

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

SMILEDIRECTCLUB, LLC,

Plaintiff

v.

GEORGIA BOARD OF DENTISTRY;  
TANJA D. BATTLE, in her official  
capacity as Executive Director of the  
Georgia Board of Dentistry; and  
THOMAS P. GODFREY, GREGORY  
G. GOGGANS, RICHARD BENNETT,  
REBECCA B. BYNUM, TRACY GAY,  
STEVE HOLCOMB, LOGAN  
NALLEY, JR., ANTWAN L.  
TREADWAY, H. BERT YEARGAN,  
and WENDY JOHNSON, individually  
and in their official capacities as  
Members of the Georgia Board of  
Dentistry,

Defendants.

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR DAMAGES, DECLARATORY, AND INJUNCTIVE  
RELIEF**

Plaintiff SmileDirectClub, LLC (“Plaintiff” or “SDC”) alleges the following against Defendants the Georgia Board of Dentistry (the “Board”), Thomas P. Godfrey, Gregory G. Goggans, Richard Bennett, Rebecca B. Bynum, Tracy Gay, Steve Holcomb, Logan Nalley, Jr., Antwan L. Treadway, H. Bert Yeargan, and

Wendy Johnson (each of the foregoing individuals is sued in his or her individual capacity and in his or her official capacity as Members of the Board), and Tanja D. Battle in her official capacity as Executive Director of the Board:

## **INTRODUCTION**

1. This is an action to enjoin the enforcement of an unauthorized and improper rule adopted by the Georgia Board of Dentistry. Specifically, the Board recently approved a rule that purportedly “expanded” the list of duties a dental assistant may perform if directly supervised by a licensed dentist under Georgia Rule of Dentistry 150-9-.02(3). A true and correct copy of Rule 150-9-.02, including the list of ten “expanded” duties, is attached hereto and incorporated herein by reference as Exhibit A. Subparagraph (aa) of the new Rule provides that a dental assistant may perform “[d]igital scans for fabrication (sic) orthodontic appliances and models” only “under the direct supervision of a licensed dentist.” Digital scanning, however, is not the practice of dentistry or dental hygiene and, thus, the Board lacks the authority to regulate this conduct.

2. By including “digital scans” within the framework of Rule 150-9-.02(3), Subparagraph (aa) bars technicians from performing digital scans of a patient’s teeth and gums unless under the direct supervision of a licensed dentist. Notably, the supervision contemplated by the new Rule simply requires that a

licensed dentist be in the building while the digital scanning is performed. It does not require that the licensed dentists perform the digital scan themselves, observe the digital scans, or even be in the same room as the patient when the digital scan is performed. Thus, effectively, Subparagraph (aa) is aimed uniquely at shops that offer digital scan services apart from dental services. As a result, Subparagraph (aa) unlawfully restricts Georgia residents' access to affordable aligner treatment, fails to protect the public in any manner, stifles competition, harms consumers, and makes it virtually impossible for Plaintiff to lawfully conduct business in the State of Georgia without making costly and prohibitive changes to its present business model.

### **THE PARTIES**

3. Plaintiff SDC is a dental service organization that provides non-clinical administrative support services to contractually affiliated dental practices in Georgia that wish to offer doctor-directed at-home clear aligner treatment for cases of mild to moderate malocclusion (*i.e.* improper positioning of the teeth when the jaws are closed). SDC is licensed to practice business in the State of Georgia.

4. The Board consists of eleven members appointed by the Governor to regulate and enforce the standards of the practice of dentistry. By statute, nine

members of the Board must be dentists, one member of the Board must be a dental hygienist who is not a dentist, and one member of the Board must be an individual who is neither a dentist nor a dental hygienist. O.C.G.A. § 43-11-2. Upon information and belief, one of the nine seats allocated to dentists is presently vacant, meaning that the Board presently consists of ten members, eight of whom are dentists. The Board's authority is limited to regulating the practice of dentistry and dental hygiene and those who practice dentistry or dental hygiene in the State of Georgia. The Board has no authority over activities that do not constitute dentistry or dental hygiene or individuals and organizations, such as SDC, that provide non-clinical administrative support services to dental providers.

5. Defendant Tanja D. Battle is the Executive Director of the Georgia Board of Dentistry.

6. Defendant Thomas P. Godfrey, D.M.D., is the President and one of the eight current dentist members of the Board. Upon information and belief, Dr. Godfrey is a licensed, practicing dentist with an office in Atlanta, Georgia.

7. Defendant Gregory G. Goggans, D.M.D., is the Vice President and one of the eight current dentist members of the Board. Upon information and belief, Dr. Goggans is a licensed, practicing orthodontist with offices in various locations throughout Georgia. According to the website for his practice, Dr.

Goggans offers patients clear aligner treatment products and services that compete with the products and services offered by SDC and its affiliated dental practices.

8. Defendant Richard Bennett, D.M.D., is one of the eight current dentist members of the Board. Upon information and belief, Dr. Bennett is a licensed, practicing dentist with an office in Gainesville, Georgia.

9. Defendant Rebecca B. Bynum, R.D.H., is a current member of the Board. Upon information and belief, Ms. Bynum is a registered dental hygienist.

10. Defendant Tracy Gay, D.M.D., is one of the eight current dentist members of the Board. Upon information and belief, Dr. Gay is a licensed, practicing dentist with an office in Dublin, Georgia. According to the website for his practice, Dr. Gay offers patients clear aligner treatment products and services that compete with the products and services offered by SDC and its affiliated dental practices.

11. Defendant Steve Holcomb, D.M.D., is one of the eight current dentist members of the Board. Upon information and belief, Dr. Holcomb is a licensed, practicing dentist with an office in Byron, Georgia.

12. Defendant Logan “Buzzy” Nalley, Jr., D.M.D., is one of the eight current dentist members of the Board. Upon information and belief, Dr. Nalley is a licensed, practicing prosthodontist with an office in Augusta, Georgia.

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