

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SHAWN KHORRAMI, ESQ., SBN 180411  
MATTHEW A. BREDDAN, ESQ., SBN 174133  
LAW OFFICES OF SHAWN KHORRAMI  
14550 Haynes Street, Third Floor  
Van Nuys, CA 91411  
Telephone: (818) 947-5111  
Facsimile: (818) 947-5121

CHARLES G. BROWN, ESQ., *pro hac vice*  
SWANKIN & TURNER  
1400 Sixteenth Street N.W.  
Suite 330  
Washington, DC 20036  
Telephone: (202) 462-8800  
Facsimile: (202) 265-6564

Attorneys for Plaintiffs,  
KIDS AGAINST POLLUTION, DENTAL AMALGAM MERCURY SYNDROME, INC.,  
AMERICAN ACADEMY OF BIOLOGICAL DENTISTRY and DEBRA SELTENREICH

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**CITY AND COUNTY OF LOS ANGELES**

KIDS AGAINST POLLUTION, a nonprofit )  
organization; DENTAL AMALGAM )  
MERCURY SYNDROME, INC., a nonprofit )  
organization; AMERICAN ACADEMY OF )  
BIOLOGICAL DENTISTRY, a nonprofit )  
organization; DEBRA SELTENREICH, an )  
individual; on behalf of themselves, all those )  
similarly situated and in the interest of the )  
general public )  
Plaintiffs )  
v. )  
AMERICAN DENTAL ASSOCIATION, a )  
corporation; CALIFORNIA DENTAL )  
ASSOCIATION, a corporation; and DOES 1 )  
THROUGH 2000, inclusive, )  
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**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

)  
)  
)  
)  
)  
\_\_\_\_\_ )

**5. Deceptive Business Practices;  
Violation of Business &  
Professions Code §§ 17200 et  
seq. based on Deceptive  
Business Practices**

1  
2 **INTRODUCTION**

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

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

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

---

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



1 which lamps traditionally contained up to 25 milligrams of mercury, have, year after year, lowered  
2 the amount of mercury in their products in a continuing effort to phase out the use of mercury.

3 7. As a point of reference, while the fluorescent lamp manufacturers have been and  
4 are currently under fire for less than 25 milligrams of mercury in their product, a typical *mercury*  
5 amalgam filling contains 750 milligrams of mercury (over *30 times* more than a fluorescent lamp),  
6 and an individual can have 5 to 15 fillings in her mouth.

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

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

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

22 11. As set forth herein, the Defendants, through their so-called "ethical rules," have  
23 openly prevented dentists from properly informing their patients of the toxicity of this product.  
24 These so-called "ethical rules" have been, and continue to be, enforced by various dental boards in  
25 order to revoke the licenses of dentists who speak against the use of *mercury* amalgams. The  
26 Defendants, through their literature, particularly their brochure which is going to be the subject of  
27

1 a request for a preliminary injunction herein, have provided false information to their members and  
2 the general public regarding the dangers of this product, or even the fact that *mercury* is an  
3 ingredient. In fact, Defendants refer to *mercury* amalgam fillings as *silver*. Through their  
4 accreditation program, Defendants, and particularly the ADA, have caused dental schools to  
5 provide trainees with false information regarding *mercury* amalgams.

6 12. The Defendants, and each of them, have steadfastly refused to inform the public, in  
7 general, and the Plaintiffs, specifically, regarding the potential toxic effects of *mercury* amalgams,  
8 or even the fact that mercury is present in amalgams. These acts violate various statutes and  
9 prevent the administration of appropriate healthcare in the dental industry as set forth herein.<sup>3</sup>

#### 10 **JURISDICTION**

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

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

20 **15.** Venue is proper in the Los Angeles Superior Court because both of the named  
21 Defendants exist, transact business, and/or have offices in Los Angeles.

#### 22 **THE PARTIES**

23 16. Kids Against Pollution (“KAP”) is a nonprofit organization of active youth  
24 \_\_\_\_\_

25 <sup>3</sup>The ADA represents that “[t]he Seal on a product is an assurance for consumers and dentists  
26 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.

27

1 throughout the United States, with offices in Utica, New York.

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

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

8 19. Debra Seltenreich is an individual residing in the State of California. Ms.  
9 Seltenreich spent some 20 years working as a dental assistant, never being informed of the  
10 dangers of mercury or even its significant presence in dental amalgam fillings.

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

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

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

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

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

27





1 enforcement. Section 17200 borrows violations of other laws and treats them as unlawful  
2 practices independently actionable. Section 17200 is designed to protect *consumers* against fraud  
3 and deceit as well as to protect competitors. It is broadly interpreted to bar all ongoing wrongful  
4 business activities in any context in which they appear.

5         30. The Unfair Competition Act authorizes injunctive relief to prevent unlawful, unfair,  
6 or fraudulent business acts or practices, and restitution (disgorgement) of money or property  
7 wrongfully obtained by means of such unfair competition. Bus. & Prof. Code, § 17203. The  
8 statute imposes strict liability. It is not necessary to show that the defendant intended to injure  
9 anyone.<sup>5</sup> Because the definition contained in Section 17200, is disjunctive, a “business act or  
10 practice” is prohibited if it is “unfair” or “unlawful” or “fraudulent.” In other words, a practice is  
11 prohibited as “unfair” or “deceptive” even if not “unlawful” and vice versa.

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

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

22         33. Furthermore, a plaintiff suing under section 17200 does not have to prove he or

---

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

26 <sup>6</sup> *State Farm Fire & Casualty Co. v Superior Court* (1996, 2nd Dist) 45 Cal App 4th  
27 1093, 1104 *citing* the U.S. Supreme Court in *FTC v. Sperry & Hutchinson Co.* (1972) 405 U.S. 233.

1 she was directly harmed by the defendant's business practices. An action may be brought by any  
2 person, corporation or association or by any person acting for the interests of itself, its members  
3 or the general public.

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

10 **B. PROPOSITION 65**

11 35. Proposition 65, a state ballot measure that passed by an overwhelming 2 to 1  
12 margin, is codification of a long-standing public policy within this state which is growing ever  
13 stronger with the passage of time. Within the Preamble to Proposition 65, the People declared, in  
14 no uncertain terms, that exposures to reproductive toxins and carcinogens “pose a serious  
15 potential threat” to the public health. Section 1 of Initiative Measure, Proposition 65, Nov. 4,  
16 1986. The People further declared their right “[t]o be informed about exposures to chemicals that  
17 cause cancer, birth defects, or other reproductive harm.” Proposition 65, §1(b). Consequently,  
18 workers and consumers throughout California mandated that manufacturers provide clear warning  
19 of the severe hazards of exposure to the chemicals that are known to the state to cause cancer or  
20 reproductive harm. A primary focus of the modern environmental movement has been the  
21 harmful effects of toxics. Simply put, the People want to eliminate exposures to these deadly  
22 chemicals, but where such exposures are necessary, want to be informed of same, and be told of  
23 the effects which may result.

24 36. Furthermore, through Proposition 65, the People expressed their distrust of  
25 government by allowing for private enforcement of the law, along with other guidelines seeking to  
26 protect the Citizens of this State despite the political pressures which may be placed on regulators  
27

1 by industry.

2 37. In relevant part, the Act provides that:  
3 No person in the course of doing business shall knowingly discharge or release a  
4 chemical known to the state to cause cancer or reproductive toxicity into water or  
5 onto or into land where such chemical passes or probably will pass into any source  
6 of drinking water . . . (Health & Safety Code §25249.5)  
7 No person in the course of doing business shall knowingly and intentionally expose  
8 any individual to a chemical known to the state to cause cancer or reproductive  
9 toxicity without first giving clear and reasonable warning to such individual, except  
10 as provided in Section 25249.10. (Health & Safety Code §25249.6)

11 38. Proposition 65 establishes a procedure by which the state develops a list of  
12 chemicals “known to the State to cause cancer or reproductive toxicity.” Health & Safety Code  
13 §25249.8. The California Office of Environmental Hazard Assessment (“OEHHA”) is the lead  
14 agency charged with administration of Proposition 65, which, among other things, includes listing  
15 chemicals, de-listing chemicals, and setting No Significant Risk Levels (“NSRLs”) and No  
16 Observable Effect Levels (“NOEL”). Proposition 65 provides clear mechanisms whereby any  
17 individual can request that a specific chemical be listed or de-listed as a carcinogen and/or  
18 reproductive toxin, request a change in the NSRL or NOEL (22 CCR §12705(b)), obtain a safe  
19 use determination (22 CCR §12104), or obtain an “interpretive guideline” regarding any matter  
20 under the Act (22 CCR § 12103).

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

27 **BACKGROUND INFORMATION ON MERCURY**

28 40. Mercury is one of the few chemicals that is *conclusively known* to cause adverse  
health effects in humans. This is because the effects of Mercury on humans have been widely

1 studied, in a variety of circumstances and populations. Mercury is dangerous if inhaled, if  
2 absorbed through the skin, or if it enters through any part of the body. It is a highly toxic element  
3 and the most volatile of the heavy metals.

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

11 42. Mercury can cause a variety of symptoms including chronic inflammation of mouth  
12 and gums, personality change, nervousness, fever, or rash. *Neurotoxicity* symptoms associated  
13 with Mercury and Mercury Compounds include, but are not limited to, impaired vision, speech,  
14 hearing, and walking; sensory disturbances; incoordination of movements; nervous system damage  
15 very similar to congenital cerebral palsy; mental disturbances; psychomotor retardation; and, in  
16 some cases death. Mercury has also been linked to brain neuron degeneration. According to the  
17 United States Public Health Service, mercury poses the most direct danger to the brain and the  
18 kidneys. It impairs fetal development, preventing the brain and nervous system from developing  
19 normally. Children poisoned by mercury show lowered intelligence, impaired hearing and poor  
20 coordination and their verbal and motor skills may be delayed or otherwise, severely and  
21 permanently impaired.

22 43. Knowledge of Mercury's adverse health effects is nothing new. Human studies  
23 alone date back more than 60 years.<sup>7</sup> Studies have correlated various ailments, symptoms, and  
24 effects with Mercury for decades. For example in the 1940's, Mercury was found to be the cause

---

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

1 of Acrodynia. Furthermore, disasters in Minamata, Japan, in the 1950s and in Iraq in 1971-  
2 1972 clearly demonstrated neurologic effects associated with ingestion of Mercury both in adults  
3 and in infants exposed in utero.

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

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

17 ///

18 ///

19 ///

## 20 **GENERAL ALLEGATIONS**

### 21 **DENTAL AMALGAM**

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

24 47. The amount of mercury in each filling is about three-fourths of a gram, or 750,000  
25 micrograms, enough to shut down a small lake from fishing – yet consumers typically have  
26 multiple fillings. Many consumers have five to fifteen fillings, and because of the actions outlined  
27

1 herein, most remain unaware that their mouths are a virtual toxic environmental hazard.  
2 Frequently, the mercury will also leach into the gums, and from there immediately enter the  
3 human bloodstream.

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

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

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

17 51. Mercury formerly was commonly used in medicine, but its usage is being  
18 withdrawn. For example, Mercurochrome was used to fight infections and mercury was a  
19 preservative in vaccines and contact lenses. Because of mercury’s extreme toxicity,  
20 Mercurochrome is now banned; mercury has been taken out of vaccines and contact lens  
21 solutions; and mercury thermometers (due to breakage risks) are being removed from hospitals.  
22 Mercury in *any* health use is now condemned via resolutions enacted by the American Public  
23 Health Association, the California Medical Association, and Health Care Without Harm. Yet  
24 Defendants steadfastly defend its use and aggressively pursue those who speak out against them.

25 **DEFENDANTS’ DECEPTION**

26 52. Solely based on the extreme toxicity of mercury, and its considerable presence in  
27

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

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

18 54. Second, Defendants hide the existence of mercury in dental fillings. Defendant  
19 California Dental Association sent a memorandum to all of its member dentists to avoid using the  
20 word “mercury” when making disclosures about toxics used in the dental office.

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

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

26 “When a product carries the ADA's Seal of Acceptance, consumers can be confident that  
27 the product meets ADA requirements for safety and effectiveness and that the

1 manufacturer's claims about that product are accurate.”

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

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

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

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

23 . The manufacturer Dentsply issued the following warning:  
24 “Contraindication: The use of amalgam is contraindicated:  
25 In proximal or occlusal contact to dissimilar metal restorations.  
26 In patients with severe renal deficiency.  
27 In patients with known allergies to mercury.  
28 For retrograde or endodontic filling.  
As a filling material for cast crown.



1 In children 6 and under  
2 In expectant mothers.<sup>8</sup>

3 · The manufacturer Vivadent adds “nursing mothers” to its list of patients who  
4 should not receive amalgam.

5 · The government of Canada issued a report in 1996, a summary of which it sent to  
6 every dentist in that country with a bilingual cover letter. The report  
7 recommended that dentists cease giving mercury amalgam fillings to children,  
8 pregnant women, and patients with kidney problems, braces, or mercury allergies.

9 · The California Dental Board sent a newsletter to all of its dentists in June, 2000,  
10 warning of the “reproductive toxicity of the mercury contained in amalgam.” The  
11 newsletter also stated:

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

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

21  
22 \_\_\_\_\_  
23 <sup>8</sup>The manufacturer warnings by Dentsply is attached as Exhibit “B.”

24 <sup>9</sup>The newsletter of the California Dental Board are attached as “C.”  
25  
26  
27



1 ADA members.

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

5 66. The provision is a gag rule. It prevents the dentist from initiating conversations  
6 with patients about the mercury amalgam controversy, lest they then decide to have this toxic  
7 material removed from their mouths. The provision is not aimed at stopping unnecessary dental  
8 practices. For example it would not prevent dentists from suggesting amalgam removal for  
9 cosmetic or any other reasons, nor for inducing the consumer on any ground to spend money  
10 needlessly. The provision singles out amalgam in a way that it does for no other procedure. No  
11 other part of the Code of Ethics, with specificity, addresses any other practices that could be  
12 considered unnecessary. The provision actually conflicts with several other provisions of the  
13 Code of Ethics. For example, the ADA Code of Ethics has the principle of nonmaleficence (“do  
14 no harm”). And said Code also requires its member dentists to stay current on science, to report  
15 adverse reaction to any dental device, and to communicate truthfully – something that may not be  
16 done if the dentist is gagged from talking about potential adverse reactions from amalgam.

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

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

27

28



1 with the State of California permitting dentists to avoid being accountable for the environmental  
2 impact of amalgam. In fact, waste from dental offices remains a major contributor of mercury to  
3 California's waterways.

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

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

16 **FIRST CAUSE OF ACTION**  
17 **Unlawful Business Practices in Violation of Business & Professions Code §§17200 et seq.**

18 (Against All Defendants, Predicated on California Health & Safety Code §25249.6)

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

21 79. California Business & Professions Code §17200 provides that "unfair competition  
22 shall mean and include any unlawful, unfair or fraudulent business act or practice."

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

26 81. Plaintiff is informed and believes, and based on such information and belief alleges,  
27

1 that since July 1, 1988, Defendants, and each of them, have engaged in conduct which violates  
2 Health & Safety Code §25249.6 et seq. This conduct includes the placing into commerce of  
3 dental amalgam containing Proposition 65-listed chemicals, including mercury, without a clear  
4 and reasonable warning within the meaning of Health & Safety Code §§25249.6 and 25249.11.

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

15 83. At all times relevant to this action, Defendants, and each of them, have knowingly  
16 and intentionally marketed and/or otherwise caused to be placed into the stream of commerce,  
17 dental amalgam containing Proposition 65-listed chemicals, including mercury for sale or use in  
18 California.

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

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

25 86. Individuals have suffered and continue to suffer irreparable harm due to exposure  
26 to Proposition 65-listed chemicals from dental amalgam without prior clear and reasonable  
27

1 warning, contrary to the express policy and statutory prohibition enacted by direct vote of the  
2 People of California in Proposition 65.

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

12 88. By committing the acts alleged above, Defendants, and each of them, have violated  
13 and continue to violate Proposition 65, and thereby have engaged in a *per se* unlawful business  
14 practice constituting unfair competition in violation of California Business & Professions Code  
15 §§17200 et seq.

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

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

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

23 **SECOND CAUSE OF ACTION**  
24 **Unlawful Business Practices in Violation of Business & Professions Code §§17200 et seq.**

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

26 91. Plaintiff realleges and incorporates by reference as if specifically set forth herein  
27

1 Paragraphs 1 through 90 inclusive.

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

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

9 94. Under Business & Professions Code §510(c):  
10 “The application and rendering by any individual, partnership, corporation, or  
11 other organization of a decision to . . . *penalize a health care practitioner*  
12 principally for advocating for appropriate health care consistent with that degree of  
13 learning and skill ordinarily possessed by reputable health care practitioners with  
14 the same license or certification and practicing according to the applicable legal  
15 standard of care violates the public policy of this state.” (Emphasis added).

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

23 96. As alleged hereinabove, Defendants, and each of them, have otherwise retaliated  
24 against dentists who disclose to their patients the toxicity of mercury by causing the enforcement  
25 of their gag rules.

26 97. By committing the acts alleged above, Defendants, and each of them, have violated  
27 and continue to violate Business & Professions Code §510, and thereby have engaged in a *per se*  
28 unlawful business practice constituting unfair competition in violation of California Business &



1 Professions Code §§17200 et seq.

2 98. An action for injunctive relief and restitution under the Unfair Competition Act is  
3 specifically authorized by Business & Professions Code §17203.

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

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

9 **THIRD CAUSE OF ACTION**  
10 **Unlawful Business Practices in Violation of Business & Professions Code §§17200 et seq.**

11 (Against All Defendants, Predicated on California Business & Professions Code §2056)

12 100. Plaintiff realleges and incorporates by reference as if specifically set forth herein  
13 Paragraphs 1 through 99 inclusive.

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

16 102. Business & Professions Code §2056(a) provides, in relevant part, “[t]he purpose  
17 of this section is to provide protection against retaliation for physicians who advocate for  
18 appropriate health care for their patients.” Subsection (b), in relevant part, provides that: “[i]t is  
19 the *public policy* of the State of California that a physician and surgeon be encouraged to  
20 advocate for appropriate health care for his or her patients.” (Emphasis added).

21 103. Under Business & Professions Code §2056(c):  
22 “The application and rendering by any person of a decision to . . . *penalize*, a  
23 physician and surgeon principally for advocating for medically appropriate health  
24 care consistent with that degree of learning and skill ordinarily possessed by  
reputable physicians practicing according to the applicable legal standard of care  
violates the public policy of this state.” (Emphasis added).

25 104. That section goes on to state:  
26 “No person shall terminate, *retaliate against*, or otherwise *penalize* a physician  
27 and surgeon for that advocacy, nor shall any person *prohibit, restrict, or in any*





1 foster and perpetuate the false belief in California consumers, other foreseeable users of dental  
2 amalgam, and other individuals that dental amalgam is free from the hazards alleged herein.

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

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

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

24 120. Moreover, as alleged hereinabove, Defendants, and each of them, are causing and  
25 continue to cause competitive injury to entities and individuals that are developing or attempting  
26 to use alternative products which are safer or otherwise do not exhibit the adverse health effects  
27

1 associated with mercury.

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

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

9 **FIFTH CAUSE OF ACTION**

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

11 (Against All Defendants)

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

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

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

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

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 false,  
18 and Defendants have no reasonable basis for believing that these statements were or are true.  
19 Furthermore, individuals and the general public are likely to be deceived by said statements,  
20 omissions, and/or practices. Defendants have therefore engaged in unfair, and deceptive practices  
21 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 liable  
27

1 for each other's fraud and deceit because, as alleged hereinabove, these tortfeasors acted on  
2 behalf of all other Defendants, within the scope of their agency and/or employment. All acts and  
3 omissions on the part of these Defendants were implicitly or explicitly ratified, consented to and  
4 approved by all other Defendants.

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

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

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

14 **NEED FOR INJUNCTIVE RELIEF**

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

21 **PRAYER FOR RELIEF**

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

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

25  
26  
27

1 herein;<sup>11</sup>

2           b.       That the Court, pursuant to Health & Safety Code §25249.7(a) and  
3 Business & Professions Code §17203, preliminarily and permanently enjoin Defendants, and each  
4 of them, and their agents, employees, assigns, and all persons acting in concert or participating  
5 with them from:

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

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

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

20           d.       That the Court, pursuant to Health & Safety Code §25249.7(a) and  
21 Business & Professions Code §17203, issue a preliminary and permanent injunction requiring

---

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

26  
27  
28



1 Defendants to remove from their ethical rules any rule that prohibits a dental professional from  
2 discussing with his or her patients the risks and efficacies of mercury amalgam fillings or  
3 otherwise

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

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

8 ///

9 ///

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

12 Dated: June 12, 2001

LAW OFFICES OF SHAWN KHORRAMI

13

14

By: \_\_\_\_\_  
SHAWN KHORRAMI, ESQ.

15

Attorneys for Plaintiffs

16

17

18

19

20

21

22

23

24

25

26

27

28