination of her Residual Annuity, if any, is additional evidence of Defendants' gross incompetence or bad faith. Further, this failure constituted an independent violation of the DOL claims regulation. The regulation requires that a written notice of a claim denial inform the claimant "of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary." 29 C.F.R. 2560.503–1(g)(1)(iii). Here, in order for Ms. Staley to perfect her claim, she needed to be informed that "The Plan document" from 2010 provided to her by Defendants did *not* control the proper determination of her Residual Annuity, but that the 1994 version of the Plan did.

205. By providing Ms. Staley with a copy of the 2010 version of the Plan document, Defendants implied that the Plan provisions controlling the determination of her plan benefit would be based upon the provisions of that document. Not only was the controlling document *not* the 2010 version of the Plan document, but the defined meaning of plan terms like "Accrued Benefit" and "Actuarial Equivalence" are dramatically different between the 2010 version of the Plan document and the controlling 1994 plan document. That discrepancy

would, in turn, lead Ms. Staley and any reasonable participant to conclude that a potentially dramatically different benefit was owed to them.

206. Defendants' provision to Ms. Staley of the incorrect plan document constitutes both a failure to inform her of the additional material to which she was entitled and that she needed and was also an improper effort to hide the fact that she would need any additional material.

(d) The Denial Letter Proves Defendants Failed to Interpret the Plan Consistently By Pretending Ms. Staley Had No Appendix C Benefit Larger than Her Appendix C § 2(b)(i) Dynamic Grandfather Benefit

207. The November 4, 2014 denial letter also shows that Defendants violated the claims regulation in yet another fundamental way. As noted above, 29 C.F.R. § 2560.503–1(b)(5) requires that the claims procedures must "contain administrative processes and safeguards designed to insure and to verify that benefit claim determinations are made in accordance with governing plan documents and that, where appropriate, the plan provisions have been applied consistently with respect to similarly situated claimants."

208. But one of the other documents enclosed with Ms. Flavin's letter – contained within the 13 pages of material identified as "Hard copy benefits documents for R. Caufield regarding the ERIP" (Ex. 28) – shows that Defendants could not have established and certainly did not follow "processes and safeguards designed to insure and to verify that . . . the [relevant, controlling] plan provisions have been applied consistently with respect to similarly situated claimants."

209. The document in question is an 11-page set of calculation worksheets and forms that Defendants prepared and provided to Ms. Staley in 1994 showing her various

benefit entitlements and enabling her to elect her benefit. These worksheets and forms are referred to here as the "1994 Worksheet(s)" or "worksheet(s)." Ex. 29.

210. The 1994 Worksheets show that Defendants knew full well what Ms. Staley's true entitlement under Appendix C was – namely, "the larger of" her Appendix C § 2(b)(i) and § 2(b)(ii) benefits – because that is exactly how they calculated her benefit entitlement in 1994 when she requested her distribution. *Id.*

211. The Worksheets, which were provided to her to enable her to elect her benefit at the time, show her various benefit entitlements, including most relevantly her Appendix C § 2(b)(i) Dynamic Grandfather benefit of $731.31 (annual benefit, commencing at age 65) and her larger Appendix C § 2(b)(ii) PRA-plus-Employee Contributions benefit of $**1,125.38**. *Id.*

212. Ignoring calculations errors that Defendants made in both 1994 and 2014-2015 (discussed elsewhere in this Complaint and in Ms. Staley's April 6, 2015 Claim Appeal), the 1994 Worksheets show that, had Defendants in 2014 treated Ms. Staley's Appendix C benefit as the larger $1,125.38 amount that they calculated and represented as her greater entitlement in 1994, they would have awarded her in 2014 a Residual Annuity of approximately $62.26 per month and back payments for March 1994 through October 1, 2014 totaling $29,907.83.

213. Defendants thus did not establish and certainly did not follow "processes and safeguards designed to insure and to verify that . . . the [relevant, controlling] plan provisions have been applied consistently." If they had, they would have addressed their 1994 calculation of Ms. Staley's Appendix C § 2(b)(ii) benefit when informing her that, in their view, she was not entitled to a Residual Annuity.

214. More specifically, the 1994 Worksheets show that Ms. Staley was entitled under Appendix C § 2(b) to the greater of one of two distinct benefits in the form of a life only annuity commencing at age 65: consistent with the only reasonable interpretation of Appendix C § 2(b), the page entitled "BASIC EMPLOYEE INFORMATION" gives Ms. Staley the right to a "payment form" of "Life Annuity Payable to Employee at age 65" of $731.31 (under Appendix C § 2(b)(i)) or "Life Annuity Payable to Employee at age 65" of $1,125.38 (under Appendix C § 2(b)(ii)). Ex. 29.

215. The pages entitled "Colgate-Palmolive Company Employees Retirement Income Plan Pension Calculation Detail" at item H. specifically show Defendants calculating the larger Appendix C § 2(b) benefit as the Appendix C § 2(b)(ii) PRA-plus-Employee Contribution benefit: Defendants demonstrate arriving at $1,125.38 by combining on H.4.B. the PRA shown on H.2.A with the employee contributions on H.1.B. and converting this combined total into an annuity benefit payable at age 65 – *i.e.*, her winning Appendix C § 2(b)(ii) benefit, which was more than the calculated result of her Appendix C § 2(b)(i) Dynamic Grandfather benefit, shown elsewhere on these pages.

216. Defendants had (and have) no rational, factual or good faith basis for rejecting their own prior interpretation and application of Appendix C as entitling Ms. Staley (and other identically situated participants) to "the larger of" her Appendix C § 2(b)(ii) PRA-plus-Employee Contribution benefit of $1,125.38 or her Appendix C § 2(b)(i) Dynamic Grandfather benefit of $731.31, as Defendants illustrated in the 1994 Worksheet.

217. The 1994 Worksheets further illustrate that even if Defendants' interpretation of the Residual Annuity based solely on the benefit under Appendix C § 2(b)(i) were not

foreclosed by the explicit and unambiguous language of the operative Plan text, it would not be lawful so construed and would lead in many cases (including this one) to absurd or arbitrary (as well as unlawful) results.

218. Under Defendants' interpretation and/or implementation of the Residual Annuity Amendment, Ms. Staley and Mr. Caufield (as Ms. Staley demonstrated in her April 6, 2015 Appeal, *see* Ex. 4, Staley 4/6/15 Claim Appeal Ltr. at 13) would be paid a benefit with a value equal to the value of their Appendix C § 2(b)(i) benefit (because the value of the Residual Annuity plus the value of their lump sums would equal the value of their Appendix C § 2(b)(i) benefit), even though their actual Plan benefit exceeded their Appendix § 2(b)(i) benefit (in the amount of the excess of the Appendix § 2(b)(ii) benefit over her Appendix § 2(b)(i) benefit). Thus, to the extent that Ms. Staley's and Mr. Caufield's Appendix § 2(b)(ii) benefit was larger than their Appendix § 2(b)(i) benefit, under Defendants' interpretation and/or implementation of the Amendment, their actual nonforfeitable benefit should be disregarded and a sizeable portion left unpaid.

219. Reading the Residual Annuity Amendment as written – *i.e.*, such that the benefit used in the calculation is the Appendix C benefit, not the "Appendix C prior Plan formula annuity" – results in the benefit owed becoming the larger benefit, and no matter which is larger, the Residual Annuity benefit is fully paid.

220. Interpreting the Amendment and associated Plan provisions in the way reflected in Defendants' November 4, 2014 letter to Ms. Staley and August 11, 2014 letter to Mr. Caufield, violates Ms. Staley's and Mr. Caufield's ERISA-protected right to their larger benefit, contradicts the Plan's and the Amendment's expressed intention at the point of

enactment to be construed and applied consistent with the requirements of the Code, *see* Ex. 9, 1994 Plan § 10.1(A); Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr. at 5, and would make a mockery of the 2005 Amendment's corrective goal by rendering the results of applying the Amendment in thousands of cases arbitrary vis-à-vis the recipient's actual original benefit entitlement.

221. The 1994 Worksheets graphically illustrate that last point. Under Defendants' 2014-2015 interpretation of the Residual Annuity Amendment – under which the Residual Annuity for participants making employee contributions is (somehow) confined to their Appendix C § 2(b)(i) benefit – the Residual Annuity benefit that would have been payable to Ms. Staley in 1994 (or more precisely, that was retroactively payable to Ms. Staley in 1994 when the Plan was amended in 2005) would have **no relationship whatsoever** to the benefits Ms. Staley would have actually received (but for electing the lump sum benefit form), either immediately or at age 65.

222. As the 1994 calculations illustrate, Ms. Staley's benefit payable at age 65 was greater under Appendix C § 2(b)(ii) ($1,125.38) than it was under Appendix C § 2(b)(i) ($731.31). Similarly, had Ms. Staley requested an immediate annuity (which, as a matter of law, she was entitled to), Ms. Staley's immediately payable annuity was also greater under Appendix C § 2(b)(ii) ($117.44) than it was under Appendix C § 2(b)(i) ($95.14).

223. An interpretation of the Residual Annuity Amendment under which the Residual Annuity that would have been payable to Ms. Staley (based upon Defendants' interpretation) in 1994 is determined by a benefit **unrelated to the actual benefit which she would have otherwise received** is nonsensical. Even if it did not so completely conflict with

the plain Plan text, Defendants' interpretation would make the Amendment's grant of corrective benefits – enacted in 2005 but reaching backwards in time to supplement payments made between 1989 and 2005 – essentially arbitrary.

224. Even if, for argument's sake, it were possible to draw a rational connection between the language of the Plan and the conclusions Defendants reached as reflected in their November 4, 2014 letter (it is not), as a fiduciary to participants, and an administrator of a Plan that expressly intends to comply with ERISA and the Code, Defendants were without authority to reject an interpretation that yields rational and lawful results over one that produces absurd, arbitrary and unlawful ones.

225. Under Defendants' interpretation of the Amendment and/or application of it, one group of Appendix C participants – those with an Appendix C § 2(b)(i) benefit larger than their Appendix C § 2(b)(ii) benefit – was given a recalculation of their Appendix C benefit and made whole via a Residual Annuity, while a second group of Appendix C participants – those with an Appendix C § 2(b)(ii) benefit larger than their Appendix C § 2(b)(i) benefit – was and should be subjected to a *miscalculation* of their Appendix C benefit and either denied a Residual Annuity entirely (Ms. Staley) or paid a version of the actual Residual Annuity they are owed (Mr. Caufield), on a basis having nothing to do with the actual Appendix C payable to them. That interpretation of the Amendment is a non-starter under the statute, the Plan, common law, common sense, and common decency.

226. On the one hand, if Defendants did not understand that this is what the 1994 Worksheet illustrates, despite possessing, presumably reviewing, and enclosing it along with their November 2014 denial letter, they lacked the competence to administer the

implementation of the Amendment and the Plan's claims process. On the other hand, if Defendants were aware that they previously calculated Ms. Staley's benefit entitlement as the larger $1,125.38 amount, they were plainly acting in bad faith (reflective of their conflict of interest) by not forthrightly acknowledging it in their November 4, 2014 letter and demonstrating how it did or did not necessarily compel the conclusion that Ms. Staley was entitled to a Residual Annuity, as a loyal and prudent fiduciary unaffected by a conflict of interest would have done.

227. Defendants did not merely fail to acknowledge and discuss their prior inconsistent interpretation of Ms. Staley's Appendix C benefit entitlement in their November 4, 2014 letter: in Defendants' subsequent March 5, 2015, June 4, 2015 and April 25, 2016 letters – despite Ms. Staley directly raising the issue of this clearly inconsistent prior interpretation and calculation of her Appendix C benefit in her January 6, 2015 and April 6, 2015 letters and requesting Defendants' response – they still said nothing.

228. By providing Ms. Staley with the 1994 Worksheets, yet never asserting and demonstrating that the determination of Ms. Staley's $1,125.38 Appendix C § 2(b)(ii) PRA-plus-Employee Contributions benefit reflected therein was in error, Defendants waived any contention that that amount does not in fact represent her winning Appendix C benefit. This concession is confirmed by the fact that Defendants attempted to disavow their 1994 Worksheet calculation of Ms. Staley's Appendix C § 2(b)(i) Dynamic Grandfather benefit in their June 4, 2015 claim appeal denial letter, as discussed below.

(4) Defendants' Appendix C § 2(b)(i)-based Denial and Misleading Communication of Their Appendix C § 2(b)(i) Determination

229. As the foregoing demonstrates, Defendants in their November 4, 2014 letter limited Ms. Staley's Appendix C entitlement to her Appendix C § 2(b)(i) Dynamic Grandfather benefit. Pages 2-3 of Defendants' November 4, 2014 letter provide Defendants' determination of Ms. Staley's Appendix C § 2(b)(i) as equaling $699.58. Defendants' letter further explains that under Defendants' interpretation of the Residual Annuity Amendment, Ms. Staley was not entitled to a Residual Annuity because that $699.58 amount was less than $752.84, which Defendants explained was the amount that they had calculated as the annuity equivalent of the $27,691.85 that Ms. Staley had previously received from the Plan. Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 2-3 ("Since this amount ($752.84) exceeds the value of your age 65 benefit under the Appendix C formula [sic] ($699.58), there is no additional annuity owed to you under the 2005 Amendment").

230. The $27,691.85 Ms. Staley previously received from the Plan consisted of (1) the $22,425.64 lump sum payment she received in March 1994 plus (2) a $5,266.21 credit that Defendants claimed for the payment Ms. Staley received as a result of the partial settlement in *In re Colgate-Palmolive Co. ERISA Litigation*. *Id.*

231. Defendants concluded their substantive discussion by stating:

> From our files, we note that a prior calculation estimated your Appendix C [sic] benefit as $731.31. This amount was just an estimate and did not reflect the actual benefit to which you were entitled. Nevertheless, if this amount were to be used in this comparison you still would not be entitled to an additional annuity payable under the 2005 Amendment since $731.31 is less than $752.84.

Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 3. This comment is noteworthy for several reasons.

232. First, while saying this information came "[f]rom our files," Defendants fail to tell Ms. Staley that this information is reflected in the 1994 Worksheets that Defendants enclosed among the papers listed as item 5 from their list of enclosures, described as "Hard copy benefits documents for R. Caufield regarding the ERIP." Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 4.

233. Second, Defendants clearly attempt to disavow their own prior interpretation and determination of Ms. Staley's Appendix C § 2(b)(i) Dynamic Grandfather benefit (which they wrongly contend is her "Appendix C" benefit), but they do not explain how or why that prior determination was incorrect.

234. Third, Defendants falsely assert that the $731.31 amount "was just an estimate" when it clearly was not: it was Defendants' formal and final calculation of Ms. Staley's Appendix C § 2(b)(i) Dynamic Grandfather benefit and, as such, was contained on the final 1994 Worksheets disclosed to Ms. Staley when she elected her benefit in 1994. *See* Ex. 29.

235. Defendants call it "just an estimate" because they – unlike loyal and prudent fiduciaries unaffected by conflicts of interest who make full and frank disclosure – did not want Ms. Staley to know that they had inconsistently calculated her "Appendix C" benefit because that might have led her to question other aspects of their determination. That also explains Defendants' otherwise odd failure to inform Ms. Staley that the $731.31 amount was not merely information "from [Defendants'] files" but a calculation that she could see for herself among the "Hard copy benefits documents for R. Caufield regarding the ERIP." Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 4.

(5) Defendants Also Violated the Claims Regulation By Unduly Delaying Their Response; In Breach of Their Fiduciary Duties, They Then Attempted to Conceal That They Had Violated the Regulation's Response Deadline

236. As indicated above, Defendants received Ms. Staley's July 30, 2014 claim for benefits on August 5, 2014. Under the governing claims regulation, the Plan document, and SPD, the deadline for responding to Ms. Staley's claim was Monday, November 3, 2014. *See* 29 C.F.R. § 2560.503–1(f)(1); Ex. 9, 1994 Plan § 8.6; Ex. 32, 1994 SPD at 11-8, 11-9. However, Defendants' denial letter was not issued until November 4, 2014.

237. Knowing that Defendants' response was late, that failure to comply with claims regulations would or could result in *de novo* review of the denial, and that $150 million was potentially at stake, Ms. Flavin (who was not the individual who personally signed the U.S. Postal Service Form 3811 for the Plan Administrator and thus perhaps mistakenly believed Defendants' failure to comply could be concealed) attempted to conceal that her response was late by omitting from her letter the date printed on Ms. Staley's claim for benefits letter (July 30, 2014) and the date that Ms. Staley's claim for benefits had been received by Defendants (August 5, 2014). Ex. 5, Def. 11/4/14 Claim Denial Ltr.

238. A plan administrator or plan administrator-delegatee could not possibly competently fail to note the date of the claimant's claim for benefits or at least the date that the claimant's claim for benefits was received since the claims regulation (and the plan and SPD) set strict time limits on the administrator's response, pegged to the date the claim was received. *See* 29 C.F.R. § 2560.503–1(f)(1). These omissions were not the result of Ms. Flavin's inadvertence but were intentional and intentionally deceptive. By omitting the date of Ms. Staley's letter and the date of its receipt, Ms. Flavin, as directed by Defendants and

counsel, sought to mislead Ms. Staley into believing that her response was in good order and not overdue. By failing to acknowledge that the response was overdue, Ms. Flavin, acting as Ms. Staley's fiduciary, was representing that it was *not* overdue and that there had been full compliance with all required processes. Meanwhile, she knew that representation was false.

239. Confirming the foregoing two paragraphs, when Ms. Staley, now appearing through undersigned counsel, raised these points with her in a letter dated January 6, 2015 and sought Ms. Flavin's response, Defendants did not provide any response. *See* Ex. 24, Staley 1/6/15 Requested Document and Information Ltr. at 1 & 3-4, Item 4; Ex. 10, Def. 3/5/15 Requested Document and Information Denial Ltr.

240. Defendants' November 4, 2014 denial letter closed by informing Ms. Staley of her right to appeal the initial denial to the Plan Administrator and by stating that if she elected to file suit, she had until "the earlier of (i) one year after the date the final decision on the adverse benefit determination on review is issued or should have been issued (or if you fail to request any available level of administrative review, the deadline for doing so), or (ii) the last day on which such legal action could be commenced under the applicable statute of limitations under ERISA (including any applicable state statute of limitations that applies under ERISA to such legal action)." Ex. 5, Def. 11/4/14 Claim Denial Ltr. at 5.

C. Ms. Staley's January 2015 Request for Documents, Records and Other Information Relevant to Her Claim for Benefits, and Defendants' Almost Complete Denial of Same in March 2015 and Subsequently, Without Explaining or Objecting that the Requested Documents and Information Lacked Relevance or Was Not Required to Be Provided to Her

241. Having reviewed Defendants' November 4, 2014 letter and enclosures, undersigned counsel, appearing for the first time in the claims process on Ms. Staley's behalf,

wrote the Committee, care of Ms. Flavin, on January 6, 2015. *See* Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr.

242. First, Ms. Staley through counsel objected that Defendants' violations of the statute's minimum required claims procedures were prejudicing her rights to a full and fair review of her claim and respectfully requested that those violations be promptly corrected. *Id*.

243. Ms. Staley asserted with specificity that Defendants failed to refer Ms. Staley to the specific plan provisions upon which the denial determination was based and additionally failed to inform her of the additional material and/or information necessary for her to perfect her claim. *Id*.

244. In none of their subsequent three letters to Ms. Staley (via counsel) did Defendants dispute either of these assertions.

245. Ms. Staley asserted that Defendants had improperly provided Ms. Staley not with the controlling Plan document but instead only a copy of the 2010 version of the Plan document. She also objected to Defendants' implication that the Plan provisions controlling the determination of Ms. Staley's benefit would be based upon the provisions of that document. She asserted that the determination of Ms. Staley's benefit was not controlled by the 2010 Plan. She objected that Defendants' letter would mislead the average participant into believing that plan terms like "Accrued Benefit" and "Actuarial Equivalence" as defined in the 2010 Plan would control the determination of her benefit. She asserted that those terms as defined in the 2010 Plan document are dramatically different in the 2010 version of the Plan document as compared to the controlling plan document. Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 1-2.

246. In none of their subsequent three letters to Ms. Staley did Defendants dispute a single one of these assertions.

247. Ms. Staley asserted that Defendants had incompetently or in bad faith failed to inform Ms. Staley of the additional material and/or information necessary for her to perfect her claim by not informing her of the need to obtain a copy of the correct plan document in order to properly determine the benefit to which she was entitled. Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr.

248. In none of their subsequent three letters to Ms. Staley did Defendants dispute this assertion (or any of its component parts).

249. Ms. Staley asserted that Defendants' provision to Ms. Staley of the incorrect plan document not only constituted a failure to inform her of the additional material she needed but also an effort to hide that she would even need additional material at all. Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr.

250. In none of their subsequent three letters to Ms. Staley did Defendants dispute any part of this assertion.

251. Ms. Staley asserted that Defendants had failed to timely respond to her claim in violation of the claims regulations and the terms of the Plan. Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr.

252. In none of their subsequent three letters to Ms. Staley did Defendants dispute any part of this assertion.

253. Ms. Staley further asserted that the Committee and its members had "compounded [their] failure to timely respond by attempting to conceal it from Ms. Staley in

violation of her fiduciary duties to [Ms. Staley] by purposefully omitting any reference to the date that [the Administrator] received her claim letter, knowing it would disclose [the Administrator's] failure to follow claims procedures consistent with the requirements of the law and increase the likelihood that the plan sponsor – [Committee members'] employer, the Colgate-Palmolive Company – would be liable directly or indirectly for benefits due under the Plan which it does not wish to acknowledge in order to save the Company money." Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 1.

254. In none of their subsequent three letters to Ms. Staley did Defendants dispute any part of this assertion.

255. Ms. Staley informed Defendants that – without prejudice to her right to argue in court if the matter ever reached the litigation stage that she need not continue trying to exhaust the Plan's internal claims process because Defendants had failed to establish and follow reasonable claims procedures – she intended to appeal (via the claims process) Defendants' denial of her claim to a Residual Annuity and further stated that she "hereby does so." Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 2.

256. Ms. Staley notified Defendants that based on the limited documents, records, and information available to her, she was entitled to a Residual Annuity "based upon **the provisions of the Plan and Plan amendments applicable to the determination of her benefit that you and your delegatee have disregarded**." *Id.* (emphasis added). She also specified that her entitlement could be found in "the plain language of Plan § 6.4(a)(i) as amended in 2005 along with the benefit provisions of Appendix C and the terms of Plan §§ 1.2, 1.3 and 6.2 of the applicable version of the Plan." *Id.*

257. Ms. Staley nevertheless asked that her appeal be held in abeyance for 30 days following the date that Defendants supplied her with all documents, records, and other information relevant to her claim, to which she was entitled under ERISA § 503(a)(2), 29 U.S.C. § 1133(a)(2) and 29 C.F.R. § 2560.503-1, in order to perfect her appeal and obtain a full and fair review of the denial of her claim. *Id*.

258. Ms. Staley explained that 29 C.F.R. § 2560.503-1(h)(2)(iii) requires as part of a full and fair review of a benefit denial, the disclosure of all documents "relevant" to a beneficiary's claim for benefits and that the definition of "relevant" was extremely broad. She reproduced for Defendants' benefit that definition: a document is "relevant" as defined in section (m)(8)(ii) if, *inter alia*, it "[w]as submitted, considered or generated in the course of making the benefit determination, **without regard to whether such document, record, or other information was relied upon** in making the benefit determination." 29 C.F.R. § 2560.503-1(m)(8)(ii) (emphasis added). Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 2-3.

259. Ms. Staley explained to Defendants that her wide-ranging request was not merely a matter of administrative due process and fairness to her, but one that would benefit Defendants in their roles as fiduciaries to Ms. Staley as well as the many other participants covered by the Residual Annuity Amendment: "[providing all requested documents, records and information] will ultimately lead to a more efficient resolution of this dispute by allowing Ms. Staley to better convince you to correct the errors reflected in Ms. Flavin's letter and the Plan's application and interpretation of the relevant Plan provisions, as applicable to Ms. Staley and many other participants who are owed additional benefits." *Id.* at 2.

260. Ms. Staley explained that she had multiple questions (and associated requests for documents, records, and other information) regarding "how Defendants made the determination of Ms. Staley's benefit, some of which are set forth below, **that in and of themselves should show you that the Plan has clearly erred**." *Id.* (emphasis added).

261. Ms. Staley said that regardless of whether at this stage of the proceedings Defendants drew the same conclusion that she already had, as reflected in her questions, "it is Ms. Staley's right that you address [all requests for documents, records and other information responsive to Ms. Staley's questions] fully and fairly, and thereafter give her an opportunity to supplement her current appeal based on the documents, records and other information you provide." *Id.*

262. Ms. Staley's letter then set forth 39 numbered questions and associated requests for documents, records, and other information regarding how Ms. Flavin made the determination to deny Ms. Staley's benefits under the Residual Annuity Amendment. Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 3-8. Ms. Staley also made a parallel request for all documents, records, and other information relevant to her claim for benefits "on review," to which she was and is entitled under 29 C.F.R. § 2560.503-1(j)(3).

263. Except for two minor exceptions discussed further below, Defendants failed to respond to any of Ms. Staley's questions or provide the documents, records, and information that Ms. Staley requested.

264. Many of Ms. Staley's 39 questions could have been answered with a simple yes or no.

265. Some of Ms. Staley's other questions had subparts.

266. None of Ms. Staley's questions and requests for documents, records, or other information required Ms. Flavin or the Committee to generate documents, records, or other information that they did not already have within their possession, custody, or control.

267. Moreover, none of Ms. Staley's questions and/or requests for documents, records, or other information required Ms. Flavin or the Committee to generate documents, records, or other information that they should not have been able to supply had Defendants loyally and prudently implemented the Residual Annuity Amendment.

268. Ms. Staley's general request, set forth in Item 1, was:

> Kindly provide us with all documents, records or other information relevant to Ms. Staley's claim including but not limited to all documents, records or other information regarding all determinations of her benefits under the Plan (**including, but not limited to the 1994 determination** and **the 2014 redetermination referenced in your November 4, 2014 letter**). **We expect to receive all documents (of any kind) and correspondence that you [the Committee/Committee members] and/or Ms. Flavin between yourselves *and/or with other persons* regarding the preparation of the November 4, 2014 denial letter and the calculations referenced in that letter**. In that connection, note that Ms. Flavin's letter states "we analyzed …": we ask that you identify who comprises the "we" that Ms. Flavin states analyzed this question. Please identify all persons with specificity involved in any respect with this analysis and provide Ms. Staley with all documents, records and other information regarding that involvement and that analysis and all relevant details to the extent not in an otherwise provided via your production of the requested documents and records hereby requested.

Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 3, Item 1 (emphasis added).

269. On March 5, 2015, Ms. Flavin responded to Ms. Staley's January 6, 2015 letter – including Item 1, as well as all of her others requests for relevant documents, records, and other information – with only a brief 1-page response that almost entirely ignored Ms. Staley's 8-page letter. Ex. 10, Def. 3/5/15 Denial of Requested Documents and Information.

270. Defendants' March 5, 2015 letter impertinently declined to address or even acknowledge Ms. Staley's questions and enclosed virtually none of the documents, records, and other information relevant to Ms. Staley's claim that Defendants was required to provide to her. *Id.* All that Defendants' letter cryptically said with respect to those requests was that: "Enclosed with this letter are the following documents:

1) Excerpts from ERC meeting delegating responsibility to handle claims.
2) SPD in effect in 1994.
3) 1989 and 1994 plan documents.
4) Additional hard-copy documents that relate to Ms. Staley's benefits under the Plan."

Id.

271. As shown below, Defendants' enclosed Item 1 (Ex. 30) – presumably provided as a result of Mr. Staley's request for all documents, records, and other information responsive to Item 29 of her January 6, 2015 letter (detailed below) – nevertheless did not fully or appropriately address Ms. Staley's request for all documents, records, and other information responsive to Item 29.

272. As for Defendants' enclosed Items 2 and 3 – the "1989 and 1994 plan documents" (Exs. 31 and 9, respectively) and the "SPD in effect in 1994" (Ex. 32) – these were provided presumably in response to Ms. Staley's (conceded) showing that, among other things, Defendants provided the wrong Plan document. But by providing two different plan documents, the 1989 and 1994 plan documents, without any further explanation, Defendants failed to cure their prior violations of the claims regulation. For example, Defendants' March 5, 2015 letter provided no explanation for why Defendants were now providing Ms. Staley with these *two* different plan documents (and an SPD for only one of them). Similarly,

Defendants' March 5, 2015 letter failed to identify which provisions of which document Defendants believed controlled the determination of Ms. Staley's eligibility for an additional benefit and why that was so.

273. Finally, Defendants' enclosed Item 4 – the "Additional hard-copy documents that relate to Ms. Staley's benefits under the Plan" (Ex. 33) – which was presumably provided because of Ms. Staley's requests and complaints set forth in Item 6a of her January 6, 2015 letter, but does not at all address either Ms. Staley's Item 6a or Item 1 requests. The provided documents were merely copies of the same previously provided material with some additional items that were non-responsive and non-informative. *See* Ex. 33.

274. Defendants thus impermissibly ignored nearly the entirety of Ms. Staley's Item 1 request for documents, records, and other information. Defendants did provide other requested documents, records, and other information regarding their 1994 determination and the 2014 redetermination of Ms. Staley's benefits, but provided no correspondence that the Committee/Committee members and/or Ms. Flavin had between themselves and/or with other persons, including in-house lawyers, consultants, actuaries, outside benefits counsel, and litigation counsel in *In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515 (LGS) (S.D.N.Y), all of whom were involved in preparing, drafting, reviewing, and providing support (including calculation support and other advice or factual information) in order to respond to Ms. Staley's claim for benefits (and her claim for benefits on review). All of those documents, records, and information (whether reduced to writing or not) were required to have been furnished to Ms. Staley. Aside from the few items described in ¶¶ 30-33 (Items 1-4 enclosed with Defendants' March 5, 2015) above (minutes and presentations

from two Committee meetings held on March 16 and May 27, 2015), Defendants provided none of it.

275. At the same time, however, Defendants did not object to providing the requested documents, records, and other information, nor did they make any showing in their March 5, 2015 letter, or in any of their subsequent letters, that the requested documents, records, and other information were not relevant to Ms. Staley's claim for benefits (or claim for benefits on review).

276. Continuing with Ms. Staley's request under Item 1 of her letter, as noted above, Ms. Staley said and requested as follows: "note that Ms. Flavin's letter states 'we analyzed …': we ask that you identify who comprises the 'we' that Ms. Flavin states analyzed this question. Please identify all persons with specificity involved in any respect with this analysis and provide Ms. Staley with all documents, records and other information regarding that involvement and that analysis and all relevant details to the extent not in an otherwise provided via your production of the requested documents and records hereby requested.'" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 3, Item 1.

277. In Ms. Flavin's March 5, 2015 letter two months later, Defendants did not respond to this request, whether by providing any of the requested documents, record, or other information responsive to it or otherwise asserting (and explaining) that they had fully complied with that request. Nor did Defendants assert that they had no obligation to respond. Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14,

2016. Still Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter.

278. Ms. Staley's letter also said: "Please provide all documents, records and other information reflecting that your claims procedures contain administrative processes and safeguards designed to insure and to verify that benefit claim determinations are made in accordance with governing plan documents." Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 8, Item 39.

279. In Ms. Flavin's March 5, 2015 letter, Defendants did not respond to this request, either by providing any of the requested documents, record or other information responsive to it, or otherwise asserting (and explaining) that they had fully complied with that request. Nor did Defendants assert that they had no obligation to respond. Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Still Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter.

280. Ms. Staley's letter also said: "You indicate that the ERIP was amended in 2005 to provide for the residual annuity but that you are doing the analysis currently versus having done it in 2005 when the Plan was thus amended." Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 3, Item 2. She then asked: "Is that correct? If it is not correct, please explain with specificity how it is not correct."

281. In their March 5, 2015 letter, Defendants did not provide the requested information (which, depending on the facts, could have been answered in one word). Nor did

Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

282. Ms. Staley's letter also said: "Assuming that the answer to our prior question is in the affirmative, what is the justification for an almost 10 year delay in determining the benefit under the amendment? Please respond with specificity." Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 3, Item 3.

283. Defendants did not provide any response to this request for information in their March 5, 2015 letter. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

284. Ms. Staley's letter also asked: "Was the determination of Ms Staley's alleged lack of entitlement to a residual annuity only done as a result of her July 30, 2014 letter? If not, what was the date and the circumstances under which you (or others acting on your behalf) had determined that she was not entitled to a residual annuity?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 3-4, Item 4.

285. Defendants did not provide any response to this request for information in their March 5, 2015 letter. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

286. Ms. Staley's letter also asked: "Have you ever calculated a residual annuity under the 2005 amendment in a fashion that differs in any way from that applied to the determination of Ms. Staley's entitlement thereunder, and/or have you ever interpreted the terms of the residual annuity amendment (or the provisions it references or incorporates) in a manner that differs in any way from the interpretation you made of its provisions in 2014?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 4, Item 5.

287. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

288. Ms. Staley's letter also stated, asked, and requested: "Enclosed along with the letter Ms. Flavin sent Ms. Staley were some documents including what Ms. Flavin described as 'Hard copy benefits documents for R. Caufield regarding the ERIP.'

A. Why did you provide Ms. Staley with these documents when you know that these were documents that Ms. Staley's husband at the time Paul Caufield provided to his lawyer who in turn provided them to you?

B. Why did you not identify the documents as previously provided to you by Mr. Caufield and hence documents which Ms. Staley presumably already had?

C. Please provide *all* "Hard copy benefits documents" and all other documents, records and other information regardless of format regarding Ms. Staley's benefits, including those documents, records and other information that the "Hard copy benefits documents" make clear necessarily exist and which you have not yet provided her.

D. Why did you not provide Ms. Staley with a complete set of the relevant benefit documents and instead merely provide her with the documents you know she already had?"

Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 4, Item 6.

289. Defendants did not respond to this request, either by providing the requested documents, record, or other information responsive to it, or otherwise asserting (and explaining) that they had fully complied with that request. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

290. Ms. Staley's letter also stated and asked: "In the calculations in your letter you state that the Social Security Primary Insurance Amount used is $1,047, but in the "Hard copy

benefits documents for R. Caufield regarding the ERIP" this amount is shown on page F1 as $840.00. Why are these two numbers not the same?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 4, Item 7.

291. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

292. Ms. Staley's letter also requested: "Please provide sufficient detail of the calculation of both the $1,047 number and the $840 number so that Ms. Staley can reproduce the calculations and determine the validity of the calculation." Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 4, Item 8.

293. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

294. Ms. Staley's letter also asked: "Do you concur that the calculation of the $840 estimated primary Social Security benefit was based upon (among other factors):

A. Continuation of compensation for Social Security purposes from 1994 through age 61 at the rate of $39,499.92 per year.

B. Actual compensation paid to Ms. Staley by Colgate for years prior to 1994.

C. A Social Security retirement age of 66 and 4 months.

D. An early retirement reduction in the primary Social Security benefit from age 66 and 4 months to age 65.

E. If a., b., c. or d. is not correct, then how did the calculation differ?"

Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 4-5, Item 9.

295. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

296. Ms. Staley's letter also asked: "Do you concur that the calculation of the $1,047 estimated primary Social Security benefit was based upon:

A. Continuation of compensation for Social Security purposes from 1994 through age 61 at the rate of $39,603 per year.

B. Compensation prior to 1994 is the 1994 decreased at 6% per year prior to 1994.

C. A Social Security retirement age of 66 and 2 months.

D. An early retirement reduction in the primary Social Security benefit from age 66 and 2 months to age 65.

E. If a., b., c. or d. is not correct, then how did the calculation differ?"

Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 5, Item 10.

297. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

298. Ms. Staley's letter also asked: "Do you concur that Section 7 of Appendix A defines how the estimated primary Social Security benefit should be calculated?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 5, Item 11.

299. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

300. Ms. Staley's letter also asked: "Do you concur that Section 7 provides two methods for determination of the estimated primary Social Security benefit, one in paragraph

a. and the other in paragraph b.?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 5, Item 12.

301. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

302. Ms. Staley's letter also asked: "Do you concur that under paragraph a. the estimated primary insurance amount is calculated based upon the assumption of no compensation after termination of employment?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 5, Item 13.

303. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

304. Ms. Staley's letter also asked: "Do you concur that under paragraph a. the estimated primary insurance amount is calculated based upon the assumption of an early

retirement reduction to age 62 (unless the participant is over age 62 at benefit commencement)?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 5, Item 14.

305. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

306. Ms. Staley's letter also asked: "Do you concur that paragraph a. applies if the benefit commencement date is immediately following the termination of employment?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 5, Item 15.

307. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

308. Ms. Staley's letter also asked: "Do you concur that Ms. Staley's benefit commencement date was immediately following termination of employment?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 6, Item 16.

309. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

310. Ms. Staley's letter also asked: "Do you concur that if the estimated primary insurance amount is calculated using paragraph a. that Ms. Staley's estimated primary insurance amount would be roughly $425?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 6, Item 17.

311. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

312. Ms. Staley's letter also asked: "Do you concur that if the estimated primary insurance amount is $425 then Ms. Staley is entitled to a residual annuity?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 6, Item 18.

313. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

314. Ms. Staley's letter also stated and asked: "In the calculations in your letter, the $1,047 number is multiplied by 12.7242 years worked after age 25 but in the original benefit calculations is shows (and the calculations appear to use) 12.75 service after age 25. What is the reason for this difference?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 6, Item 19.

315. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

316. Ms. Staley's letter also asked: "Do you concur that under Appendix B Section 2(a), the 12.7242 factor should be measured in terms of an integer number of months?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 6, Item 20.

317. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

318. Ms. Staley's letter also asked: "Do you concur that 12.7242 does not represent an integer number of months?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 6, Item 21.

319. Defendants did not provide any response to question in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

320. Ms. Staley's letter also stated and asked: "In the calculations in your letter you illustrate that $865.11 – $166.53 = $699.58. The $699.58 amount is then repeated later in

your letter. When we subtract $166.53 from $865.11 we get $698.58. Can you explain this difference?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 6, Item 22.

321. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

322. Ms. Staley's letter also stated and asked: "You indicate that the $11,226.03 settlement amount was discounted from July 1, 2013 to the original payment date using the interest rates in effect on and the actuarial equivalence basis in the Plan on her original lump sum payment date, producing a value of $5,266.21. Do you concur that this reduction was based upon 4% interest and a mortality discount based upon the factors in Appendix F?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 6, Item 23.

323. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

324. Ms. Staley's letter also asked: "On what basis was mortality used in this calculation?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 6, Item 24.

325. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review).

326. Ms. Staley's letter also stated and asked: "In your letter you state that the age 65 life annuity actuarial equivalent amount of this total lump sum payment based on Ms. Staley's age at the time of the lump sum payment and the plan actuarial equivalence factors is $752.84. You then state what those factors are. Do you concur that this calculation was done based upon the inclusion of survivorship between the benefit payment date and age 65?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 6, Item 25.

327. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

328. Ms. Staley's letter also asked: "On what basis was survivorship used in this calculation?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 6, Item 26.

329. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review).

330. Ms. Staley's letter also stated and asked: "In your letter you state 'from our files, we note that a prior calculation estimated your Appendix C benefit as $731.31.' Provide copy of the document in your files that refers to an 'Appendix C benefit' of $731.31. If there is no such document referring to an 'Appendix C benefit' of $731.31, explain the basis for your comment." Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 6, Item 27.

331. Defendants did not respond to this request, either by providing any of the requested documents, record or other information responsive to it, or otherwise asserting (and explaining) that they had fully complied with that request. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

332. Referring to the assertion in Defendants' November 4, 2014 letter that the 1994 calculation of Ms. Staley's Appendix C § 2(b)(i) of $731.31 was not correct, Ms. Staley's letter asked: "Can you please explain why the calculation previously done was determined to be incorrect?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 7, Item 28.

333. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

334. Ms. Staley's letter also stated and asked: "Ms. Flavin states 'that the authority to determine initial claims has been delegated to me.' Please provide all evidence supporting that assertion." Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 7, Item 29.

335. On March 5, 2015, *see* Ex. 10, 3/5/15 Ltr. at 1, Defendants did provide minutes from a December 15, 2006 Committee meeting at which the Committee delegated its authority to determine initial claims to the two individuals serving in the roles of "Vice President, Global Human Resources" and "Vice President, Global Benefits and Domestic Services." Ex. 30, 12/15/16 Committee Mtg. Mins. at 3. Defendants did not, however, provide any other documents, records, or information as to how, why, when, and by whom it was decided that Ms. Flavin (holding the slightly different position title of Vice President for Global Compensation and Benefits) versus the other delegee (presumably Colgate's Vice President for Global Human Resources, whoever that may be) was given the responsibility for deciding *this* initial claim.

336. Ms. Staley's letter also stated and asked: "On page F4 of "Hard copy benefits documents for R. Caufield regarding the ERIP," the Plan discloses a PRA Life Annuity Beginning on 06/01/2021 of $1,125.38. Do you concur?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 7, Item 30.

337. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

338. Ms. Staley's letter also stated and asked: "We have determined that the $1,125.38 was calculated as follows:

> Ms. Staley's rounded age at payment was 38.
>
> Ms. Staley had 17 years to age 55.
>
> Ms. Staley had 10 years from age 55 to age 65.
>
> Ms. Staley had a PRA of $18,860.44 at payment.
>
> Ms. Staley had a value of employee contributions with interest of $3,565.20 at payment.
>
> The factor to convert used to convert the account at age 65 into a monthly life only annuity was 107.38204.
>
> The math producing the $1,125.38 amount on the form was: ($18,860.44 + $3,565.20) X (1 + 6% + 1% - 2%) ^ 17 X (1 + 6% + 1%) ^ 10 / 107.38204 = $1,125.38.

> Do you concur that this was the underlying math used to determine the $1,125.38 benefit illustrated in the "Hard copy benefits documents for R. Caufield regarding the ERIP?" If you disagree, identify with specificity in what way(s) you disagree."

Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 7, Item 31.

339. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

340. Ms. Staley's letter also asked: "Do you concur that the rounded 20-year Treasury bill rate applicable under Plan § 1.3 as in effect when Ms. Staley was paid was 6%?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 7, Item 32.

341. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

342. Ms. Staley's letter also asked: "Do you concur that the '6% + 1%' factor (in the formula at the end of 8)) was applied for the period after age 55 because Plan § 1.3 calls

for the use of the rounded 20-year Treasury bill rate increased by one percent (1%) per annum?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 7, Item 33.

343. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

344. Ms. Staley's letter also asked: "Do you concur that you applied '6% + 1% - 2%' factor for the period prior to age 55?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 7, Item 34.

345. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

346. Ms. Staley's letter also asked: "Do you concur that Plan § 1.3 calls for the use of the 20 year treasury rate increased by one percent per annum then 'for the period before age 55" "minus two percent (2%) per annum' *only* 'for benefits commencing before age 55?'

In other words, do you agree that if the benefit is not commencing before age 55, then the minus two percent rule does not apply? If you disagree, explain with specificity on what basis you disagree and provide the analysis you applied in 1994 justifying your contrary view." Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 8, Item 35 (emphasis in the original).

347. Defendants did not respond to this request, either by providing any of the requested documents, record or other information responsive to it, or otherwise asserting (and explaining) that they had fully complied with that request. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

348. Ms. Staley's letter also asked: "Do you concur that the 107.3824 factor is the factor for the cost of a life only annuity commencing at age 65 of $1 per month (payable monthly) based upon the plan mortality table in Appendix F and 7% interest? If not, please explain how the factor used to convert the age 65 account into an annuity was determined." Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 8, Item 36.

349. Defendants did not provide any response to this request for information in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated

it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

350. Ms. Staley's letter also asked: "Do you concur that the 107.3824 factor is the factor dictated by Plan § 1.3 to convert a PRA into a life only annuity at age 65 at the time Ms. Staley was paid her benefit?" Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 8, Item 37.

351. Defendants did not provide any response to this question in their March 5, 2015 response. Nor did Defendants object that the information sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

352. Ms. Staley's letter also asked: "Do you concur that the $1,125.38 was the amount that the plan calculated as the Accrued Benefit (as defined in Plan § 1.2) plus the benefit attributable to the contributions to maintain the prior plan benefits with interest? If not, please describe, with specificity, what benefit under the Plan the $1,125.38 benefit relates to (*i.e.* what is the benefit, and why was it disclosed?)." Ex. 24, Staley 1/6/15 Requested Documents and Information Ltr. at 8, Item 38.

353. Defendants did not provide any response to this question and request for information in their March 5, 2015 response. Nor did Defendants object that the information

sought was not relevant to Ms. Staley's claim for benefits (or claims for benefits on review). Having thus been provided no response or objection to this request, Ms. Staley complained and reiterated it, along with her other requests in her letters dated April 6, 2015 and March 14, 2016. Defendants did not respond (or object) in either their June 4, 2015 letter or April 25, 2016 letter to this request for relevant information.

D. Ms. Staley's Appeal of Defendants' Denial of Her Request for a Residual Annuity and of Defendants' Determination of Mr. Caufield's Residual Annuity as His Beneficiary

354. By a 41-page letter dated April 6, 2015, Ms. Staley appealed Ms. Flavin's determination that Ms. Staley is not entitled to benefits under the Residual Annuity Amendment and also appealed on the same grounds Defendants' August 11, 2014 determination of Mr. Caufield's Residual Annuity as his beneficiary.

355. Ms. Staley's claims appeal letter – restated in essence elsewhere in this Complaint and incorporated by reference here in full – explained in detail how, after all four groups of Defendants' errors are corrected, Ms. Staley was and is entitled to a Residual Annuity of $157.48 commencing as of March 1994, together with missed back payments. Ms. Staley showed that she would be entitled to a Residual Annuity even if any one of the multiple errors she identified were corrected in isolation. She also made comparable showings for Mr. Caufield and herself as his beneficiary, demonstrating that his Residual Annuity should be substantially increased.

356. With respect to "Error 1," Ms. Staley demonstrated that Defendants' interpretation of the Residual Annuity Amendment conflicts in multiple ways with its plain language and the plain language of the controlling Plan document and, further, that the Plan

text left no room to read the Amendment as covering the benefit payable under some parts but not others of Appendix C.

357. Ms. Staley also showed, using the 1994 Worksheets, that Defendants had arbitrarily disagreed with their own prior (and correct) interpretation of Appendix C as guaranteeing participants who elected to make employee contributions an Appendix C benefit not less than their PRA-plus-Employee Contribution benefit under Appendix C § 2(b)(ii).

358. As stated above, when Defendants responded to Ms. Staley's appeal, they ignored this objection. In so doing, Defendants failed to dispute any of the factual particulars underlying Ms. Staley's argument.

359. Ms. Staley also argued that even if Defendants' interpretation of the Residual Annuity as being based solely on the benefit under Appendix C § 2(b)(i) were not foreclosed by the clear and unambiguous language of the operative Plan text, that Defendants' interpretation could not stand because it would lead in many cases (including this one) to absurd, arbitrary, and unlawful results. Ex. 4, Staley 4/6/15 Claim Appeal Ltr.

360. As stated above, when Defendants responded to Ms. Staley's appeal, they ignored this objection. In so doing, Defendants failed to dispute any of the factual particulars underlying Ms. Staley's argument. Ms. Staley's appeal argument asserted many of the facts set forth above in this Complaint. In no instance did Defendants controvert any of Ms. Staley's factual assertions or calculations supporting her argument.

361. Ms. Staley's April 6, 2015 letter also appealed Colgate's March 5, 2015 denial of her request for all documents, records, and other information relevant to her claim and specifically asked "that you respond to those contentions, answer those questions, and fully

comply with those requests forthwith so as to prevent further prejudice to Ms. Staley and further impairment to the integrity of these proceedings." Ex. 4, Staley 4/6/15 Ltr. at 2.

362. Ms. Staley explained that it was clear that Defendants were withholding a considerable volume of documents, records, and information relevant to Ms. Staley's claim and provided as an example her requests concerning the November 2014 claim denial letter's assertion that provided "a **summary** of our analysis" and the fact that it was Defendants' obligation to provide Ms. Staley with the *entirety* of their analysis, not merely "a summary." *Id.*

363. Ms. Staley also explained that "[b]y denying us the entirety of that analysis, the specific reasons and plan citations that you think support that analysis, and all documents, records and other information relevant to that analysis, you have adversely affected Ms. Staley's right to a full and fair opportunity to address and challenge it and present evidence and arguments on appeal refuting it and supporting her claim." *Id.*

364. Ms. Staley further asserted:

> By failing, in response to Ms. Staley's November 4 claim and January 6 appeal, to articulate any textual basis for your determinations, and by failing to provide her any semblance of due process (by ignoring her highly pertinent questions and by withholding the documents, records and other relevant information you owe her), you confirm our previously voiced concerns that your decision making process was and is fundamentally flawed and your decisions tainted by financial considerations, precluding any objective and fair determination or review of Ms. Staley's claim.

Id.

E. <u>Defendants' June 4, 2015 Denial of Plaintiffs' Appeal</u>

365. In their claims appeal denial letter dated June 4, 2015, Defendants ignored all of the foregoing points. By that letter, signed by Daniel Marsili as "Senior Vice President,

Global Human Resources," the Committee denied Ms. Staley's claims appeal, both as to her own Residual Annuity and as to her request for a recalculation and upward adjustment of Mr. Caufield's Residual Annuity as his beneficiary.

366. As reflected in their denial letter, Defendants' principal defense was to repeatedly assert that the claims Ms. Staley was raising on behalf of herself and Mr. Caufield as his beneficiary were barred by the release Defendants obtained as part of the partial settlement approved by the Court in 2014 in *In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515 (LGS) (S.D.N.Y). Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr. at 2, Overview of Section III ("Ms. Staley's appeal seeks to assert claims that are subject to the release contained in the settlement agreement that was executed in the case titled In re: Colgate-Palmolive Co. ERISA Litigation (Master File No. 07-cv-9515)"; *id.* at 3, Overview of Section V(c) (rejecting her claims as "already litigated"; claims are ones "that Ms. Staley and her counsel were paid to settle and release"); *id.* at 3, Overview of Section V(d) ("This is another argument raised and settled in the prior litigation and therefore cannot be relitigated"); *id.* at 3-4, Section III ("Ms. Staley is Seeking to Assert Claims Subject to a Release"); *id.* at 10-11, Section V(b) ("Ms. Staley's appeal is barred by the release found in the settlement agreement in *In re: Colgate-Palmolive Co. ERISA Litigation*"); *id.* at 12, Section V(c) (arguing that claims are barred because they involve "an argument that was raised and released in the class action litigation"); *id.* at 13, Section V(f) (arguing that claims are barred because they question "the calculation of PRA-based annuities" which "is an issue Ms. Staley (or her counsel) litigated and settled in In re: Colgate-Palmolive Co, ERISA Litigation").

367. Like Defendants' March 5, 2015 documents and information denial letter, Defendants' June 4, 2015 appeal denial letter continued to almost entirely ignore Ms. Staley's repeated requests for all documents, records, and information relevant to her claim. Only after informing her that the appeals process was over, does the letter recite that Ms. Staley is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all available documents, records, and other information relevant to her claim for benefits." Not a word in the letter acknowledged that Ms. Staley had, months earlier, twice and in detail, already requested exactly such documents and information, but had been given only a handful of documents and virtually none of the documents, records, and other information that she requested.

368. Defendants' June 4, 2015 denial letter stated that it was enclosing documents that the Committee "reviewed" and "considered" in their denial of Ms. Staley's appeal of the Plan's November 4, 2014 determination that Ms. Staley was not entitled to a Residual Annuity, but virtually all of these documents had been previously produced, leaving wholly unaddressed Ms. Staley's repeated requests for compliance with the protections of the claims regulation in this regard. The only "new" documents that Defendants provided with their June 4, 2015 letter were: the "Plan document in effect in 2003" (Ex. 39); and excerpts of the minutes and resolutions from the Committee's December 5, 2014 meeting (Ex. 40).

F. Ms. Staley's Third Request for All Relevant Documents, Records, and Other Information and Request for All Documents, Records, and Other Information Relevant to the Claims On Review, and Defendants' Continuing, Improper Non-Response

369. On March 14, 2016, Ms. Staley wrote to Colgate again, asking that it provide her with all information, documents, and records relevant to her claim on review generated or

developed after the initial benefit claim denial and up to and including June 4, 2015. Ex. 38, Staley 3/14/16 Ltr. Ms. Staley further asked that Colgate rectify its prior failures to provide her with the information and documents relevant to her claim that she had previously requested. *Id.*

370. On April 25, 2016, Colgate provided four redacted documents, two of which were required to have been provided to her prior to her April 6, 2015 appeal and all of which further confirm that Colgate is refusing to provide information, documents, and records to which Ms. Staley is entitled and Colgate was and is required to produce under the claims regulation. *See* Ex. 25, Colgate 4/25/16 Ltr.; *see also* 3/16/15 Committee Mtg. Minutes (Ex. 34); 3/16/15 Presentation Slides (Ex. 35); 5/27/15 Committee Mig. Minutes (Ex. 36); 5/27/15 Presentation Slides (Ex. 37).

371. Plaintiffs have fully exhausted the internal claims procedures of the Plan to the extent they had any obligation to do. Their claims for benefits have been (nominally) denied by the Committee, the named fiduciary responsible for deciding benefit claims. Without agreeing with Defendants' assertions as to the statute of limitations governing Ms. Staley's claims, even under Defendants' view of the governing limitations period, this action is timely filed.

CLAIMS FOR RELIEF

Count One
(Denial of Right to All Relevant Documents, Records and Other Information)

372. Plaintiffs repeat and re-allege the allegations contained in all foregoing paragraphs herein.

373. ERISA § 503(a)(2), 29 U.S.C. § 1133(a)(2) provides, "in accordance with regulations of the Secretary, every employee benefit plan shall . . . afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim." ERISA § 503(a)(2), 29 U.S.C. § 1133(a)(2).

374. An ERISA plan's claims review procedure must "[p]rovide that a claimant shall be provided, upon request and free of charge . . . copies of, all documents, records, and other information relevant to the claimant's claim for benefits" and claim for benefits "on review." 29 C.F.R. § 2560.503-1(h)(iii) and § 2560.503-1(j)(3)

375. "Whether a document, record or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section." 29 C.F.R. § 52560.503-1(h)(2)(iii).

376. Paragraph (m)(8) provides in pertinent part: "A document, record, or other information shall be considered "relevant" to a claimant's claim if such document, record, or other information: (i) Was relied upon in making the benefit determination; (ii) Was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination; (iii) Demonstrates compliance with the administrative processes and safeguards required pursuant to paragraph (b)(5) of this section in making the benefit determination." *Id.* § 52560.503-1(m)(8).

377. The opportunity to review the documents, records and information relevant to a participant's claim and claim on review is critical to a full and fair review, because only

then can a claimant have access to the evidence upon which the decision-maker relied in denying the claim and thus the opportunity to challenge its accuracy and reliability.

378. Review of the "relevant" documents, records and other information in this case is additionally important here because it will also help establish that Defendants' denials lacked any rational basis and were the product of conflicts of interest.

379. Plaintiffs and the proposed Class seek and are entitled to relief for and as a result of these violations under ERISA § 502(a), 29 U.S.C. § 1132(a). Because Defendants have denied Plaintiffs' right under the claims regulations, the SPD and the Plan itself, to review the relevant documents, records and other information respectively, Defendants should be ordered to permit Plaintiffs to review all relevant documents, records and other information forthwith.

Count Two
(Denial of Benefits)

380. Plaintiffs repeat and re-allege the allegations contained in all foregoing paragraphs herein.

381. Under ERISA, a plan administrator must, among other things, follow the plan's plain terms. *See* 29 U.S.C. § 1104(a)(1)(D) (plan must be administered "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [ERISA]").

382. Defendants have deprived Plaintiffs and putative Class members of their rights to benefits under the Residual Annuity Amendment and incorporated Plan provisions.

383. Plaintiffs and the proposed Class are entitled to enforce their rights under the terms of the Plan and to recover benefits due to him under the terms of the Plan or to clarify his rights to future benefits under the terms of the plan.

384. Under ERISA § 502(a), 29 U.S.C. § 1132(a), Plaintiffs and the proposed Class seek and are entitled to relief for and as a result of Defendants' violations of their rights under the Residual Annuity Amendment.

Count Three
(Contempt of Court)

385. Plaintiffs repeat and re-allege the allegations contained in all foregoing paragraphs herein.

386. The Court's Final Order and Judgment in the *In re Colgate-Palmolive Co. ERISA Litigation* case, which prohibited Defendants from denying any participant's Residual Annuity Amendment claim in whole or in part in any subsequent administrative or judicial proceeding based on any assertion that such claim was released in the partial settlement. Ex. 1, 7/8/14 Final Order and Judgment, Dkt. 162 at 5, ¶¶ 7-8; Ex. 2, Partial Settlement Agreement, Dkt. 130-1, at 17, § 12.D(2).

387. Although the Court's Order is clear that "Defendant and/or Colgate **may not assert** in any future administrative or legal proceeding that the release set forth in this Agreement releases, bars, or precludes any claims under the Residual Annuity Amendment," *id.* (emphasis added), Defendants did just that: in fact, in the 2014-2015 internal claims process, Defendants' principal defense against Plaintiffs' claim was that "Ms. Staley's appeal seeks to assert claims that are ***subject to the release*** contained in the settlement agreement that was executed in the case titled In re: Colgate-Palmolive Co. ERISA Litigation (Master File

No. 07-cv-9515)." Ex. 6, Def. 6/4/15 Claim Appeal Denial Ltr. at 2, Overview of Section III (emphasis added); *see also id.* at 3, Overview of Section V(c); *id.* at 3, Overview of Section V(d); *id.* at 3-4, Section III; *id.* at 10-11, Section V(b); *id.* at 12, Section V(c); *id.* at 13, Section V(f). A court cannot honor the supposedly expert interpretation of allegedly ambiguous plan text from parties who cannot or will not follow the court's own clear and unambiguous orders.

388. The Court's July 8, 2014 Final Order and Judgment decrees that the Partial Settlement Agreement in that case "shall be effective, **binding and enforced according to its terms** and conditions," Ex. 1, 7/8/14 Final Order and Judgment, Dkt. 162 at 4, ¶ 6 (emphasis added), and specifies that the Court "shall retain exclusive jurisdiction to resolve any disputes or challenges that may arise as to the performance of the Settlement Agreement or any challenges as to the performance, validity, interpretation, administration, enforcement, or enforceability of . . . this Final Order and Judgment, or the Settlement Agreement." *Id.* at 6 ¶ 10.

389. Plaintiffs and the members of the proposed Class here are all members of the certified Class in *In re Colgate-Palmolive Co. ERISA Litigation.*

390. Plaintiffs and the proposed Class seek and are entitled to relief for and as a result of Defendants' violations of the Court's Final Order and Judgment *In re Colgate-Palmolive Co. ERISA Litigation* in the form of an order of contempt and all appropriate associated relief.

Count Four
(Violation of ERISA § 102-SPDs and SMMs)

391. Plaintiff repeats and re-alleges the allegations contained in all foregoing

paragraphs herein.

392. Defendants' failure to timely disclose and describe and continuing failure to disclose and describe the Residual Annuity Amendment and/or the Residual Annuity benefit to participants in a summary plan description and/or summary of material modifications violated and violates the minimum requirements for SPDs set forth in ERISA § 102, 29 U.S.C. § 1022, and its implementing regulations found in 29 C.F.R. § 2520.102.

393. Plaintiffs and the proposed Class seek and are entitled to relief for and as a result of this violation under ERISA § 502(a), 29 U.S.C. § 1132(a).

Count Five
(Violation of ERISA § 404(a)-Fiduciary Duties)

394. Plaintiffs repeat and re-allege the allegations contained in all foregoing paragraphs herein.

395. Defendants breached their strict fiduciary duties under ERISA § 404(a) by intentionally, recklessly or negligently making the materially false and misleading statements and omissions described above, by intentionally, recklessly or negligently violating ERISA § 102; and by fraudulently concealing or attempting to fraudulently conceal those violations, described above.

396. Plaintiffs and the proposed Class seek and are entitled to relief for and as a result of this violation under ERISA § 502(a), 29 U.S.C. § 1132(a).

Class Action Allegations

397. Plaintiffs bring suit on behalf of themselves and on behalf of all other participants and beneficiaries similarly situated under the provisions of Rule 23 of the Federal

Rules of Civil Procedure. Judicial economy dictates that the issues raised here be resolved in a single action.

398. The proposed Class is defined to include:

> Any person who, under any of Appendices B, C or D of the Colgate-Palmolive Company Employees' Retirement Income Plan ("Plan"), is entitled to a greater benefit than his Accrued Benefit as defined in Plan § 1.2, provided such person receives a lump sum payment from the Plan, and the beneficiaries and estates of such Participants.

399. The requirements for maintaining this action as a class action under Fed. R. Civ. P. 23(a) are satisfied.

400. First, there are too many Class members for joinder of all of them to be practicable. There are hundreds of members of the proposed Class dispersed among many states.

401. Second, there are common questions of law and fact affecting the rights of the members of the proposed Class.

402. Third, the claims of the named Class representative are typical of the claims of the proposed Class.

403. Fourth and finally, the named representative will fairly and adequately protect the interests of the proposed Class.

404. Additionally, all of the requirements of Fed. R. Civ. P. 23(b)(1) are satisfied in that the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications establishing incompatible standards of conduct for defendants, and individual adjudications present a risk of adjudications which, as a practical matter, would be dispositive of the interests of other members who are not parties.

405. All of the requirements of Fed. R. Civ. P. 23(b)(2) also are satisfied in that the Defendants' actions affected all Class members in the same manner making appropriate final declaratory and injunctive relief with respect to the Class as a whole.

406. All of the requirements of Fed. R. Civ. P. 23(b)(3) also are satisfied in that questions of law or fact common to class members predominate over any questions affecting only individual members' and that class treatment would be superior to individual litigation.

Prayer for Relief

WHEREFORE, Plaintiffs pray that judgment be entered against Defendants and that the Court award the following relief:

A. Certification of this action as a class action for all purposes of liability and relief and appointment of undersigned counsel as class counsel pursuant to Fed. R. Civ. P. 23.

B. Judgment for Plaintiffs and the Class against Defendants on all claims expressly asserted and/or within the ambit of this Complaint, including that Defendants were and are in contempt of this Court's Final Order and Judgment *In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515 (LGS) (S.D.N.Y).

C. An order requiring Defendants to re-calculate the benefit amounts due or past due under the terms of the Plan in accordance with the requirements of ERISA, and, where applicable, for the Plan to pay the difference, plus interest, to or on behalf of all Class members who received less in benefits than the amount to which they are entitled and/or to pay benefits to which Class members are entitled.

F. An order awarding pre- and post-judgment interest.

G. An order awarding attorney's fees on the basis of the common fund doctrine (and/or other applicable law, at Plaintiffs' election), along with the reimbursement of the expenses incurred in connection with this action.

H. An order awarding, declaring or otherwise providing Plaintiff and the Class all other such relief under ERISA § 502(a), 29 U.S.C. § 1132(a), or any other applicable law, that Plaintiff may subsequently specify and/or that the Court may deem appropriate.

Dated: June 3, 2016

Respectfully submitted,

/s/ *Eli Gottesdiener*

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