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11 AMERICAN ACADEMY OF BIOLOGICAL DENTISTRY and DEBRA SELTENREICH

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

13 KIDS AGAINST POLLUTION, a nonprofit )  
14 organization; DENTAL AMALGAM )  
15 MERCURY SYNDROME, INC., a nonprofit )  
16 organization; AMERICAN ACADEMY OF )  
17 BIOLOGICAL DENTISTRY, a nonprofit )  
18 organization; DEBRA SELTENREICH, an )  
19 individual; on behalf of themselves, all those )  
20 similarly situated and in the interest of the )  
21 general public )

18 Plaintiffs

19 v.

20 AMERICAN DENTAL ASSOCIATION, a )  
21 corporation; CALIFORNIA DENTAL )  
22 ASSOCIATION, a corporation; and DOES 1 )  
23 THROUGH 2000, inclusive, )

22 Defendants.

Case No.

COMPLAINT FOR INJUNCTIVE  
RELIEF AND RESTITUTION BASED  
ON:

1. Violation of Business & Professions Code §§17200 et seq. based on Health & Safety Code §§25249.6 et seq.;
2. Violation of Business & Professions Code §§ 17200 et seq. based on Business & Professions Code §510;
3. Violation of Business & Professions Code §§17200 et seq. based on Business & Professions Code §2056;
4. Violation of Business & Professions Code §§ 17200 et seq. based on Unfair and Deceptive Business Practices;
5. Violation of Business & Professions Code §§ 17200 et seq. based on Deceptive Business Practices

1 INTRODUCTION

2 1. This is a case about two healthcare associations which have undertaken a course  
3 of conduct and a business practice spanning over many decades in order to assure that patients do  
4 not receive accurate information regarding *mercury* amalgam fillings. Specifically, the American  
5 Dental Association (“ADA”) and the California Dental Association (“CDA”) have, for years,  
6 sent out literature, informational materials, advertisements, and other written correspondence,  
7 and also made oral representations, all of which were deliberately intended to disguise *mercury*  
8 amalgam fillings as *silver*. The ADA and CDA have concealed and provided false information  
9 to their members and the general public regarding the significant risk of harm and toxic injury  
10 from such fillings to consumers, and dental practitioners. Furthermore, the ADA and CDA have  
11 undertaken business practices in order to assure that consumers, particularly patients and high  
12 risk populations such as pregnant women and children remain oblivious to the significant levels  
13 of mercury in and toxicity of dental amalgam fillings.

14 2. This deception takes the form of concealment, openly false representations, and an  
15 outward aggression toward those who do not agree with the Defendants. It is layer upon layer of  
16 actions by the Defendants from their pamphlets and other written and oral materials, to  
17 accreditation of dental schools, to revocation of licenses of those dentists who oppose the  
18 Defendants’ position.

19 3. The ADA has a significant income from the sale of its written materials,  
20 including, but not limited to pamphlets and brochures.<sup>1</sup> These materials convey false and  
21 misleading information to dental professionals and the public, and combined with the Defendants  
22 continuous efforts to “gag” any opposition, assure that the “m” word (mercury) remains a secret.

23 4. When considering the significance of these Defendants’ actions, it is important to  
24 consider the following:

- 25 • These organizations, and particularly the ADA, hold themselves out as the  
26

27 <sup>1</sup>In fact, the ADA sells these materials in various ways, among those, an extensive catalogue.  
28 For example, the ADA sells its brochures “Answers to Your Questions About *Silver* Fillings,”  
(emphasis added) which is but one of its false and misleading products.

1 foremost, and perhaps only, authorities on oral care in this country and the world.

- 2 • These organizations, and particularly the ADA, have actively prevented dentists  
3 from receiving accurate information about mercury amalgam;
- 4 • Even where dentists have been aware of the serious toxicity issues relating to  
5 mercury amalgam, these organizations, and particularly the ADA, have actively  
6 prevented dentists from relaying this toxicity information to their patients;

7 5. *Mercury* is one of, if not *the*, most toxic non-radioactive element known to man.

8 There is an overwhelming amount of scientific data ranging from animal to human studies  
9 conclusively documenting mercury's horrendous and devastating effects. Unlike some other  
10 toxic materials,<sup>2</sup> Mercury is dangerous in all of its formulations. In fact, the State of California  
11 (along with various other authoritative governmental and scientific bodies) recognizes *mercury*,  
12 *methylmercury*, and *all of their compounds* as highly toxic to the human body. When it comes to  
13 mercury, the question is not *whether* it is toxic, but just *how* toxic it is.

14 6. Over the years, Governmental and scientific bodies, continuously, have lowered  
15 the levels at which mercury is considered toxic. Additionally, in virtually every other  
16 application, particularly in the healthcare industry, the use of mercury has either been banned or  
17 phased out. For example, the use of mercury thermometers has been phased out;  
18 mercurochrome, previously used to treat cuts, has been banned; the use of mercury preservatives  
19 in vaccines, and eye drops is being phased out. Outside of the healthcare industry, the  
20 manufacturers of fluorescent lamps, which lamps traditionally contained up to 25 milligrams of  
21 mercury, have, year after year, lowered the amount of mercury in their products in a continuing  
22 effort to phase out the use of mercury.

23 7. As a point of reference, while the fluorescent lamp manufacturers have been and  
24 are currently under fire for less than 25 milligrams of mercury in their product, a typical *mercury*  
25 amalgam filling contains 750 milligrams of mercury (over *30 times* more than a fluorescent  
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27 <sup>2</sup>For example, much has been made of Chromium, the chemical that made famous due to its  
28 devastating effects when it was used by PG&E. While *trivalent* chromium exhibits almost no toxic  
effects, *hexavalent* chromium is highly toxic.

1 lamp), and an individual can have 5 to 15 fillings in her mouth.

2 8. Additionally, *mercury* is a toxic substance when being delivered to the dental  
3 office, and the fillings are toxic waste when leaving the dental office. Yet, Defendants claim that  
4 the fillings are perfectly safe when placed inside an individual's *mouth*. Simply put, the  
5 Defendants concede that mercury is toxic in every instance; just not in an individual's mouth.

6 9. Although this contention is facially laughable, its effects on the public (and many  
7 dentists' careers) have been anything but funny. The dental industry, including the Defendants  
8 herein, stands alone as the only industry which openly, outwardly, and *falsely* claims that  
9 mercury is safe and that its use should be continued.

10 10. It is most noteworthy that this is not about an association advocating the use of a  
11 particular product; this is about an association which actively, and aggressively lashes out against  
12 those who oppose its views. This is about an association that derives a significant income from  
13 advocating for the use of this highly toxic substance. This is about an association that is  
14 generally known as the number one, and perhaps, *only* authority in oral care, advocating, telling,  
15 and *teaching* its members and the public that the most toxic element known to man is actually  
16 safe when placed in millions of people's *mouths*.

17 11. As set forth herein, the Defendants, through their so-called "ethical rules," have  
18 openly prevented dentists from properly informing their patients of the toxicity of this product.  
19 These so-called "ethical rules" have been, and continue to be, enforced by various dental boards  
20 in order to revoke the licenses of dentists who speak against the use of *mercury* amalgams. The  
21 Defendants, through their literature, particularly their brochure which is going to be the subject of  
22 a request for a preliminary injunction herein, have provided false information to their members  
23 and the general public regarding the dangers of this product, or even the fact that *mercury* is an  
24 ingredient. In fact, Defendants refer to *mercury* amalgam fillings as *silver*. Through their  
25 accreditation program, Defendants, and particularly the ADA, have caused dental schools to  
26 provide trainees with false information regarding *mercury* amalgams.

27 12. The Defendants, and each of them, have steadfastly refused to inform the public,  
28 in general, and the Plaintiffs, specifically, regarding the potential toxic effects of *mercury*

1 amalgams, or even the fact that mercury is present in amalgams. These acts violate various  
2 statutes and prevent the administration of appropriate healthcare in the dental industry as set forth  
3 herein.<sup>3</sup>

#### 4 JURISDICTION

5 13. The California Superior Court has jurisdiction over this action pursuant to  
6 California Constitution Article VI, Section 10, which grants the Superior Court “original  
7 jurisdiction in all causes except those given by statute to other trial courts.” The Statutes under  
8 which this action is brought do not specify any other basis for jurisdiction.

9 14. The California Superior Court has jurisdiction over all Defendants because, based  
10 on information and belief, each is a corporation and/or entity and/or person that has sufficient  
11 minimum contacts in California, is a citizen of California, or otherwise intentionally avails itself  
12 of the California market so as to render the exercise of jurisdiction over it by the California  
13 courts consistent with traditional notions of fair play and substantial justice.

14 15. Venue is proper in the San Francisco Superior Court because both of the named  
15 Defendants exist, transact business, and/or have offices in San Francisco.

#### 16 THE PARTIES

17 16. Kids Against Pollution (“KAP”) is a nonprofit organization of active youth  
18 throughout the United States, with offices in Utica, New York.

19 17. Dental Amalgam Mercury Syndrome, Inc. (“DAMS”) is a nonprofit organization  
20 with its national offices located in Minneapolis, Minnesota. DAMS’ membership includes  
21 individuals throughout the nation and California who have been injured by dental amalgam.

22 18. The American Academy of Biological Dentistry (“AABD”) is a nonprofit  
23 organization headquartered in Carmel Valley, California. AABD and its members advocate  
24 mercury-free dentistry.

25 19. Debra Seltenreich is an individual residing in the State of California. Ms.  
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27 <sup>3</sup>The ADA represents that “[t]he Seal on a product is an assurance for consumers and dentists  
28 against misleading or untrue statements concerning a product, its use, safety and effectiveness.”  
When it comes to the *mercury* amalgam, there could be nothing farther from the truth.

1 Seltenreich spent some 20 years working as a dental assistant, never being informed of the  
2 dangers of mercury or even its significant presence in dental amalgam fillings.

3 20. At all times relevant herein, the California Dental Association is and was a  
4 nonprofit corporation headquartered in California, and doing business throughout this State. The  
5 Plaintiffs are informed and believe, and based thereon allege that the CDA's members comprise  
6 some 75% of the dentists in California.

7 21. At all times relevant herein, Defendant CDA transacted business in the State of  
8 California, County of Los Angeles.

9 22. At all times relevant herein, the American Dental Association is and was a  
10 nonprofit corporation headquartered in Illinois. All members of the CDA are required to be  
11 members of the ADA. As such, Plaintiffs are informed and believe and based thereon allege that  
12 approximately 75% of the dentists in California are ADA members, and transact business with  
13 the ADA. Furthermore, among other things, the ADA accredits dental schools within California.

14 23. At all times relevant herein, Defendant ADA transacted business in the State of  
15 California, County of Los Angeles.

16 24. The true names and capacities, whether individual, corporate, associate, or  
17 otherwise, of Defendants named herein as DOES 1 through 100, and each of them, are unknown  
18 to Plaintiffs, who therefore, sue said Defendants by such fictitious names.

19 25. Plaintiffs will ask leave to amend this Complaint to state said Defendants' true  
20 identities and capacities when the same have been ascertained.

21 26. Plaintiffs is informed and believe and based thereupon allege that each of the  
22 defendants designated herein as DOE took part in and participated with the Defendants in all  
23 matters referred to herein and was in some manner responsible for the injuries and losses suffered  
24 by Plaintiffs.

25 27. Plaintiffs is informed and believe and based thereupon allege that at all times  
26 herein mentioned each of the Defendants was the agent, servant and/or employee or occupied  
27 other relationships with each of the other named Defendants and at all times herein mentioned  
28 acted within the course and scope of said agency and/or employment and/or other relationship

1 and each other Defendant has ratified, consented to, and approved the acts of his agents,  
2 employees, and representatives, and that each actively participated in, aided and abetted, or  
3 assisted one another in the commission of the wrongdoing alleged in this Complaint.

#### 4 STATUTORY BACKGROUND

##### 5 A. UNFAIR COMPETITION ACT (BUS. & PROF. CODE § 17200 ET SEQ.)

6 28. California Business & Professions Code §17200 provides that “unfair competition  
7 shall mean and include unlawful, unfair or fraudulent business act or practice.” Section 17203 of  
8 the Business & Professions Code provides that “(a)ny person performing or proposing to perform  
9 an act of unfair competition within this state may be enjoined in any court of competent  
10 jurisdiction.”

11 29. “An unlawful business activity includes anything that can properly be called a  
12 business practice and that at the same time is forbidden by law.”<sup>4</sup> “Unlawful” practices  
13 prohibited are any practices forbidden by law be it civil or criminal, federal, state, or municipal,  
14 statutory, regulatory, or court-made. It is not necessary that the predicate law provide for private  
15 civil enforcement. Section 17200 borrows violations of other laws and treats them as unlawful  
16 practices independently actionable. Section 17200 is designed to protect *consumers* against fraud  
17 and deceit as well as to protect competitors. It is broadly interpreted to bar all ongoing wrongful  
18 business activities in any context in which they appear.

19 30. The Unfair Competition Act authorizes injunctive relief to prevent unlawful,  
20 unfair, or fraudulent business acts or practices, and restitution (disgorgement) of money or  
21 property wrongfully obtained by means of such unfair competition. Bus. & Prof. Code, § 17203.  
22 The statute imposes strict liability. It is not necessary to show that the defendant intended to  
23 injure anyone.<sup>5</sup> Because the definition contained in Section 17200, is disjunctive, a “business act  
24 or practice” is prohibited if it is “unfair” or “unlawful” or “fraudulent.” In other words, a  
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26 <sup>4</sup> *People v. McKale* (1979) 25 Cal.3d 626, 632 citing *Barquis v. Merchants Collection*  
27 *Assn.* (1972) 7 Cal.3d 94, 113 (internal quotations omitted).

28 <sup>5</sup> *People ex rel. Van de Kamp v. Cappuccio, Inc.* (1988) 204 Cal.App.3d 750, 760-76;  
*see also, State Farm Fire & Casualty Co. v Superior Court* (1996, 2nd Dist) 45 Cal App 4th 1093.

1 practice is prohibited as “unfair” or “deceptive” even if not “unlawful” and vice versa.

2 31. The “fraud” contemplated by the third prong of Section 17200, bears little  
3 resemblance to common law fraud or deception. The test is whether the public is likely to be  
4 deceived. This means that, unlike common law fraud or deceit, a violation occurs even if no one  
5 was actually deceived, relied upon the fraudulent practice, or sustained any damage.

6 32. An “unfair” business practice occurs when that practice offends an established  
7 public policy or when the practice is immoral, unethical, oppressive, unscrupulous, or  
8 *substantially injurious* to consumers. In fact, even if a practice is neither in violation of antitrust  
9 laws nor deceptive, it may nonetheless be unfair. An act is unfair, without necessarily having  
10 been previously considered unlawful, if it offends public policy - that is, if “it is within at least  
11 the penumbra of some common-law, statutory, or other established concept of unfairness.”<sup>6</sup>

12 33. Furthermore, a plaintiff suing under section 17200 does not have to prove he or  
13 she was directly harmed by the defendant's business practices. An action may be brought by any  
14 person, corporation or association or by any person acting for the interests of itself, its members  
15 or the general public.

16 34. California Business & Professions Code §17206(a) provides that any person  
17 violating Section 17200 “shall be liable for civil penalty not to exceed two thousand five hundred  
18 dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action  
19 brought in the name of the people of the State of California.” Under Section 17205, all remedies  
20 and penalties are “cumulative to each other and to the remedies or penalties available under all  
21 other laws of this state.”

22 **B. PROPOSITION 65**

23 35. Proposition 65, a state ballot measure that passed by an overwhelming 2 to 1  
24 margin, is codification of a long-standing public policy within this state which is growing ever  
25 stronger with the passage of time. Within the Preamble to Proposition 65, the People declared, in  
26 no uncertain terms, that exposures to reproductive toxins and carcinogens “pose a serious

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28 <sup>6</sup> *State Farm Fire & Casualty Co. v Superior Court* (1996, 2nd Dist) 45 Cal App 4th  
1093, 1104 citing the U.S. Supreme Court in *FTC v. Sperry & Hutchinson Co.* (1972) 405 U.S. 233.



1 potential threat” to the public health. Section 1 of Initiative Measure, Proposition 65, Nov. 4,  
2 1986. The People further declared their right “[t]o be informed about exposures to chemicals  
3 that cause cancer, birth defects, or other reproductive harm.” Proposition 65, §1(b).

4 Consequently, workers and consumers throughout California mandated that manufacturers  
5 provide clear warning of the severe hazards of exposure to the chemicals that are known to the  
6 state to cause cancer or reproductive harm. A primary focus of the modern environmental  
7 movement has been the harmful effects of toxics. Simply put, the People want to eliminate  
8 exposures to these deadly chemicals, but where such exposures are necessary, want to be  
9 informed of same, and be told of the effects which may result.

10 36. Furthermore, through Proposition 65, the People expressed their distrust of  
11 government by allowing for private enforcement of the law, along with other guidelines seeking  
12 to protect the Citizens of this State despite the political pressures which may be placed on  
13 regulators by industry.

14 37. In relevant part, the Act provides that:

15 No person in the course of doing business shall knowingly discharge or release a  
16 chemical known to the state to cause cancer or reproductive toxicity into water or  
17 onto or into land where such chemical passes or probably will pass into any source  
of drinking water . . . (Health & Safety Code §25249.5)

18 No person in the course of doing business shall knowingly and intentionally  
19 expose any individual to a chemical known to the state to cause cancer or  
20 reproductive toxicity without first giving clear and reasonable warning to such  
individual, except as provided in Section 25249.10. (Health & Safety Code  
§25249.6)

21 38. Proposition 65 establishes a procedure by which the state develops a list of  
22 chemicals “known to the State to cause cancer or reproductive toxicity.” Health & Safety Code  
23 §25249.8. The California Office of Environmental Hazard Assessment (“OEHHA”) is the lead  
24 agency charged with administration of Proposition 65, which, among other things, includes  
25 listing chemicals, de-listing chemicals, and setting No Significant Risk Levels (“NSRLs”) and  
26 No Observable Effect Levels (“NOEL”). Proposition 65 provides clear mechanisms whereby any  
27 individual can request that a specific chemical be listed or de-listed as a carcinogen and/or  
28 reproductive toxin, request a change in the NSRL or NOEL (22 CCR §12705(b)), obtain a safe

1 use determination (22 CCR §12104), or obtain an “interpretive guideline” regarding any matter  
2 under the Act (22 CCR § 12103).

3 39. Pursuant to the mandates of Proposition 65, on July 1, 1987, OEHHA designated  
4 Methylmercury as a chemical known to the State of California to be a reproductive and/or  
5 developmental toxin. On July 1, 1990, OEHHA determined that Mercury and Mercury  
6 Compounds are known to the State of California to be reproductive and/or developmental toxins.  
7 Subsequently, on May 1, 1996, OEHHA determined that Methylmercury compounds are known  
8 to the State of California to be carcinogens since May 1, 1996. CCR §22-12000.

9 **BACKGROUND INFORMATION ON MERCURY**

10 40. Mercury is one of the few chemicals that is *conclusively known* to cause adverse  
11 health effects in humans. This is because the effects of Mercury on humans have been widely  
12 studied, in a variety of circumstances and populations. Mercury is dangerous if inhaled, if  
13 absorbed through the skin, or if it enters through any part of the body. It is a highly toxic element  
14 and the most volatile of the heavy metals.

15 41. Various Federal governmental agencies, and numerous States, including  
16 California, regard Mercury as a powerful carcinogen, and a reproductive and developmental  
17 toxin. Mercury is also poisonous to the human nervous system. Due to its significant  
18 documented reproductive and developmental effects, pregnant women and their developing  
19 fetuses, women of child-bearing age, and children under the age of 8 are most at risk for  
20 mercury-related health impacts. These health impacts include, for example, subtle effects arising  
21 from prenatal exposure such as delayed development and cognitive changes in children.

22 42. Mercury can cause a variety of symptoms including chronic inflammation of  
23 mouth and gums, personality change, nervousness, fever, or rash. *Neurotoxicity* symptoms  
24 associated with Mercury and Mercury Compounds include, but are not limited to, impaired  
25 vision, speech, hearing, and walking; sensory disturbances; incoordination of movements;  
26 nervous system damage very similar to congenital cerebral palsy; mental disturbances;  
27 psychomotor retardation; and, in some cases death. Mercury has also been linked to brain neuron  
28 degeneration. According to the United States Public Health Service, mercury poses the most

1 direct danger to the brain and the kidneys. It impairs fetal development, preventing the brain and  
2 nervous system from developing normally. Children poisoned by mercury show lowered  
3 intelligence, impaired hearing and poor coordination and their verbal and motor skills may be  
4 delayed or otherwise, severely and permanently impaired.

5 43. Knowledge of Mercury's adverse health effects is nothing new. Human studies  
6 alone date back more than 60 years.<sup>7</sup> Studies have correlated various ailments, symptoms, and  
7 effects with Mercury for decades. For example in the 1940's, Mercury was found to be the cause  
8 of Acrodynia. Furthermore, disasters in Minamata, Japan, in the 1950s and in Iraq in 1971-1972  
9 clearly demonstrated neurologic effects associated with ingestion of Mercury both in adults and  
10 in infants exposed in utero.

11 44. In workplace case studies, very low exposure to Mercury has been linked to  
12 neurologic and renal disorders. Studies have confirmed more subtle effects such as preclinical  
13 changes in kidney function and behavioral and cognitive changes associated with effects on the  
14 central nervous system. Chronic exposure can result in neuropsychiatric symptoms such as "mad  
15 hatter syndrome" or "erethism" and include tremor, anxiety, incapacitating shyness and  
16 irritability. Mercury is a neurological poison affecting primarily brain tissue. In adults, permanent  
17 brain damage is focal affecting the function of such areas as the cerebellum (ataxia) and the  
18 visual cortex (constricted visual fields). Methylmercury also at high doses can cause severe  
19 damage to the developing brain.

20 45. Even trace amounts of Mercury are known to be toxic to humans. In fact, various  
21 governmental and private entities have determined that exposures of less than 1 microgram per  
22 kilogram of body weight, per day, can have severe adverse effects. The mercury in just one fever  
23 thermometer is enough to contaminate more than 200 million gallons of water.

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28 <sup>7</sup>It is noteworthy that there are only a handful of chemicals for which there is direct, human  
data available.

1 GENERAL ALLEGATIONS

2 DENTAL AMALGAM

3 46. Mercury is the major component of amalgam dental fillings – approximately 50  
4 percent by molecular mass.

5 47. The amount of mercury in each filling is about three-fourths of a gram, or 750,000  
6 micrograms, enough to shut down a small lake from fishing – yet consumers typically have  
7 multiple fillings. Many consumers have five to fifteen fillings, and because of the actions  
8 outlined herein, most remain unaware that their mouths are a virtual toxic environmental hazard.  
9 Frequently, the mercury will also leach into the gums, and from there immediately enter the  
10 human bloodstream.

11 48. According to a report of the United States Agency for Toxic Substances and  
12 Disease Registry, mercury vapors constantly emit from amalgam fillings – more heavily when  
13 the consumer chews or drinks hot liquids or foods – with the vaporized toxics going into the  
14 brain, kidneys, and other organs, where the mercury may remain imbedded as a heavy metal  
15 toxic. According to the United States Public Health Service, the major cause of mercury toxicity  
16 for most people is not fish; *it is amalgam fillings.*

17 49. Because of the mercury, defendants warn dentists that they should exercise  
18 extreme precautions to protect themselves before placing the amalgam filling in a patient's  
19 mouth. Furthermore, an amalgam filling is classified as a hazardous waste as soon as it is  
20 removed from the mouth. Yet, according to Defendants, it is absolutely harmless inside the  
21 patient's mouth.

22 50. According to the California Dental Board, a state agency within the Department of  
23 Consumer Affairs, at least three alternatives to mercury amalgam fillings exist: resin (also  
24 known as composite), porcelain, and gold.

25 51. Mercury formerly was commonly used in medicine, but its usage is being  
26 withdrawn. For example, Mercurochrome was used to fight infections and mercury was a  
27 preservative in vaccines and contact lenses. Because of mercury's extreme toxicity,  
28 Mercurochrome is now banned; mercury has been taken out of vaccines and contact lens

1 solutions; and mercury thermometers (due to breakage risks) are being removed from hospitals.  
2 Mercury in *any* health use is now condemned via resolutions enacted by the American Public  
3 Health Association, the California Medical Association, and Health Care Without Harm. Yet  
4 Defendants steadfastly defend its use and aggressively pursue those who speak out against them.

#### 5 DEFENDANTS' DECEPTION

6 52. Solely based on the extreme toxicity of mercury, and its considerable presence in  
7 dental amalgam, it is readily apparent that the Defendants have been horribly deceptive and  
8 dishonest with the American and California public. However, this case is much more than that.  
9 These Defendants have undertaken a course of conduct not only to conceal the toxicity of dental  
10 amalgam, but to actually promote its use with claims of safety and cost-effectiveness. Unlike  
11 many other health associations, Defendants have also reaped a substantial financial benefit from  
12 their conduct. Through their conduct, these Defendants have actually caused and promoted the  
13 exposure of patients to one of the most toxic substances known to man. Specifically, Defendants  
14 have deceived or misled the California public in at least seven distinct categories.

15 53. First, Defendants deceive the public by representing amalgam is "silver." As  
16 recently as 2000, the ADA printed brochures to the public which state that amalgam is "silver."  
17 Exhibit A. Defendants give such brochures to dentists to hand out to their patients. This is a  
18 deliberate and conscious attempt to hide mercury's presence. In fact, "silver fillings" necessarily  
19 implies that the fillings are primarily made of "silver." In reality, the largest component of  
20 amalgam is mercury: "Silver-colored dental fillings typically contain about 50% metallic  
21 mercury," according to Toxicological Profile for Mercury (Update, 1999), a report of the United  
22 States Government's Agency for Toxic Substances and Disease Registry, a part of the Public  
23 Health Service, United States Department of Health and Human Services.

24 54. Second, Defendants hide the existence of mercury in dental fillings. Defendant  
25 California Dental Association sent a memorandum to all of its member dentists to avoid using  
26 the word "mercury" when making disclosures about toxics used in the dental office.

27 55. Unlike other health professions, the American Dental Association has no protocol  
28 to warn, or even advise, dental patients that amalgam contains the powerful neuro-toxin mercury.

1           56.     Third, Defendants hide their economic stake in amalgam sales while declaring the  
2 product “safe.” The ADA has a Seal of Acceptance program, under which it uses its name on  
3 commercial products. The ADA describes its program as follows:

4           “When a product carries the ADA's Seal of Acceptance, consumers can be confident that  
5 the product meets ADA requirements for safety and effectiveness and that the  
6 manufacturer's claims about that product are accurate.”

7           The ADA further represents that “[t]he Seal on a product is an assurance for consumers  
8 and dentists against misleading or untrue statements concerning a product, its use, safety and  
9 effectiveness.” The ADA fails to disclose, however, its large revenues from manufacturers of the  
10 various commercial products with whom the ADA contracts in its Seal of Acceptance program.

11           57.     Among the manufacturers who receive the ADA Seal of Acceptance, and who pay  
12 revenues to the ADA, are several manufacturers of amalgam products. The revenues may affect  
13 the way the ADA promotes amalgam use. For example, in scientific journals, the ADA admits  
14 that some consumers are allergic to amalgam. But in its presentations to the public, the ADA  
15 pronounces amalgam as safe for all.

16           58.     The American *Medical* Association refuses to take money for endorsing products,  
17 a position which allows the organization to maintain the appearance of integrity and objectivity.  
18 By contrast, the American *Dental* Association has chosen the opposite path to other health  
19 professions. It provides endorsements and receives monetary payments from the manufacturers  
20 of the products it endorses. Also significant is the fact that the ADA owns two patents on dental  
21 amalgam (since expired).

22           59.     Fourth, Defendants hide the controversy about the health effects of mercury.  
23 Even though the United States Public Health Service, other governments, scientific studies, and  
24 many dentists themselves believe amalgam is dangerous for vulnerable populations or for  
25 everyone, defendants refuse to give both sides of this intense controversy. The use of mercury  
26 amalgam is now subject to strong warnings by some mercury amalgam manufacturers, by the  
27 government of Canada, and by the California Dental Board:

28           •       The manufacturer Dentsply issued the following warning:

          “Contraindication: The use of amalgam is contraindicated:

1 In proximal or occlusal contact to dissimilar metal restorations.  
2 In patients with severe renal deficiency.  
3 In patients with known allergies to mercury.  
4 For retrograde or endodontic filling.  
5 As a filling material for cast crown.  
6 In children 6 and under  
7 In expectant mothers.<sup>8</sup>

- 8 • The manufacturer Vivadent adds “nursing mothers” to its list of patients who should not receive amalgam.
- 9 • The government of Canada issued a report in 1996, a summary of which it sent to every dentist in that country with a bilingual cover letter. The report recommended that dentists cease giving mercury amalgam fillings to children, pregnant women, and patients with kidney problems, braces, or mercury allergies.
- 10 • The California Dental Board sent a newsletter to all of its dentists in June, 2000, warning of the “reproductive toxicity of the mercury contained in amalgam.” The newsletter also stated:

11 “[This newsletter article] suggest[s] that dentists discuss with their patients the percentage of mercury in amalgam and that mercury and other substances used in dental offices are designated hazardous under [California] Proposition 65. The Board encourages discussion between the dentist and patient regarding the potential sensitivity and allergic or adverse reactions to mercury by some patients.”<sup>9</sup>

12 60. Thus, defendants by their deceptions have a particularized effect on unborn  
13 children, young children, and people with kidney problems or braces by declaring amalgam to be  
14 safe for all.

15 61. Fifth, Defendants gag dentists who believe amalgam is dangerous. Defendants  
16 have taken outward and aggressive action to prevent any warnings from reaching the consumer.  
17 As such, while they may not have actually produced and sold dental amalgam, they have actively  
18 marketed it through their seal of approval and through actively preventing dentists from  
19 communicating mercury’s dangers to their patients. This is particularly significant due to the  
20 unique structure of the medical industry. In the medical field, warnings are rarely if ever  
21 communicated directly by the manufacturers to the ultimate consumers.<sup>10</sup> In this industry

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22 <sup>8</sup>The manufacturer warnings by Dentsply is attached as Exhibit “B.”

23 <sup>9</sup>The newsletter of the California Dental Board are attached as “C.”

24 <sup>10</sup>In other settings, the manufacturer directly warns the ultimate consumer through labeling and the like.

1 warnings are communicated to the healthcare provider and are then passed on to the patient.

2       62. Defendant American Dental Association (“ADA”), headquartered in Illinois, is  
3 the largest – but far from the only – association of dentists in the United States. More than two-  
4 thirds of American dentists belong to the ADA, meaning that approximately one-third of  
5 American dentists belong to competing dental societies or to no dental societies at all.  
6 Approximately three-fourths of California dentists belong to the CDA., meaning approximately  
7 one-fourth do not belong.

8       63. Many dentists belong to dental societies which oppose the use of mercury in  
9 dentistry. Such societies include the International Academy for Oral Medicine and Toxicology,  
10 based in Orlando, Florida; the American Academy of Biological Dentistry, based in Carmel,  
11 California; and the Holistic Dental Association, based in Colorado.

12       64. Over a decade ago -- while its amalgam patents were in effect -- the ADA  
13 instituted a gag rule on its member dentists to limit its members from discussing dangers of  
14 amalgam. Unbelievably, this was done through the guise of so-called “ethical” rules. Through  
15 the use of their mammoth economic and political power, the ADA and CDA have been able to  
16 extend enforcement of the gag rule to the many dentists who are not ADA members. The major  
17 means is through state boards of dental examiners, a majority of whose members generally are  
18 dentists and ADA members.

19       65. Also, through their so-called “ethical” rules, Defendants prevented dentists from  
20 informing patients of the dangers of mercury by pronouncing as “unethical” the practice of even  
21 suggesting the removal of amalgam due to their toxicity.

22       66. The provision is a gag rule. It prevents the dentist from initiating conversations  
23 with patients about the mercury amalgam controversy, lest they then decide to have this toxic  
24 material removed from their mouths. The provision is not aimed at stopping unnecessary dental  
25 practices. For example it would not prevent dentists from suggesting amalgam removal for  
26 cosmetic or any other reasons, nor for inducing the consumer on any ground to spend money  
27 needlessly. The provision singles out amalgam in a way that it does for no other procedure. No  
28 other part of the Code of Ethics, with specificity, addresses any other practices that could be



1 considered unnecessary. The provision actually conflicts with several other provisions of the  
2 Code of Ethics. For example, the ADA Code of Ethics has the principle of nonmaleficence (“do  
3 no harm”). And said Code also requires its member dentists to stay current on science, to report  
4 adverse reaction to any dental device, and to communicate truthfully – something that may not be  
5 done if the dentist is gagged from talking about potential adverse reactions from amalgam.

6 67. The ADA gag rule is contrary to medical standards. First, it says dentists may not  
7 initiate conversations about removing amalgam for health reasons, but the consumer may so  
8 request. The entire value of a professional degree is to diagnose, then initiate discussions about  
9 the diagnosis. The ADA has turned the approach used by medicine on its head for its own  
10 economic gain. Second, it says consumers may decide if the amalgam is removed, whether  
11 needed or not. Presumably the AMA does not countenance the removal of the appendix upon  
12 consumer request if the procedure is not needed.

13 68. Even if scientific evidence merited this protectionist proviso in 1986, the ADA  
14 gag rule cannot be considered valid today, in light of condemnation of mercury by Health Canada  
15 and warnings by manufacturers and the California Dental Board.

16 69. The ADA gag rule has a widespread chilling effect beyond stopping the removal  
17 of fillings. Plaintiff dentists and other mercury-free dentists risk their licenses by initiating a  
18 discussion on the dangers of amalgam even when choosing what new filling is to go into the  
19 patient, lest it lead to the patient deciding to remove existing amalgam fillings. Thus, patients –  
20 even pregnant women – do not get the warnings they need before having fillings.

21 70. The ADA gag rule is selective and discriminatory in two ways. One, it does not  
22 prohibit a dentist from inducing patients to spend money to have their serviceable amalgams  
23 removed on the grounds of improving their appearance – even though dentists is regulated as a  
24 health, not a cosmetics, profession. Second, if the ADA’s purpose is to stop unnecessary work, it  
25 would attack all unnecessary procedures, instead of one whose effect is to stop communications  
26 about the amalgam controversy.

27 71. The ADA gag rule was adopted during the time the ADA owned two patents on  
28 amalgam -- patent numbers 4,018,600 and 4,078,921. The ADA hid this obvious conflict of

1 interest from the public and most of its members.

2 72. The ADA insists that its pro-amalgam policy be the sole acceptable teaching  
3 regimen on mercury to get accredited. As such dental colleges across the country, accept and  
4 enforce the ADA policy that amalgam is safe for all students (even pregnant ones), employees,  
5 and dental school patients.

6 73. Dental Boards require that dentists attend only ADA-accredited schools. To keep  
7 their accreditation, the dental schools may not teach amalgam policies hostile to the ADA.

8 74. Dental colleges across the country are placing dental students – especially women  
9 students who are or wish to become pregnant and the children they may bear -- at risk in order to  
10 become dentists. Dental colleges give no warnings to such patients about the potential harm to  
11 mercury, nor do they provide such warnings to employees constantly exposed to mercury.

12 75. Sixth, Defendants are hiding the dangerous environmental impact from the public  
13 of amalgam. In 1998, through its powerful lobbying presence, defendants secured a consent  
14 order with the State of California permitting dentists to avoid being accountable for the  
15 environmental impact of amalgam. In fact, waste from dental offices remains a major contributor  
16 of mercury to California's waterways.

17 76. Seventh, Defendant ADA created the third-party reimbursement program to favor  
18 amalgam. The Delta Dental Plans were created by the ADA. The ADA-created plans force poor  
19 children, through Medi-Cal, to get only mercury fillings. Likewise, public employees are  
20 covered only for mercury-based fillings. Essentially, the Defendants created a system that  
21 actively hides the dangers of mercury fillings and actually promotes them for safety and cost-  
22 effectiveness. They also created dental health plans. As a result, insurance companies and  
23 government health plans such as Medi-Cal typically either do not cover alternative treatments or  
24 only pay for the cost of mercury amalgam. Unbelievably, this is one of the excuses that is  
25 extended by these same Defendants as to why alternative treatments are not utilized.

26 77. This aside, the cost difference between mercury fillings and resin is small, and  
27 would be even smaller but for the ADA's ability to restrain trade through creating the third-party  
28 payment mechanism.

1 FIRST CAUSE OF ACTION

2 **Unlawful Business Practices in Violation of Business & Professions Code §§17200 et seq.**  
3 (Against All Defendants, Predicated on California Health & Safety Code §25249.6)

4 78. Plaintiff realleges and incorporates by reference as if specifically set forth herein  
5 Paragraphs 1 through 77 inclusive.

6 79. California Business & Professions Code §17200 provides that “unfair competition  
7 shall mean and include any unlawful, unfair or fraudulent business act or practice.”

8 80. Proposition 65 requires that clear and reasonable warnings be given by persons  
9 who, in the course of doing business, knowingly and intentionally expose any individual to a  
10 chemical known to the state of California to cause cancer or reproductive harm.

11 81. Plaintiff is informed and believes, and based on such information and belief  
12 alleges, that since July 1, 1988, Defendants, and each of them, have engaged in conduct which  
13 violates Health & Safety Code §25249.6 et seq. This conduct includes the placing into  
14 commerce of dental amalgam containing Proposition 65-listed chemicals, including mercury,  
15 without a clear and reasonable warning within the meaning of Health & Safety Code §§25249.6  
16 and 25249.11.

17 82. Separately, Defendants have undertaken and continue to undertake a policy and  
18 practice, as manifested in their so-called “ethical” rules, to prevent warnings regarding mercury  
19 from reaching the exposed population, namely the patients, or otherwise assuring that such  
20 warnings are not ultimately provided to patients. This, in and of itself, causes individuals to be  
21 exposed to this deadly chemical without warning because through their efforts the Defendants,  
22 and each of them, have effectively blocked the only pathway in the medical industry for  
23 disclosure of health risks to patients. Specifically, in the healthcare industry, the most prevalent,  
24 common, and widely accepted method of providing warnings is through the healthcare provider,  
25 the dentist. The ADA’s efforts have either completely shut down or otherwise chilled any effort  
26 to provide warnings within the meaning of Health & Safety Code §§25249.6 and 25249.11.

27 83. At all times relevant to this action, Defendants, and each of them, have knowingly  
28 and intentionally marketed and/or otherwise caused to be placed into the stream of commerce,

1 dental amalgam containing Proposition 65-listed chemicals, including mercury for sale or use in  
2 California.

3 84. At all times relevant to this action, Defendants, and each of them, have known and  
4 intended that the normal and foreseeable use of the dental amalgam would expose individuals to  
5 Proposition 65-listed chemicals, along with other hazardous chemicals.

6 85. Defendants, and each of them, have failed to give clear and reasonable warning to  
7 individuals prior to their exposure to Proposition 65-listed chemicals, including mercury, through  
8 the normal and foreseeable use of dental amalgam.

9 86. Individuals have suffered and continue to suffer irreparable harm due to exposure  
10 to Proposition 65-listed chemicals from dental amalgam without prior clear and reasonable  
11 warning, contrary to the express policy and statutory prohibition enacted by direct vote of the  
12 People of California in Proposition 65.

13 87. By committing the acts alleged above, Defendants, and each of them, have, in the  
14 course of doing business, knowingly and intentionally exposed individuals to chemicals known  
15 to the State of California to cause cancer and/or birth defects or other reproductive harm without  
16 first giving clear and reasonable warning to such individuals within the meaning of Health &  
17 Safety Code §25249.6. Furthermore, the aforementioned conduct of Defendants, and each of  
18 them, has caused individuals within California, including, but not limited to, normal and  
19 foreseeable consumers and users of the dental amalgam to experience a higher chance of  
20 developing cancer, and reproductive and developmental injuries and/or other harm for which  
21 they currently need and will continue to need medical monitoring.

22 88. By committing the acts alleged above, Defendants, and each of them, have  
23 violated and continue to violate Proposition 65, and thereby have engaged in a *per se* unlawful  
24 business practice constituting unfair competition in violation of California Business &  
25 Professions Code §§17200 et seq.

26 89. An action for injunctive relief and restitution under the Unfair Competition Act is  
27 specifically authorized by Business & Professions Code §17203.

28 90. Continuing commission by Defendants, and each of them, of the acts alleged

1 above will irreparably harm Plaintiff and the citizens of the State of California, for which harm  
2 they have no plain, speedy or adequate remedy at law.

3 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as set  
4 forth hereinbelow.

5 **SECOND CAUSE OF ACTION**

6 **Unlawful Business Practices in Violation of Business & Professions Code §§17200 et seq.**

7 (Against All Defendants, Predicated on California Business & Professions Code §510)

8 91. Plaintiff realleges and incorporates by reference as if specifically set forth herein  
9 Paragraphs 1 through 90 inclusive.

10 92. California Business & Professions Code §17200 provides that “unfair competition  
11 shall mean and include any unlawful, unfair or fraudulent business act or practice.”

12 93. Business & Professions Code §510(a) provides, in relevant part, “[t]he purpose of  
13 this section is to provide protection against retaliation for health care practitioners who advocate  
14 for appropriate health care for their patients.” Subsection (b), in relevant part, provides that:  
15 “[i]t is the *public policy* of the State of California that a health care practitioner be encouraged to  
16 advocate for appropriate health care for his or her patients.” (Emphasis added).

17 94. Under Business & Professions Code §510(c):

18 “The application and rendering by any individual, partnership, corporation, or  
19 other organization of a decision to . . . *penalize a health care practitioner*  
20 principally for advocating for appropriate health care consistent with that degree  
21 of learning and skill ordinarily possessed by reputable health care practitioners  
with the same license or certification and practicing according to the applicable  
legal standard of care violates the public policy of this state.” (Emphasis added).

22 95. As alleged hereinabove, Defendants, and each of them, have undertaken and  
23 continue to undertake a policy and practice, as manifested in their so-called “ethical” rules, to  
24 prevent warnings and information regarding mercury from reaching the exposed population,  
25 namely the patients, or otherwise assuring that such warnings are not ultimately provided to  
26 patients. Furthermore, as alleged hereinabove, Defendants, and each of them, have prevented  
27 and continue to prevent dentists from even suggesting the removal of dental amalgam based on  
28 its toxicity.



1 physician and surgeon principally for advocating for medically appropriate health  
2 care consistent with that degree of learning and skill ordinarily possessed by  
3 reputable physicians practicing according to the applicable legal standard of care  
4 violates the public policy of this state.” (Emphasis added).

5 104. That section goes on to state:

6 “No person shall terminate, *retaliate against*, or otherwise *penalize* a physician  
7 and surgeon for that advocacy, nor shall any person *prohibit, restrict, or in any*  
8 *way discourage* a physician and surgeon *from communicating to a patient*  
9 information in furtherance of medically appropriate health care.” Emphasis  
10 added.

11 105. As alleged hereinabove, Defendants, and each of them, have undertaken and  
12 continue to undertake a policy and practice, as manifested in their so-called “ethical” rules, to  
13 prevent warnings and information regarding mercury from reaching the exposed population,  
14 namely the patients, or otherwise assuring that such warnings are not ultimately provided to  
15 patients. Furthermore, as alleged hereinabove, Defendants, and each of them, have prevented  
16 and continue to prevent dentists from even suggesting the removal of dental amalgam based on  
17 its toxicity.

18 106. As alleged hereinabove, Defendants, and each of them, have otherwise retaliated  
19 against dentists who disclose to their patients the toxicity of mercury by causing the enforcement  
20 of their gag rules.

21 107. By committing the acts alleged above, Defendants, and each of them, have  
22 violated and continue to violate Business & Professions Code §2056, and thereby have engaged  
23 in a *per se* unlawful business practice constituting unfair competition in violation of California  
24 Business & Professions Code §§17200 et seq.

25 108. An action for injunctive relief and restitution under the Unfair Competition Act is  
26 specifically authorized by Business & Professions Code §17203.

27 109. Continuing commission by Defendants, and each of them, of the acts alleged  
28 above will irreparably harm Plaintiff and the citizens of the State of California, for which harm  
they have no plain, speedy or adequate remedy at law.

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as set  
forth hereinbelow.

1 **FOURTH CAUSE OF ACTION**

2 **Unfair and Deceptive Business Practices**  
3 **in Violation of Business & Professions Code §§17200 et seq.**

4 (Against All Defendants)

5 110. Plaintiff realleges and incorporates by reference as if specifically set forth herein  
6 Paragraphs 1 through 109 inclusive.

7 111. California Business & Professions Code §17200 provides that “unfair competition  
8 shall mean and include unlawful, unfair or fraudulent business act or practice.”

9 112. The Unfair Competition Act defines unfair competition to include any “unfair,”  
10 “unlawful” or “deceptive” business practice. Business & Professions Code § 17200. The Act  
11 provides for injunctive relief and restitution for violations. Business and Professions Code §  
12 17203.

13 113. As alleged hereinabove, California has a long-standing and ever-growing public  
14 policy that the public should be informed about exposures to chemicals that cause cancer, birth  
15 defects, or other reproductive harm due to the fact that these chemicals pose a serious potential  
16 threat to public health and that such exposures must be eliminated wherever and whenever  
17 possible. As alleged hereinabove, this public policy was overwhelmingly approved by the People  
18 of this State and subsequently codified in the Health & Safety Code.

19 114. As alleged hereinabove, California has a public policy to encourage physicians  
20 and healthcare providers to advocate for appropriate healthcare for their patients.

21 115. As alleged hereinabove, Defendants, and each of them, have failed and continue  
22 to fail and refuse to warn the general public as to the adverse health effects associated with  
23 Mercury as used in dental amalgam. Furthermore, Defendants, and each of them, have a policy  
24 and practice directed toward preventing warnings regarding mercury from reaching the exposed  
25 population, namely the patients, or otherwise assuring that such warnings are not ultimately  
26 provided to patients. Additionally, Defendants, and each of them, retaliate against dentists who  
27 advocate the use of appropriate care meant to prevent mercury exposure.

28 116. Therefore, Defendants, and each of them, have engaged, and continue to engage in



1 a practice which violates an established public policy. Defendants, and each of them, have  
2 knowingly and intentionally concealed, and continue to conceal these hazards, and in fact,  
3 actively foster and perpetuate the false belief in California consumers, other foreseeable users of  
4 dental amalgam, and other individuals that dental amalgam is free from the hazards alleged  
5 herein.

6 117. As alleged hereinabove, during most of or the entire period during which  
7 Defendants have produced dental amalgam, Defendants, and each of them, have engaged in a  
8 campaign of deceiving individuals and the general public about the health effects of Mercury and  
9 potential hazards of dental amalgam. In fact, through their actions and omissions, including, but  
10 not limited to, their seal of approval, their brochures, and their so-called "ethical" rules, both  
11 written and oral, Defendants, and each of them, have concealed or otherwise understated the  
12 adverse health effects of mercury, and dental amalgam, and have stagnated, to the extent  
13 possible, research and development, and use of substitute products. Additionally, entities that are  
14 attempting to use alternative products, are likely to, and in fact, do suffer competitive injury as a  
15 result of Defendants' conduct.

16 118. Additionally, Defendants, and each of them, willfully and intentionally attempted  
17 to deceive and/or deceived the general public and Plaintiffs by making false statements and/or  
18 omissions regarding dental amalgam, including, but not limited to, willfully and intentionally  
19 failing to disclose that through the normal and foreseeable use of dental amalgam, individuals  
20 within the general public are being exposed to Chemicals which are carcinogens and/or  
21 reproductive and/or developmental toxins.

22 119. Furthermore, as alleged hereinabove, while being extremely injurious to  
23 consumers and the general public, the use of dental amalgam can be either eliminated or  
24 minimized greatly. As such, Defendants' practices are immoral, unethical, oppressive, and  
25 unscrupulous. Furthermore, Defendants, and each of them, have been and are currently, willfully  
26 engaging in unfair, deceptive, and unlawful business practices in violation of the Unfair  
27 Competition Act.

28 120. Moreover, as alleged hereinabove, Defendants, and each of them, are causing and

1 continue to cause competitive injury to entities and individuals that are developing or attempting  
2 to use alternative products which are safer or otherwise do not exhibit the adverse health effects  
3 associated with mercury.

4 121. Accordingly, Defendants, and each of them, have violated and continue to violate  
5 California Business & Professions Code §17200's proscription against engaging in unlawful,  
6 unfair, and deceptive business practices and are liable for restitution, and penalties for their  
7 conduct and for damages suffered by individuals and the general public. Defendants, and each of  
8 them, must be enjoined from further engaging in these practices as more fully set forth below.

9 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as set  
10 forth hereinbelow.

11 **FIFTH CAUSE OF ACTION**

12 **Deceptive Business Practices in Violation of Business & Professions Code §§17200 et seq.**

13 (Against All Defendants)

14 122. Plaintiff realleges and incorporates by reference as if specifically set forth herein  
15 Paragraphs 1 through 121 inclusive.

16 123. As alleged hereinabove, Defendants, and each of them, willfully attempted to  
17 deceive and/or deceived the general public and Plaintiff by making false statements and/or  
18 omissions regarding dental amalgam. In fact, as alleged hereinabove, Defendants, and each of  
19 them, have for years, caused exposures of individuals and the general public to mercury without  
20 any warning or inadequate warning.

21 124. As alleged herein, Defendants, and each of them, willfully attempted to and did  
22 actually deceive the general public and Plaintiff by actively fostering the false belief that mercury  
23 from dental amalgam does not pose any significant health risk or otherwise does not cause  
24 certain adverse health effects. The statements made by Defendants are and were false, and were  
25 made with the intent to induce, and in some cases, did actually induce reliance by individuals  
26 within the general public.

27 125. Despite the fact the Defendants, and each of them, have known of the grave  
28 potential for harmful effects from mercury and despite the mandates of Proposition 65, common

1 law, and established public policy, and Defendants' duties thereunder, Defendants, and each of  
2 them, have knowingly and intentionally concealed same from the general public, in particular,  
3 individuals within California. As such, Defendants' statements as to dental amalgam have been  
4 and continue to be false and Defendants have no reasonable basis for believing that these  
5 statements were or are true. Thus, Defendants, and each of them, have committed and continue  
6 to commit fraud and deceit, and engage in unfair and deceptive practices within the meaning of  
7 the Unfair Competition Act.

8         126. Furthermore, Defendants, and each of them, have made and continue to make  
9 representations through their correspondence, brochures, literature, their so-called "ethical" rules,  
10 and actions, both express and implied, that dental amalgam is safe for use and that there is no  
11 health concern related thereto.. As alleged hereinabove, said statements are false as dental  
12 amalgam does, in actuality, cause substantial exposure of individuals to mercury, a deadly toxin,  
13 and as such violates numerous common laws and statutes, including but not limited to,  
14 Proposition 65, and Defendants have been, at all times alleged herein, aware of the falsity of their  
15 representations. In fact, Defendants, and each of them, have perpetuated and continue to actively  
16 cause the general public to believe that dental amalgam and the Mercury therefrom is safe and in  
17 compliance with all applicable laws and statutes. These statements were and continue to be  
18 false, and Defendants have no reasonable basis for believing that these statements were or are  
19 true. Furthermore, individuals and the general public are likely to be deceived by said  
20 statements, omissions, and/or practices. Defendants have therefore engaged in unfair, and  
21 deceptive practices within the meaning of the Unfair Competition Act.

22         127. As alleged hereinabove, entities and individuals that are attempting to use safer,  
23 non-hazardous, alternatives are suffering competitive injury as Defendants, and each of them,  
24 through their actions, have been and continue to purposefully, willfully, and intentionally, stifle  
25 and hinder the development and use of such alternatives.

26         128. Defendants, and each of them, including DOE Defendants 1 through 500, are  
27 liable for each other's fraud and deceit because, as alleged hereinabove, these tortfeasors acted on  
28 behalf of all other Defendants, within the scope of their agency and/or employment. All acts and

1 omissions on the part of these Defendants were implicitly or explicitly ratified, consented to and  
2 approved by all other Defendants.

3 129. The acts and omissions of Defendants, and each of them, proximately caused  
4 property damage and injuries to individuals and the general public as alleged hereinabove.

5 130. Accordingly, Defendants, and each of them, have violated and continue to violate  
6 California Business & Professions Code §17200's proscription against engaging in unlawful,  
7 unfair, and deceptive business practices and are liable for restitution, and penalties for their  
8 conduct and for damages suffered by individuals and the general public. Defendants, and each of  
9 them, must be enjoined from further engaging in these practices as more fully set forth below.

10 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as set  
11 forth hereinbelow.

12 **NEED FOR INJUNCTIVE RELIEF**

13 131. By committing the acts alleged herein, Defendants, and each of them, have caused  
14 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence of  
15 equitable relief, Defendants will continue to cause unwarned exposures of the general public to  
16 chemicals as alleged herein, and will continue to discharge said chemicals into sources of  
17 drinking water. As such the general public will continue to be involuntarily exposed to said  
18 chemicals without a clear and reasonable warning, creating substantial risk of irreparable  
19 physical injury.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff pray for judgment against defendants as follows:

22 a. That the Court, pursuant to Health & Safety Code §25249.7(b) assess civil  
23 penalties against Defendant ADA in the amount of \$2,500 per day for each violation alleged  
24 herein;<sup>11</sup>

25 b. That the Court, pursuant to Health & Safety Code §25249.7(a) and  
26

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27 <sup>11</sup>Concurrently with the filing of this action, Plaintiffs sent to Defendant ADA and all relevant  
28 public prosecutors within the State of California, including the Attorney General, a notice of their  
intent to sue the ADA under Proposition 65. Upon the expiration of the statutorily prescribed 60  
days, Plaintiffs will amend the instant action to include a cause of action for Proposition 65.

1 Business & Professions Code §17203, preliminarily and permanently enjoin Defendants, and  
2 each of them, and their agents, employees, assigns, and all persons acting in concert or  
3 participating with them from:

4 (1) Disseminating false, misleading, and inaccurate information as set  
5 forth in Defendants' written materials regarding the existence and toxicity of mercury in dental  
6 amalgam without first providing, to consumers and users, and other individuals who come into  
7 contact with such amalgams. Plaintiff shall sufficiently specify this prayer for relief and the basis  
8 therefor in further application to the Court;

9 (2) Referring to mercury amalgam fillings as "silver." Plaintiff shall  
10 sufficiently specify this prayer for relief and the basis therefor in further application to the Court;

11 c. That the Court, pursuant to Health & Safety Code §25249.7(a) and  
12 Business & Professions Code §17203, issue a preliminary and permanent injunction requiring  
13 Defendants to provide clear and reasonable warnings to consumers and dental professionals, that  
14 the amalgam cause exposure to Mercury and Mercury Compounds, chemicals known to the State  
15 of California to be reproductive and/or developmental toxins, and which are neurotoxins, and are  
16 associated with a host of other adverse health effects as alleged herein. Plaintiff shall sufficiently  
17 specify this prayer for relief and the basis therefor in further application to the Court;

18 d. That the Court, pursuant to Health & Safety Code §25249.7(a) and  
19 Business & Professions Code §17203, issue a preliminary and permanent injunction requiring  
20 Defendants to remove from their ethical rules any rule that prohibits a dental professional from  
21 discussing with his or her patients the risks and efficacies of mercury amalgam fillings or  
22 otherwise

23 c. That the Court grant restitution to individuals in the state of California of  
24 the monies earned by Defendants from dental amalgam as set forth herein;

25 d. That the Court grant Plaintiff their reasonable attorneys' fees and costs of  
26 suit; and

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e. That the Court grant such other and further relief as may be just and proper.

Dated: June 12, 2001

LAW OFFICES OF SHAWN KHORRAMI

By:   
SHAWN KHORRAMI, ESQ.  
Attorneys for Plaintiffs



For more than 150 years, silver fillings have been a reliable option in tooth restoration. Although newer materials like tooth-colored composite resins are available for use in some cases, silver fillings continue to be used because they are safe, durable and affordable.



Also called dental amalgam, silver fillings are made of a mixture of metals such as silver, copper and tin. These metals are combined with mercury, which chemically binds the compounds together to form a hard, durable restorative material.

Because it can withstand heavy pressure, dental amalgam often is used to restore the chewing surfaces of back teeth or molars, especially when the area of decay is large.

In addition to its durability, dental amalgam's low cost in comparison to other materials makes it an attractive option.

Some people, though, have questions about the safety of dental amalgam because it contains mercury. Some common questions are addressed in this brochure. If you have additional questions about this or other oral health issues, we encourage you to talk to your dentist.



Answers to your questions about

# Silver

A Safe,

Affordable

Option in T

Restorat.



American Dental Association  
Division of Communications  
211 East Chicago Avenue  
Chicago, IL 60611-2678



**I thought mercury was poisonous-how could it be safe to put it in your mouth?**

When mercury is used in dental amalgam, it chemically binds to the other metals being used (dental amalgam contains a mixture of metals, such as silver, copper, or tin). Once mercury is combined with these metals it forms a biologically inactive substance.

**Can some of the mercury from the filling escape and enter the foodstream?**

Minute amounts of mercury may be released under the pressure of chewing or grinding, but there is no scientific evidence that low-level exposure is harmful.

Small quantities of mercury can be found throughout the body. We are exposed to mercury through drinking water and some foods, especially fish and seafood, and through the air we breathe. Eventually, the body rid itself of mercury through the urine, and there is always a low level of mercury present in our bodies.

**Can silver fillings cause medical problems or illnesses?**

There is no scientific evidence supporting a link between silver fillings and systemic diseases or chronic illnesses.

Dental amalgam has been the subject of many scientific studies. None of these have demonstrated that the small contribution of mercury from dental fillings to the overall mercury level in the body causes a toxic reaction, except in the very rare case of an allergic reaction.

**Have other countries banned the use of dental amalgam?**

Dental amalgam has not been banned in the United States or any other country. A few countries have suggested limiting the use of amalgam restorations in some patient populations (for example, young children, pregnant women or people who have kidney disease). New Zealand's National Health and Medical Research Council, however, clarified that in New Zealand, such limitations are "based on public health principles of risk avoidance, not on any credible evidence of harm."

Several nations report declining use of amalgam. These decreases are attributed to improvements in preventive dentistry, the introduction of more durable tooth-colored restoratives, and environmental concerns.

**Is it possible to develop an allergy to mercury?**

Theoretically, a person could have an allergy to mercury, just as one could have an allergy to anything else in the environment like pollen or dust. Scattered reports of alleged cases have been published in the scientific literature. These reported cases, however, are quite rare and it is difficult to confirm that a reaction is specifically related to mercury rather than another component in the amalgam. Nevertheless, if an allergy is suspected an alternative filling material should be used.

**Do other groups or agencies consider dental amalgam safe?**

Agencies within the U.S. Public Health Service — including the National Institutes of Health, Food and Drug Administration, and the Centers for Disease Control and Prevention — have reviewed data on the safety of silver fillings. Based on the available research, these groups concluded that dental amalgam causes no demonstrated clinical harm and that removal of dental amalgam fillings will not prevent adverse health effects or reverse the course of existing diseases. Other organizations, like the World Health Organization, American Association for Dental Research and the Environmental Protection Agency have reached similar conclusions.

In addition, the National Multiple Sclerosis Society maintains that there is no scientific evidence to reliably link the development of Multiple Sclerosis (or MS) with dental amalgam fillings.

RECORDS UNIT



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## DIRECTIONS FOR USE

# Dispersalloy®

### Tablets and Powder

A dispensed phase admix amalgam, containing lathe-cut particles and silver/copper eutectic spheres.  
Caution: U.S. Federal law restricts this device to sale by or on the order of a dentist. For dental use only.

#### Composition

	Powder (for 100g.)	Tablets
Silver	69.5 g	.270 g
Tin	17.7 g	.069 g
Copper	11.8 g	.046 g
Zinc	1.0 g	.004 g

#### Indication for use

Dispersalloy® should be used in stress bearing restorations (Class 1 and 2), when other restorative materials or restoration techniques are not indicated.

#### Contraindication

The use of amalgam is contraindicated;

- In proximal or occlusal contact to dissimilar metal restorations.
- In patients with severe renal deficiency.
- In patients with known allergies to amalgam.
- For retrograde or endodontic filling.
- As a filling material for cast crown.
- In children 6 and under.
- In expectant mothers.

#### Side Effects/Warning

Prior to use, read the MSDS information and product instructions for this item.

Exposure to mercury may cause irritation to skin, eyes, respiratory tract and mucous membrane. In individual cases, hypersensitivity reactions, allergies, or electrochemically caused local reactions have been observed. Due to electrochemical processes, the *lichen planus* of the mucosa may develop.

Mercury may also be a skin sensitizer, pulmonary sensitizer, nephrotoxin and neurotoxin.

After placement or removal of amalgam restorations, there is a temporary increase of the mercury concentration in the blood and urine.

Mercury expressed during condensation and unset amalgam may cause amalgamation or galvanic effect if in contact with other metal restorations. If symptoms persist, the amalgam should be replaced by a different material.

Removal of clinically acceptable amalgam restorations should be avoided to minimize mercury exposure, especially in expectant mothers.

#### **Precautions**

The number of amalgam restorations for one patient should be kept to a minimum.

Inhalation of mercury vapor by dental staff may be avoided by proper handling of the amalgam, the use of masks, along with adequate ventilation.

Avoid contact with skin and wear safety glasses and gloves.

Store amalgam scrap in well sealed containers. Regulations for disposal must be observed.

**DISPERSALLOY® CONTAINS ZINC; THE AMALGAM MADE THEREFROM MAY SHOW EXCESSIVE EXPANSION IF MOISTURE IS INTRODUCED DURING MIXING, CONDENSING AND COMPACTING.**

#### **Proportions**

As with all alloys, the ratio mercury to alloy is important. A 1:1 mercury/alloy ratio is recommended. When using either Dispersalloy® Tablets or Powder, we recommend using an automatic powder and mercury proportioner. It will automatically and precisely dispense measured amounts of mercury and alloy. Refer to the instructions provided by the proportioner manufacturer.

Made by:

DENTSPLY Caulk

DENTSPLY INTERNATIONAL INC.

Milford, DE 19963-0359

U.S.A.

1-800-532-2855

Responsible distributor in Europe:

DENTSPLY DeTrey GmbH

De-Trey-Strasse 1

D-78467 Konstanz

Germany

556011 (R-9/97)

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# CALIFORNIA

Quarterly News & Action Report

June 30, 2000

## PRESIDENT'S MESSAGE

*Roger Simonian, DDS*



In recent editions, this column has been reserved for the President to share information about the Board. In keeping with that tradition, I would like to discuss the action the Board took in December 1999, regarding a petition from Consumers for Dental Choice. The petition addressed five major points relative to Business and Professions Code Sections 1648.10 and 1648.20 of the 1992 Statutes. At that meeting, the Board took action on four of the five points made in the petition. Since that time, several reports have been written regarding the petition and the Board's action. This article is intended to clarify what was requested and how the Board responded to that request. Since this was a complex petition making several requests of the Board, for the benefit of the reader, the following information contains the legal basis for the petition, the specific requests, and the action taken by the Dental Board.

Business & Professions Code Section 1648.10 mandated the Dental Board of California to develop and distribute a Dental Materials Fact Sheet (Fact Sheet) which described and compared the risks and efficacy of the various types of dental restorative materials that may be used to repair a dental patient's oral condition or defect. The law required the fact sheet to contain specific information and be updated as deemed necessary by the Board. Section 1648.20 exempts any dental tool or instrument used during the dental procedure from the provisions of Section 1648.10, and clarifies the language so the Fact Sheet focuses on those dental materials that remain in a patient's mouth after completion of a procedure. These can include, but are not limited to, removable and fixed restorative materials, orthodontic appliance materials, and materials used in the restoration of teeth. In May 1993, a two-page Fact Sheet containing the pros and cons of various dental restorative materials was developed and distributed by the Board. The petitioner requested the revision of the Dental Material Fact Sheet to (1) rid the Fact Sheet of misleading language on amalgams; (2) include in the fact sheet all statutory

*Continued on page 7*

## THE BOARD WELCOMES FOUR NEW MEMBERS

The Senate Rules Committee of the Legislature recently appointed Attorney Michael Pinkerton as a public member to the Dental Board of California. Mr. Pinkerton is currently the Director of the California Association of Insurance and Financial Advisors. Mr. Pinkerton has vast legal experience including having served as a Deputy Attorney General from 1985-1989.

Alan H. Kaye, DDS, was appointed by Governor Gray Davis. Dr. Kaye has been licensed in California since 1976 and practices oral and maxillofacial surgery in Beverly Hills. In addition to his California dental license, Dr. Kaye holds a license in New York and Florida.

Katie Dawson, RDH, was appointed by Governor Davis to fill a vacated auxiliary position on the Board. Ms. Dawson is past president of the California Dental Hygienists Association and has been a practicing hygienist for 23 years.

LaDonna Drury-Klein, RDA, was also appointed by Governor Davis. Ms. Drury-Klein is a faculty instructor with the Dental Assisting Department of Alameda Community College.

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### The Dental Board of California

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Georgetta Coleman

(Continued from page 1)

requirements regarding the dentist's responsibility to fully inform the patient of the available options of dental restorative materials. The Fact Sheet should also encourage dentists to discuss with their patients the advantages and disadvantages of the various dental filling materials; (3) the Fact Sheet update should cover the past six years of research documenting hazards of all dental filling materials and; (4) the Fact Sheet should provide dentists with guidance on properly warning patients about the reproductive toxicity of the mercury contained in amalgam. The Fact Sheet should also address ways in which practitioners may determine patient sensitivity to mercury, i.e., a comprehensive health questionnaire. Any interested party should have the opportunity to review and comment on the Fact Sheet prior to its distribution. The Board's goal is to have a new Fact Sheet for distribution by December 2000. *The Board voted to approve all the above referenced recommendations.*

The petitioner has requested the Board, as part of the licensure process, to require all participants in the dental licensure examination to complete a questionnaire on the various types of dental restorative materials. Board staff recommended that, in lieu of a questionnaire, the California Law Examination be revised to include questions on Business & Professions Code Section 1648.10. *The Board voted to approve the above recommendation.*

In addition, the petitioner requested a number of items the Board considered to fall under the general heading of informed consent. The petitioner requested that (1) the dentist advise patients of the different types of filling materials; (2) the dentist advise patients and staff that an amalgam contains mercury, a substance designated under Proposition 65 and found to be hazardous. The petitioner also requested the dentist provide copies of the revised Fact Sheet to any patient requiring a restoration.

The Board voted to include an article in the newsletter encouraging dentists to discuss with their patients the different restorative materials. The article should also suggest that dentists discuss with their patients the percentage of mercury in amalgam and that mercury and other substances used in dental offices are designated hazardous under Proposition 65. The Board encourages discussion between the dentist and patient regarding the potential sensitivity and allergic or adverse reactions to mercury by some patients. The Board further approved the distribution of the revised Fact Sheet to all licensed dentists.

The petitioner requested the Board to clarify its position on mercury-free practice. The Board agreed to publicly clarify that it has no position either pro, or con, on the various dental restorative materials. The dentist is free to decide what type of restorative materials he/she may use or not use in the practice. However, the Dental Board of California encourages dentists to discuss the choice of restorative materials with their patients. ■

### DISCIPLINARY TERMS

**REVOKED** - The license is rescinded. The right to practice has ended.

**REVOKED, STAYED, PROBATION** - "Stayed" means the revocation is held in abeyance. Professional practice may continue if the licensee complies with specific probationary terms and conditions. Violation of probation may result in the revocation that was postponed.

**SUSPENSION** - The licensee is prohibited from practicing for a specific period of time.

**GROSS NEGLIGENCE** - An extreme departure from the standard of practice.

**DEFAULT DECISION** - Licensee fails to respond to the accusation by filing a Notice of Defense, or fails to appear at the administrative hearing.

**SURRENDER OF LICENSE** - While charges are still pending, the licensee relinquishes the license - subject to acceptance by the Board. The right to practice is ended.

**EFFECTIVE DECISION DATE** - The date the disciplinary decision goes into operation.