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9  
10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA

12 JOEL S. BERGER, D.D.S., M.D., RICHARD J. )  
BERRIOS, D.D.S., ANDREW CHANG, D.D.S., )  
13 M.D., ALBERT CUTRI, D.D.S., M.D., DAVID )  
GILBERT, D.D.S., STEPHEN KREIZENBECK, )  
14 D.D.S., LESTER MACHADO, D.D.S., M.D., )  
PETER SCHEER, D.D.S., W. FREDERICK )  
15 STEPHENS, D.D.S., and CRAIG THIEDE, D.D.S., )

No. Civ. S-01-0153 LKK GGH

**FIRST AMENDED COMPLAINT  
FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

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16 Plaintiffs,

17 vs.

18 KATHLEEN HAMILTON, in her Official )  
Capacity as Director, California Department of )  
Consumer Affairs; GEORGETTA COLEMAN, )  
19 Executive Officer, Dental Board of California; )  
ROGER SIMONIAN, D.D.S., President; KIT )  
20 NEACY, D.D.S., Vice-President; RICHARD )  
BENVENISTE, D.D.S., Secretary; LLEWELLYN )  
21 CHIN, Public Member; ROBERT )  
CHRISTOFFERSEN, D.D.S., Member; MARK )  
22 GOLDENBERG, D.D.S., Member; KATHY )  
HOLLADAY, Public Member; ALAN KAYE, )  
23 D.D.S., Member; KATIE DAWSON, R.D.H., )  
Member; LA DONNA DRURY-KLEIN, R.D.A., )  
24 Member; and MICHAEL PINKERTON, Public )  
Member, in their Official Capacities as Members )  
25 of the Dental Board of California; and DENTAL )  
BOARD OF CALIFORNIA, )

26 Defendants.

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1 Plaintiffs Joel S. Berger, D.D.S., M.D., Richard J. Berrios, D.D.S., Andrew  
2 Chang, D.D.S., M.D., Albert Cutri, D.D.S., M.D. ("Dr. Cutri"), David Gilbert, D.D.S.,  
3 Stephen Kreizenbeck, D.D.S., Lester Machado, D.D.S., M.D. ("Dr. Machado"), Peter  
4 Scheer, D.D.S., W. Frederick Stephens, D.D.S., and Craig Thiede, D.D.S. (collectively  
5 "the Plaintiffs"), for their Complaint against the Defendants Kathleen Hamilton,  
6 Georgetta Coleman, Roger Simonian, D.D.S., Kit Neacy, D.D.S., Richard Benveniste,  
7 D.D.S., Llewellyn Chin, Robert Christoffersen, D.D.S., Mark Goldenberg, D.D.S.,  
8 Kathy Holladay, Alan Kaye, D.D.S., Katie Dawson, R.D.H., La Donna Drury-Klein,  
9 R.D.A., Michael Pinkerton, and the Dental Board of California (collectively "the  
10 Defendants" or "the Dental Board") allege as follows:

#### 11 **JURISDICTION AND VENUE**

12 1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and  
13 1343(a), and Plaintiffs seek declaratory and injunctive relief pursuant to 28 U.S.C.  
14 §§ 16551, 2201 and 2202 and 42 U.S.C. § 1983 and 1988. Furthermore, this matter  
15 arises under the First and Fifth Amendments to the United States Constitution, which  
16 are made applicable to the states by the Fourteenth Amendment to the United States  
17 Constitution.

18 2. Venue is proper in this district under 28 U.S.C. § 1391(b).

#### 19 **NATURE OF ACTION**

20 3. In this action, Plaintiffs challenge the constitutionality of the Letter-  
21 Order sent by Defendants to Plaintiffs dated January 24, 2000 ("Letter-Order"), a true  
22 and correct copy of which is attached hereto as Exhibit A.

23 4. The Dental Board's Letter-Order states its intent to clarify the scope of  
24 the dental licenses held by Plaintiffs and others similarly situated and to direct them  
25 to limit their practices accordingly. The Letter-Order purports to exclude from the  
26 scope of the dental licenses a number of surgeries and procedures for which Plaintiffs  
27 and others similarly situated are trained, that they have been performing for many  
28 years or decades, and that have always before been deemed within the scope of their

1 dental licenses. The Letter-Order was issued without notice and opportunity for  
2 hearing.

3 5. Plaintiffs assert that the Dental Board's Letter-Order violates their  
4 constitutional rights in that it constitutes an unlawful deprivation of their  
5 constitutionally protected property interests in their professional licenses without due  
6 process of law; it further constitutes a deprivation of their First Amendment rights  
7 without due process of law; and it further subjects them to disciplinary action by the  
8 Defendants or others as a result thereof.

### 9 PLAINTIFFS

10 6. Plaintiffs are licensed to practice dentistry in the State of California by  
11 the Defendant Dental Board and/or are licensed to practice medicine in the State of  
12 California. All the Plaintiffs are specialists in oral and maxillofacial surgery, as the  
13 Commission on Dental Accreditation, the American Dental Association, and the  
14 American Association of Oral and Maxillofacial Surgery define that specialty.  
15 Plaintiffs are certified, or are eligible for certification, by the American Board of Oral  
16 and Maxillofacial Surgery ("ABOMS").

17 7. Plaintiffs possess a constitutionally-protected property interest in their  
18 licenses and have the rights, under the Constitution of the United States, to perform  
19 all procedures properly within the scope of their licenses, to earn a livelihood through  
20 the performance of such procedures, and to advertise and otherwise inform members  
21 of the public and other professionals of their training and experience in performing  
22 such procedures.

### 23 DEFENDANTS

24 8. The Defendant Director of the California Department of Consumer  
25 Affairs, Defendant Executive Director of the Dental Board and the Defendant Dental  
26 Board Members are sued in their official capacities only. They are collectively  
27 responsible for implementing, administering and enforcing the various provisions of  
28 the statutes governing the practice of dentistry in the State of California. The Director

1 of the California Department of Consumer Affairs (hereinafter "the Director") and the  
2 Board, through its Executive Officer and other officers and members, are mandated by  
3 the State of California to enforce the provisions of the California Business and  
4 Professions Code ("the Code") that apply to dentists, as well as to enforce the  
5 provisions of the Dental Practice Act itself.

6 9. Defendants are further responsible for investigations of dentists relating  
7 to the implementation and enforcement of the provisions of Dental Practice Act and  
8 the regulations enacted pursuant to that Act.

9 **FACTUAL ALLEGATIONS APPLICABLE TO ALL COUNTS**

10 10. Oral and Maxillofacial Surgery ("OMS") is one of eight areas of dental  
11 practice recognized by the American Dental Association ("ADA") as a "specialty"  
12 area of practice.

13 11. An oral and maxillofacial surgeon must first obtain a D.D.S. degree and  
14 then complete an accredited postgraduate program in oral and maxillofacial surgery.

15 12. There are multiple accredited, postgraduate programs in oral and  
16 maxillofacial surgery in the State of California including those at Loma Linda  
17 University, the University of California-Los Angeles, the University of Southern  
18 California, the University of California-San Francisco, and the University of the  
19 Pacific. All of these programs must comply with the criteria for accreditation  
20 established by the Commission on Dental Accreditation ("CDA") and therefore all  
21 programs are required to teach OMS postgraduate students cosmetic oral and  
22 maxillofacial surgical procedures, including the procedures deemed beyond the scope  
23 of dental licensure by the Dental Board, in its January 24, 2000 Letter-Order to  
24 dentists, including Plaintiffs. Basic surgical principles relating to all areas of oral and  
25 maxillofacial surgery are taught in an accredited OMS postgraduate program.

26 13. OMS training also consists of an in-depth understanding of physical  
27 diagnosis, pathophysiology and clinical medicine, as well as comprehensive training

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1 in anesthesia, which requires an in-depth knowledge of anatomy, physiology and  
2 pharmacology as they are related to pain and anxiety management.

3 14. OMS training includes a structured, didactic course in physical  
4 diagnosis similar to that provided to medical students and often given jointly.  
5 Didactic and clinical training are provided to a level of competence in all aspects of  
6 pain and anxiety control, including general anesthesia/deep sedation. OMS residents  
7 must complete a core medical/surgical year that includes training during rotations to  
8 the medical, surgical and anesthesia services, with the requirement that OMS  
9 residents function at the level of a resident in the respective services.

10 15. Oral and maxillofacial surgeons (“OMSs”) are also trained in  
11 esthetic/oral and maxillofacial surgery and, during training, must be able to recognize  
12 and diagnose congenital, developmental and acquired esthetic facial deformities.  
13 Both skeletal and soft tissue alterations of facial form must be taught and treated,  
14 including but not limited to esthetic surgery such as rhinoplasty (repair of a partial or  
15 complete defect of the nose with tissue taken from elsewhere; a plastic operation to  
16 change the shape or size of the nose), septoplasty (an operation to correct defects or  
17 deformities of the nasal septum), blepharoplasty (any operation for the correction of a  
18 defect in the eyelid), rhytidectomy (elimination of wrinkles from, or reshaping of, the  
19 face by excising any excess skin and tightening the remainder; the so-called “face-  
20 lift”), genioplasty (a surgical procedure whereby the shape or size of the chin is  
21 altered), lipectomy (surgical removal of fatty tissue), facial implants, otoplasty  
22 (reparative or plastic surgery of the auricle of the ear) and scar revision.

23 16. OMS training includes a broad range of dentoalveolar surgical  
24 procedures. Management of dentoalveolar injuries, infections, and pathologic  
25 conditions and other hard and soft tissue surgeries related to the alveolar structures  
26 are major aspects of OMS training and practice. Additional significant areas of OMS  
27 training and practice include diagnosis of oral disease and lesions of systemic diseases  
28 manifested in the oral cavity and various hard and soft tissue biopsy techniques, the

1 removal of erupted and impacted teeth, the use of hard and soft tissue grafts, and  
2 preparation of the mouth for prostheses.

3 17. OMSs are also trained to perform the reconstruction of the oral and  
4 maxillofacial region with implant devices designed to support various prostheses,  
5 combined with an in-depth knowledge of bone and soft tissue physiology,  
6 biomaterials and the biomechanics of implant reconstruction.

7 18. Microneurosurgery, through clinical correlations of pathophysiology of  
8 nerve dysfunction and repair, testing modalities for neurosensory and neuromotor  
9 defects and methods of repair, is also a part of the OMS training, and OMSs are  
10 trained in the diagnosis and treatment planning of persons suffering from  
11 neurosensory and neuromotor deficiencies, including experience in repair or revision  
12 of a damaged sensory nerve of the face and/or facial structures.

13 19. OMSs are taught surgical correction of skeletal deformities of the oral  
14 and maxillofacial region, at a level of competency in orthognathic surgery which  
15 includes the analysis of facial form, diagnosis of malocclusions and their relationships  
16 of facial form, the biomechanics of orthodontics, comprehensive treatment planning  
17 and surgical procedures. The OMS also learns to correct deformities of the mandible  
18 and maxilla, as well as other deformities of the facial skeleton, correct functional and  
19 esthetic orofacial and craniofacial deformities of the mandible, maxilla, zygoma and  
20 other facial bones, including but not limited to ramus and body procedures, subapical  
21 segmental osteotomies and craniofacial operations.

22 20. The OMS must become competent in the evaluation and management of  
23 patients with hard and soft tissue defects of the maxillofacial region, involving  
24 reconstructive procedures, which restore form and function, and in the assessment,  
25 treatment planning, and surgical and comprehensive management of the patient. This  
26 competency includes both bone grafting and soft tissue grafting procedures,  
27 vestibuloplasties, augmentation procedures, temporomandibular joint reconstruction,  
28 management of continuity defects and other reconstructive surgery.

1           21. OMS postgraduate education and training includes the diagnosis,  
2 evaluation and management of temporomandibular joint disorders (“TMJ”),  
3 differential diagnosis of head, neck and facial pain, non-surgical treatment options,  
4 and surgical management of TMJ disorders. Another integral part of the OMS’s  
5 training is the comprehensive management of trauma of the oral and maxillofacial  
6 region, which includes learning the principles of shock management, fluid and  
7 electrolyte balance, resuscitation and surgical airway procurement, assessment  
8 management and treatment of maxillofacial and multiple systems trauma.

9           22. During training, the OMS must successfully complete an Advanced  
10 Trauma Life Support course. Trauma management includes, but is not limited to,  
11 surgical management of the airway, including performance of tracheostomies,  
12 treatment of fractures of the dentoalveolar, mandible, maxilla, zygoma, nose, orbit,  
13 naso-frontal-orbital-ethmoidal and midface region and repair of soft tissue of the head  
14 and neck region. The OMS is also trained in the hospital emergency department and  
15 must, during training, be available to the emergency services at all times.

16           23. Plaintiffs herein have been, and continue to be, called to various hospital  
17 emergency rooms to treat accident or other trauma victims. Such treatment routinely  
18 includes extensive cosmetic oral and maxillofacial surgical procedures and/or  
19 reconstructive surgical procedures.

20           24. A significant part of the OMS’s practice includes the evaluation and  
21 treatment of infectious, inflammatory and benign neoplastic lesions involving the oral  
22 and maxillofacial region.

23           25. The American Dental Association defines oral and maxillofacial surgery  
24 as follows: “Oral and maxillofacial surgery is the specialty of dentistry which  
25 includes the diagnosis, surgical and adjunctive treatment of diseases, injuries, and  
26 defects involving both the functional and esthetic aspects of the hard and soft tissues  
27 of the oral and maxillofacial region.” “Maxillofacial” is defined in Stedman’s Medical

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1 Dictionary as “pertaining to the jaws and face, particularly with reference to  
2 specialized surgery of this region.”

3 26. Criteria used by the nationally-recognized Joint Commission on  
4 Accreditation of Healthcare Organizations (“JCAHO”) have been accepted for nearly  
5 50 years. Under these criteria, hospitals grant clinical privileges to medical staff  
6 members, including OMSs, based upon each member’s education, training, current  
7 competence and experience. Cosmetic/esthetic oral and maxillofacial surgery  
8 performed by OMSs are a natural extension of the knowledge and expertise gained by  
9 these specialists in performing complex trauma and reconstructive surgery.  
10 Accredited hospitals have granted hospital privileges to Plaintiffs and other OMSs for  
11 the purpose of performing those procedures encompassed within the scope of training  
12 of OMSs, including the esthetic and cosmetic aspect of oral and maxillofacial surgery  
13 deemed beyond the scope of a dental license in the Defendant Dental Board’s Letter-  
14 Order at issue herein.

15 27. OMSs have been successfully performing cosmetic oral and maxillofacial  
16 surgical procedures for at least the past 30 years, in conjunction with complex facial  
17 reconstructive and trauma surgeries, and for the past 10 years as elective procedures,  
18 according to the American Association of Oral and Maxillofacial Surgeons  
19 (“AAOMS”).

20 28. The Commission on Dental Accreditation (“CDA”) is the autonomous  
21 accrediting body recognized by the United States Department of Education  
22 (“USDOE”), which accredits undergraduate (D.D.S.) dental schools in California and  
23 throughout the United States, and accredits specialty programs, including oral and  
24 maxillofacial programs in California, across the country. The CDA is also responsible  
25 for setting forth the Standards for Advanced Education in the respective dental  
26 specialty programs and for the undergraduate dental programs leading to the DDS  
27 degree. Compliance with those standards is necessary for accreditation by the CDA,

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1 which in turn is necessary for postgraduate OMS programs and students to be eligible  
2 for any applicable federal funding.

3 29. "Dentistry" is defined by the CDA in the Standards for Advanced  
4 Specialty Education ("the Standards") as the evaluation, diagnosis, prevention and/or  
5 treatment (nonsurgical, surgical or related procedures) of diseases and/or conditions  
6 of the oral cavity, maxillofacial area and/or adjacent and associated structures and  
7 their impact on the human body; provided by a dentist, *within the scope of his/her*  
8 *education, training and experience*, in accordance with the ethics of the profession and  
9 applicable law.

10 30. "Oral and Maxillofacial Surgery" is defined in the CDA Standards as  
11 including the diagnosis, surgical and adjunctive treatment of diseases, injuries and  
12 defects involving both the functional and esthetic aspects of the hard and soft tissues  
13 of the oral and maxillofacial region. The CDA relies on the Stedman's Medical  
14 Dictionary definition of "maxillofacial," which states as follows: "pertaining to the  
15 jaws and the face, particularly with reference to specialized surgery of this region."

16 31. Before OMS training programs can be accredited by the CDA, they must  
17 meet the minimum standards set forth in the Standards for Advanced Specialty  
18 Education Programs in Oral and Maxillofacial Surgery ("OMS Standards"). These  
19 OMS Standards require programs to be a minimum of 48 months of full-time training  
20 in a hospital-based residency. Some programs also offer a medical degree (M.D.).

21 32. Since both the four-year OMS programs and the medical degree-  
22 integrated programs must meet the OMS Standards, training in oral and maxillofacial  
23 surgery is identical in both types of programs. Surgical experience in all accredited  
24 OMS programs includes maxillofacial esthetic cases, including but not limited to the  
25 following procedures: blepharoplasty, brow lifts, treatment of skin lesions,  
26 cheiloplasty (plastic surgery of the lips), genioplasty, otoplasty, rhinoplasty and  
27 rhytidectomy.

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1           33. Plaintiffs are informed and believe after significant inquiry and thereon  
2 allege that surgical procedures deemed beyond the scope of dental licensure in the  
3 Defendants' January 24, 2000 Letter-Order are not deemed beyond the scope of dental  
4 licensure for an OMS in any other states within the United States. Many states have  
5 expressly deemed such procedures within the scope of the practice of dentistry.

6           34. The Maryland State Board of Dental Examiners has previously  
7 determined that face lifts, blepharoplasty, rhinoplasty and collagen injections are  
8 within the scope of the practice of dentistry because OMSs are trained to be competent  
9 in those areas in CDA-accredited OMS residency programs affiliated with accredited  
10 hospitals or teaching institutions. That Board has also determined that hair  
11 transplants, when performed as a required adjunctive procedure secondary to a  
12 primary procedure within the scope of dentistry, such as transplants performed as  
13 adjunctive procedures to orthognathic surgery or reconstruction after a facial trauma  
14 or cleft surgery, are within the practice of dentistry. The Maryland Board found that  
15 the above-mentioned procedures are included within the practice of dentistry under  
16 the definition of "associated structures" contained in the Maryland statute, based  
17 upon lengthy and credible testimony of the history of the procedures performed.

18           35. The Minnesota Board of Dentistry has stated that it would support the  
19 ability of OMSs with the appropriate education, training and competence to perform  
20 certain cosmetic oral and maxillofacial surgical procedures, as such procedures were  
21 included in the curricula of the dental schools and residency training programs and,  
22 as such, are protected as within the scope of dentistry under Minnesota law. The  
23 Minnesota statute includes the phrase "associated structures" in its definition of  
24 dentistry.

25           36. In 1999, the Georgia legislature passed a new definition of dentistry, in  
26 conformance with the ADA's definition of dentistry enacted in 1997, recognizing the  
27 modern, evolving scope of the practice of dentistry, which includes OMS as a  
28 specialty. The Georgia definition of dentistry recognizes that the practice of dentistry

1 involves the “oral cavity, maxillofacial area, or the adjacent or associated structures, or  
2 any combination thereof, and their impact on the human body provided by a dentist,  
3 within the scope of his or her education, training, and experience . . . .” The Georgia  
4 Board of Dentistry has determined that OMSs have the requisite education, training  
5 and experience to perform procedures they are taught in residency training programs,  
6 including cosmetic/esthetic oral and maxillofacial surgical procedures deemed  
7 beyond the practice of dentistry by the Defendants’ Letter-Order of January 24, 2000.

8           37. The New Jersey Board of Dentistry has declared that OMSs, with the  
9 appropriate training, can perform rhinoplasty and septoplasty surgery, cosmetic oral  
10 and maxillofacial surgical procedures.

11           38. Mississippi’s relevant statute explicitly permits OMSs to perform  
12 reconstructive and related surgical procedures to the head and neck. It includes  
13 within the scope of practice of dentistry “surgery of the head or neck incident to the  
14 practice of oral surgery.” Miss. Code Ann. § 73-9-3.

15           39. Section 1625 of the California Business and Professions Code, Division 2,  
16 Chapter 4, Dentistry, defines “Dentistry” as “the diagnosis or **treatment, by surgery**  
17 or other method, of diseases and lesions and **the correction of malpositions** of the  
18 human teeth, alveolar process, gums, jaws, **or associated structures.**” (emphases  
19 added).

20           40. Stedman’s Medical Dictionary defines “associated” as “[a]ny item or  
21 individual grouped with others by some common factor.” The head and neck are  
22 certainly “grouped with” the “human teeth or jaws” on the human body and share the  
23 same “common factor” of interconnected skeleto-muscular tissues.

24           41. For as long as they have been trained to do so in their respective  
25 postgraduate programs, Plaintiffs and other OMSs in California have performed  
26 cosmetic oral and maxillofacial surgical procedures, in conjunction with dental  
27 procedures, trauma injuries, and as independent cosmetic oral and maxillofacial  
28 surgical procedures, such as rhinoplasty, septoplasty, blepharoplasty, and other

1 esthetic procedures, under the above-referenced definition of dentistry found in  
2 Section 1625 of the Code.

3 42. Section 1638 of the Code defines OMS as “the diagnosis and surgical and  
4 adjunctive treatment of diseases, injuries, and defects, which involve both functional  
5 and **esthetic** aspects of the hard and soft tissues of the oral and maxillofacial region”  
6 (emphasis added).

7 43. Pursuant to Section 1638 of the Code, a person licensed under the  
8 Medical Practice Act of California, but not licensed to practice dentistry in California,  
9 “may apply to the [dental] board on a form prescribed by the [dental] board for an  
10 oral and maxillofacial surgery permit.”

11 44. Section 1638 also provides that the Dental Board “may issue an oral and  
12 maxillofacial surgery permit to an applicant who has furnished evidence satisfactory  
13 to the board that he or she is **currently certified or eligible for certification in oral  
14 and maxillofacial surgery by a specialty board recognized by the Commission on  
15 Accreditation of the American Dental Association** and holds a current license in  
16 good standing to practice medicine in the state.” (emphasis added).

17 45. Plaintiffs who possess dual degrees (D.D.S. and M.D.) have the same  
18 training in the procedures at issue as that provided to single degree dentists (D.D.S.)  
19 and receive that training in the same postgraduate OMS programs, accredited by the  
20 CDA.

21 46. Multiple hospitals in California have granted privileges to Plaintiffs and  
22 other OMSs who regularly perform surgical procedures, including but not limited to  
23 esthetic surgery such as rhinoplasty, blepharoplasty, rhytidectomy, genioplasty,  
24 lipectomy, facial implants, otoplasty and scar revision; dentoalveolar surgical  
25 procedures, including management of dentoalveolar injuries, infections, and  
26 pathologic conditions and other hard and soft tissue surgery related to the alveolar  
27 structures; diagnosis of oral disease and lesions of systemic diseases manifested in the  
28 oral cavity, utilizing various hard and soft tissue biopsy techniques; the removal of

1 erupted and impacted teeth; hard and soft tissue grafts; surgical correction of skeletal  
2 deformities of the oral and maxillofacial region; correction of deformities of the  
3 mandible and maxilla, as well as other deformities of the facial skeleton; correction of  
4 functional and esthetic orofacial and craniofacial deformities of the mandible, maxilla,  
5 zygoma and other facial bones, including but not limited to ramus and body  
6 procedures, subapical segmental osteotomies and craniofacial operations; surgical  
7 management of TMJ disorders; assessment, management and treatment of  
8 maxillofacial and multiple systems trauma; surgical management of the airway,  
9 including performance of tracheostomies, treatment of fractures of the dentoalveolar,  
10 mandible, maxilla, zygoma, nose, orbit, naso-frontal-orbital-ethmoidal and midface  
11 region and repair of soft tissue of the head and neck region.

12 47. Plaintiffs and other OMSs have engaged in the practice of multiple  
13 procedures described in the foregoing paragraphs for the past several decades, with  
14 the full knowledge and consent, either express or implied, of the Defendant Dental  
15 Board. Plaintiffs are informed and believe and thereon allege that, before the Dental  
16 Board's issuing its Letter-Order of January 24, 2000, it had never threatened to take,  
17 nor had it ever taken, any disciplinary action against any single-degree (D.D.S.) or  
18 dual-degree (D.D.S., M.D.) OMS as a result of their having performed any of the  
19 procedures at issue.

20 48. Several Plaintiffs and other similarly situated California OMSs have  
21 advertised that they perform cosmetic/esthetic oral and maxillofacial surgical  
22 procedures, with the full knowledge and approval, explicit or implicit, of the Dental  
23 Board. Plaintiffs are informed and believe and thereon allege that, before its January  
24 24, 2000 Letter-Order, the Defendant Dental Board has never disciplined, or attempted  
25 or threatened to discipline, the Plaintiffs or any other OMSs who advertised the  
26 performance of such services.

27 49. Cosmetic oral and maxillofacial surgical procedures deemed beyond the  
28 scope of dental licensure by the Defendant Dental Board in its January 24, 2000 Letter-

1 Order are the same surgical procedures performed by OMSs for trauma and  
2 orthognathic surgery that the Defendant Dental Board has deemed lawful in its Letter-  
3 Order at issue.

4 50. The California Association of Oral and Maxillofacial Surgery  
5 (“CAOMS”), the American Association of Oral and Maxillofacial Surgeons (AAOMS),  
6 and the California Dental Association have presented numerous continuing education  
7 courses on cosmetic oral and maxillofacial surgical procedures to oral and  
8 maxillofacial surgeons/dentists in California in the past years, with full knowledge  
9 and approval of the Dental Board.

10 51. Plaintiffs are informed and believe and thereon allege that, at no time  
11 did the Defendant Dental Board inform any organization sponsoring continuing  
12 education courses in OMS that the organization was teaching procedures that were  
13 not within the scope of practice of dentistry. All said courses received prior approval  
14 from the Dental Board for continuing education credit purposes. The Dental Board  
15 awarded continuing education credit for license maintenance purposes for all such  
16 courses.

17 52. Plaintiffs are informed and believe and thereon allege that physicians  
18 have called on the American Medical Association (“AMA”) to curtail the cosmetic oral  
19 and maxillofacial surgical procedures performed by OMSs such as the Plaintiffs.

20 53. The AMA House of Delegates has noted that, “in order to accommodate  
21 the [ADA’s] Commission of Dental Accreditation’s Accreditation Standards for  
22 Advanced Specialty Education Programs in Oral and Maxillofacial Surgery (OMS),  
23 **the California Board of Dental Examiners [now, the Dental Board of California]**  
24 **convened an ad hoc Committee on the Scope of Practice for OMS which identified**  
25 **the following procedures as falling under the scope of practice of OMS:**  
26 **rhytidectomy, blepharoplasty, rhinoplasty, otoplasty, cerficofacial liposuction, cleft**  
27 **lip and palate repair, resection of the parotid, craniofacial surgery, laser skin**

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1 **resurfacing, laser ablation of orofacial lesions, excision of skin lesions, abdominal**  
2 **fat grafts and treatment of sleep apnea, among others.”** (emphasis added).

3 54. The AMA House of Delegates further noted that several of the OMS  
4 training programs in California that are teaching the procedures listed above are state-  
5 funded.

6 55. The AMA House of Delegates, California delegation, in response to the  
7 Dental Board’s Ad Hoc Committee recommendation to include within the scope of  
8 practice of the OMS those areas listed above, issued the following resolution:  
9 “RESOLVED, That the American Medical Association encourage state medical  
10 societies to vigorously oppose state legislative proposals to expand the scope of  
11 practice of dentists or non-MD oral and maxillofacial surgeons licensed under the  
12 state’s Dental Practice Act.”

13 56. On or about January 24, 2000, the Defendant Dental Board sent its  
14 Letter-Order to Plaintiffs and, Plaintiffs are informed and believe and thereon allege  
15 to all dentists licensed in California, rejecting the recommendations of its own Ad Hoc  
16 Committee, and stating as follows:

- 17 1. California law currently prohibits a dentist from performing  
18 cosmetic procedures that are not part of the treatment, by surgery  
19 or other methods, of diseases, lesions or the correction of  
20 malpositions of the human teeth, alveolar process, gums, jaws, or  
21 associates structures. This includes unrelated cosmetic  
22 procedures.
- 23 2. Cosmetic procedures performed on the body<sup>1</sup> are clearly medical  
24 in nature and not within the scope of practice of dentistry.
- 25 3. Rhinoplasty and septoplasty are medical procedures not within  
26 the scope of the practice of dentistry unless directly related to and  
27 part of the treatment for a dental condition; [sic] such as facial  
28 trauma or congenital maxillofacial anomalies.

The Board trusts this clarifies the scope of the dental license with respect  
to performing cosmetic surgery procedures and that you will limit your  
practice accordingly.

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1 To the extent “the body” refers to the arms, legs, torso, and the like, of course,  
2 Plaintiffs have no quarrel with the Letter-Order.

1 January 24, 2000 Letter-Order, Exhibit A. Through this Letter-Order, the Dental Board  
2 has unlawfully legislated, regulated and/or unilaterally constricted and/or restricted  
3 the scope of dental licensure of the Plaintiffs and the related advertising of Plaintiffs  
4 herein, and has exposed Plaintiffs to disciplinary action, or prosecution, in violation of  
5 their constitutional rights.

6 57. Many affected California dentists have performed procedures now  
7 declared to be prohibited in the January 24, 2000 Letter-Order. Those California  
8 dentists risk loss of licensure by the Dental Board, see Section 651(g) of the Business &  
9 Professions Code, and criminal penalties, see Section 651(f) of the Code.

10 58. In its Letter-Order, the Dental Board ostensibly permits "dual degree"  
11 (D.D.S., M.D.) oral surgeons to perform the procedures at issue, while permitting  
12 "single degree" OMSs (D.D.S.) to perform the procedures only in situations directly  
13 related to and as part of the treatment of facial trauma or congenital maxillofacial  
14 anomalies. In other words, the Dental Board has recognized the single-degree OMSs'  
15 ability to perform the procedures for facial trauma or congenital maxillofacial  
16 anomalies, but is now prohibiting the single-degree OMSs from performing those  
17 same procedures for esthetic related reasons, stating that the performance of those  
18 procedures for esthetic reasons is beyond the scope of practice of dentistry, is medical  
19 in nature, and constitutes the unlicensed practice of medicine, while performance of  
20 those same procedures for facial trauma or congenital maxillofacial anomalies is  
21 ostensibly not medical in nature and does not constitute the unlicensed practice of  
22 medicine.

23 59. The Dental Board's January 24, 2000 Letter-Order places the Plaintiffs  
24 and other similarly-situated California OMSs at imminent risk of being prosecuted for  
25 the "unlicensed practice of medicine." Plaintiffs are informed and believe and thereon  
26 allege that the Defendant Dental Board has already commenced disciplinary  
27 investigations and/or proceedings against California OMSs pursuant to the mandates  
28 of its January 24, 2000 Letter-Order.

1           60.    The Dental Board’s Letter-Order has placed the Plaintiffs and other  
2 similarly situated California OMSs at risk of suspension or revocation of their  
3 professional licenses.

4           61.    The Dental Board has placed the Plaintiffs and other similarly situated  
5 California OMSs at risk of loss of their constitutionally protected property interest in  
6 their professional license. Moreover, by virtue of its prohibitions, the January 24, 2000  
7 Letter-Order has already caused a loss of business and diminution in the income of  
8 Plaintiffs and others similarly situated.

9           62.    The restrictions set forth in the Dental Board’s Letter-Order are contrary  
10 to the scope of the required courses that must be taught to dentists in the accredited  
11 postgraduate programs in oral and maxillofacial surgery in California.

12           63.    Plaintiffs Dr. Machado and Dr. Cutri teach in accredited postgraduate  
13 oral and maxillofacial surgery programs in California and must, pursuant to the  
14 accreditation criteria of the CDA, teach dentists in said programs those procedures  
15 deemed beyond the scope of the dental license in California by the Defendant Dental  
16 Board. The postgraduate students must learn and perform those procedures deemed  
17 unlawful in the Dental Board’s Letter-Order.

18           64.    Their teaching obligations put these Plaintiffs at risk for aiding and  
19 abetting the unlawful practice of medicine, violating the directives of the Defendant  
20 Dental Board, facing disciplinary action by the Dental Board and/or criminal  
21 prosecution. Those dentists receiving that training and experience are similarly at risk  
22 for performing those procedures deemed unlawful in the Dental Board’s Letter-Order.

23           65.    The restrictions set forth in the Dental Board’s Letter-Order have  
24 unlawfully restricted the scope of dental licensure and the ability of the Plaintiffs to  
25 perform well-established reconstructive and cosmetic oral and maxillofacial surgical  
26 procedures that they have been performing for decades in California, and that are  
27 performed by other OMSs nationwide.

28    ///

1           66.     The directives, mandates and restrictions set forth in the Dental Board's  
2 Letter-Order are having and will have a detrimental effect on California's citizens'  
3 right to choose a particular OMS who will best serve their reconstructive and related  
4 oral and maxillofacial surgical needs.

5           67.     As a result of the Dental Board's Letter-Order, threatening prosecution  
6 or disciplinary action against their professional licenses, Plaintiffs and other similarly-  
7 situated California dentists have ceased to perform many of the oral and maxillofacial  
8 surgical procedures they were trained to perform and had previously been  
9 performing with the explicit or implicit approval of the Board.

10          68.     The Dental Board's Letter-Order has already caused and is causing  
11 injury and creates a threat of additional injury to the Plaintiffs and other similarly-  
12 situated California OMSs.

13          69.     Many of the Plaintiffs and other similarly situated OMSs have  
14 purchased very expensive laser equipment and other expensive equipment used for  
15 the performance of certain of the procedures now prohibited under the January 24,  
16 2000 Letter-Order. Plaintiffs would not have purchased this equipment if they had  
17 known of the restrictions contained in the Letter-Order as they are essentially  
18 prohibited from using the equipment yet required to continue making payments on it.  
19 For one Plaintiff, Dr. Scheer, for example, the monthly payments for this equipment  
20 are approximately \$4000. Training courses in the use of this equipment for cosmetic  
21 oral and **maxillofacial surgical procedures** were specifically approved by the Dental  
22 Board for continuing education credit. As a result, the Dental Board had knowledge  
23 that Plaintiffs and other similarly situated OMSs were engaged in these now  
24 prohibited procedures, and the Dental Board gave tacit approval for the use of the  
25 equipment and the performance of the procedures by Plaintiffs and other similarly  
26 situated OMSs.

27          70.     As a result of the Dental Board's Letter-Order, Plaintiffs and other  
28 similarly-situated California OMSs have suffered public ridicule and damage to their

1 professional reputations by allegations and inferences that they have been unlawfully  
2 performing procedures beyond the scope of their licenses and further in violation of  
3 the respective hospital bylaws of hospitals in which Plaintiffs have hospital privileges.

4 71. As a result of the Dental Board's Letter-Order, many of the Plaintiffs and  
5 other similarly-situated California OMSs have suffered from restrictions placed upon,  
6 or the total loss of, their previously granted hospital privileges to perform the  
7 cosmetic oral and maxillofacial surgical procedures at issue.

8 72. The actions of the Plaintiffs and other similarly-situated OMSs have  
9 been chilled, in that they have ceased performing procedures they had previously  
10 performed, under the threat of prosecution and/or disciplinary action contained in  
11 the Dental Board's Letter-Order.

12 73. Plaintiffs are informed and believe and thereon allege that Plaintiffs and  
13 other similarly-situated OMSs are also in imminent risk of revocation or suspension of  
14 their licenses to practice dentistry as a result of having exercised their First  
15 Amendment right to engage in commercial free speech by advertising, or by having  
16 advertised, that they perform the cosmetic oral and maxillofacial surgical procedures  
17 at issue.

18 74. Plaintiffs are informed and believe and thereon allege that Plaintiffs and  
19 other similarly-situated California OMSs are at imminent risk of disciplinary action,  
20 including revocation and/or suspension of licensure, for performing cosmetic oral  
21 and maxillofacial surgical procedures in situations that are not authorized in the  
22 Defendants' Letter-Order and that may be found to be non-trauma or non-medically  
23 necessary situations. Although no formal disciplinary action is presently pending  
24 against Plaintiffs, Plaintiffs are informed and believe and thereon allege that the  
25 Defendant Dental Board has commenced investigations of licensed dentists who have  
26 performed the cosmetic oral and maxillofacial surgical procedures deemed beyond  
27 the scope of dental licensure by the Board's January 24, 2000 Letter-Order.

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1           75. Plaintiffs are informed and believe and thereon allege that Board has  
2 also has also communicated with hospitals that have granted privileges to perform  
3 those cosmetic oral and maxillofacial procedures recently deemed unlawful by the  
4 Defendant Dental Board for the purpose of placing the hospital staff status of  
5 Plaintiffs and others similarly situated in jeopardy. Hospital staff status is a valuable  
6 property right protected under the United States Constitution.

7           76. Plaintiffs are at risk today and have been unlawfully forced to abide by  
8 the Dental Board's directives, reflected in the Letter-Order at issue, and to forego  
9 performing procedures that have constituted part of their respective practices in  
10 cosmetic oral and maxillofacial surgery. Plaintiffs have also lost the income relating  
11 thereto. Alternatively, if Plaintiffs ignore the Dental Board's Letter-Order, they are  
12 placed at risk of civil and criminal penalties, public humiliation, and potential loss of  
13 license if they should continue to practice the procedures at issue as they have for the  
14 many years since they commenced practicing cosmetic oral and maxillofacial surgery  
15 in California.

16           77. Even if some avenue of exhaustion were arguably available, forcing  
17 Plaintiffs to risk civil penalties and criminal prosecution or to forego property and  
18 liberty rights inherent in their dental licenses and their professions that Plaintiffs have  
19 enjoyed for many years would violate constitutional principles. Given governmental  
20 immunities and other principles of law, Plaintiffs are most likely unable to recover  
21 damages for lost income during the period in which they forego property rights in  
22 compliance with the January 24, 2000 Letter-Order, with the result that imposition of  
23 an exhaustion requirement would cause Plaintiffs to suffer damages without a  
24 remedy. Damages without remedy are recognized as creating irreparable harm,  
25 rendering administrative procedures inadequate and entitling Plaintiffs to seek  
26 judicial redress at this time.

27           78. There is no clearly defined administrative machinery in existence for the  
28 presentation, evaluation, and resolution of Plaintiffs' objections to the January 24, 2000

1 Letter-Order. The Dental Board issued the January 24, 2000 Letter-Order without  
2 notice and opportunity for a hearing, bypassing rule-making procedures and avoiding  
3 formal public notice, comment and compliance with other procedural safeguards  
4 attached thereto. The Dental Board has stated its position and has established its  
5 enforcement policy, with the result that there are no administrative proceedings in  
6 this matter pending, scheduled, or available. Given the finality of the Dental Board's  
7 Letter-Order, any attempts to seek relief from the Dental Board would be futile.

8 79. The January 24, 2000 Letter-Order presents an issue of general public  
9 concern and a prompt resolution of the issues presented in this action is appropriate.  
10 Plaintiffs and similarly situated California dentists have engaged in the now-  
11 prohibited procedures for many years. The definition of the practice of dentistry,  
12 Business & Professions Code section 1625, has not been amended in a quarter century,  
13 yet the Dental Board has elected to alter the definition on its own, without receiving  
14 direction from the Legislature, without engaging in rule-making or other  
15 administrative procedures, and without consideration of the constitutional rights of  
16 the Plaintiffs and other California licensed dentists/oral and maxillofacial surgeons.

17 80. In many rural California communities, physician/surgeons trained and  
18 capable of performing the procedures at issue are scarce, and the most qualified and  
19 experienced professionals to perform such services are oral and maxillofacial surgeons  
20 such as the Plaintiffs. The January 24, 2000 Letter-Order deprives California residents  
21 of these services to their detriment and should be judicially addressed promptly.

22 81. Although the declaratory decision process specified in California law is  
23 not amenable to addressing the issues at hand, the Dental Board's past history of  
24 failing to respond to applications for a declaratory decision, especially coupled with  
25 its election to issue the January 24, 2000 Letter-Order without notice and opportunity  
26 to be heard, reflect that it is highly unlikely that the Board could or even would  
27 address the subject matter of its January 24, 2000 Letter-Order at Plaintiffs' request

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1 absent a judicial decision on the merits. Moreover, the Dental Board has already  
2 decided the issues, and acted, through the Letter-Order at issue.

3 82. At all times after January 24, 2000, the Dental Board and the other  
4 Defendants have had a policy to define the scope of the dental licenses of the Plaintiffs  
5 and other similarly situated OMSs as set forth in the Letter-Order. This policy  
6 continually deters Plaintiffs and other similarly situated OMSs from engaging in  
7 aspects of the practice of dentistry that had been long accepted as permitted and  
8 encouraged before January 24, 2000. This continuing injury affects Plaintiffs and other  
9 similarly situated OMSs to their detriment and threatens to continue to affect them  
10 adversely into the future, absent relief from this Court.

11 83. The Dental Board's actions and acknowledgment of its intention to  
12 enforce the terms stated in its Letter-Order constitute multiple violations of 42 U.S.C. §  
13 1983.

14 **COUNT ONE**

15 **(Facial Violation of First and Fifth Amendment Rights)**

16 84. The Dental Practice Act and Business & Professions Code section 1625  
17 entitle Plaintiffs and similarly situated California OMSs to engage in the practice of  
18 dentistry. The Board has asserted in its Letter-Order that OMSs in California are  
19 allowed to perform certain cosmetic oral and maxillofacial surgical procedures only  
20 under the limited circumstances delineated in that Letter-Order.

21 85. The Dental Board in its Letter-Order has restricted California OMSs,  
22 without due process of law and in violation of the constitutional rights of California  
23 OMSs, from performing procedures authorized by the Dental Practice Act and  
24 Business and Professions Code 1625 that they have performed in the past with the full  
25 knowledge and approval, either explicit or implicit, of the Board.

26 86. The Dental Board's Letter-Order constitutes an unconstitutional  
27 restriction of and/or taking of the licensure rights and/or property interests of the  
28 Plaintiffs and other similarly-situated California OMSs, a deprivation of their

1 protected property interest in their dental licenses and a deprivation, diminishment  
2 and/or taking of their good name and professional reputation, also protected by the  
3 United States Constitution. Therefore, the Letter-Order is unconstitutional on its face.

4 87. Plaintiffs and other similarly-situated California OMSs are in imminent  
5 risk of irreparable injury caused by the Dental Board by being subjected to  
6 investigations, public allegations of misconduct, loss of hospital privileges, public  
7 disciplinary hearings and public disciplinary action, as well as criminal prosecution,  
8 all of which flow from the deprivation of rights guaranteed by the Fifth and First  
9 Amendment of the United States Constitution, incorporated to the States by the  
10 Fourteenth Amendment.

11 88. Plaintiffs and other similarly-situated California OMSs who wish to  
12 truthfully inform the public of their education, training and certification to perform  
13 cosmetic oral and maxillofacial surgical procedures are in imminent risk of irreparable  
14 injury unless this Court declares the Dental Board's Letter-Order unconstitutional and  
15 grants Plaintiffs the injunctive relief sought.

## 16 COUNT TWO

### 17 **(As Applied Violation of First and Fifth Amendment Rights)**

18 89. Because the Dental Board has explicitly threatened to prosecute and/or  
19 discipline any California OMS who performs cosmetic oral and maxillofacial surgical  
20 procedures other than for trauma-related purposes, while at the same time allowing  
21 California OMSs to perform the same cosmetic oral and maxillofacial surgical  
22 procedures for trauma-related purposes, the Board's Letter-Order is an  
23 unconstitutional restriction of the Plaintiffs' and other similarly-situated California  
24 OMSs' protected property interest in their professional licenses without due process  
25 of law.

26 90. Because the Dental Board has explicitly threatened to prosecute and/or  
27 discipline any California OMS who performs cosmetic oral and maxillofacial surgical  
28 procedures other than for trauma-related purposes, while at the same time allowing

1 California OMSs to perform the same cosmetic oral and maxillofacial surgical  
2 procedures for trauma-related purposes, the Board's Letter-Order is an  
3 unconstitutional restriction of the Plaintiffs' and other similarly-situated California  
4 OMSs' constitutionally protected right to engage in free speech without due process of  
5 law. Plaintiffs and other similarly-situated California OMSs who wish to truthfully  
6 inform the public of their education, training and certification to perform cosmetic  
7 oral and maxillofacial surgical procedures are in imminent risk of irreparable injury  
8 unless this Court declares the Board's Letter-Order unconstitutional as applied to  
9 Plaintiffs and grants Plaintiffs the injunctive relief sought.

10 91. Plaintiffs and other similarly-situated California OMSs are in imminent  
11 risk of irreparable injury by the Dental Board by being subjected to investigations,  
12 public allegations of misconduct, public disciplinary hearings and public disciplinary  
13 action, as well as criminal prosecution, affecting a constitutionally-protected property  
14 interest in licensure, all of which flow from the deprivation of rights guaranteed by  
15 the First and Fifth Amendment of the United States Constitution, incorporated to the  
16 States under the Fourteenth Amendment, without due process of law.

17 92. Plaintiffs and other similarly-situated California OMSs who wish to  
18 truthfully inform the public of their education, training and certification to perform  
19 cosmetic oral and maxillofacial surgery, are in imminent risk of irreparable injury by  
20 the Dental Board by being subjected to investigations, public allegations of  
21 misconduct, public disciplinary hearings and public disciplinary action, as well as  
22 criminal prosecution, affecting a constitutionally-protected property interest in  
23 licensure, unless this Court declares that the Board's Letter-Order is unconstitutional  
24 and grants the Plaintiffs the injunctive relief sought.

25 **COUNT THREE**

26 **(Violation of First Amendment Commercial Speech Rights)**

27 93. The Dental Board's Letter-Order is an unconstitutional infringement of  
28 the commercial free speech rights of the Plaintiffs and other similarly-situated

1 California OMSs, which rights are guaranteed by the First Amendment of the  
2 Constitution as applied to the states through the Due Process Clause of the Fourteenth  
3 Amendment.

4 94. Plaintiffs and other similarly-situated California OMSs who wish to  
5 truthfully inform the public of their education, training and certification to perform  
6 cosmetic oral and maxillofacial surgery, are in imminent risk of irreparable injury by  
7 the Dental Board by being subjected to investigations, public allegations of  
8 misconduct, public disciplinary hearings and public disciplinary action, as well as  
9 criminal prosecution, affecting their constitutionally-protected property interest in  
10 licensure, unless this Court declares that the Board's Letter-Order is unconstitutional  
11 and grants the Plaintiffs the injunctive relief sought.

#### 12 COUNT FOUR

#### 13 **(Violation of Fourteenth Amendment Right to Teach)**

14 95. The teaching obligations of Plaintiffs Dr. Machado and Dr. Cutri,  
15 pursuant to the accreditation criteria of the CDA, require them to teach dentists  
16 procedures deemed beyond the scope of the dental license in California by the  
17 Defendant Dental Board. These teaching obligations put these Plaintiffs at risk for  
18 aiding and abetting the unlawful practice of medicine, violating the directives of the  
19 Defendant Board, facing disciplinary action by the Defendant Board and/or criminal  
20 prosecution.

21 96. Plaintiffs Dr. Machado and Dr. Cutri and other similarly-situated  
22 California OMSs enjoy constitutional rights to teach and communicate, and to earn  
23 money through teaching, yet the Letter-Order creates the risk of civil and criminal  
24 penalties for the exercise of these constitutional rights in conformity with the  
25 accreditation criteria of the CDA.

26 97. Plaintiffs Dr. Machado and Dr. Cutri and other similarly-situated  
27 California OMSs who wish to teach cosmetic oral and maxillofacial surgery, are in  
28 imminent risk of irreparable injury by the Dental Board by being subjected to

1 investigations, public allegations of misconduct, public disciplinary hearings and  
2 public disciplinary action, as well as criminal prosecution, affecting their  
3 constitutionally-protected property and liberty interests, unless this Court declares  
4 that the Board's Letter-Order is unconstitutional and grants these Plaintiffs the  
5 injunctive relief sought.

6 WHEREFORE, Plaintiffs pray for the following relief:

7 1. A declaration that the Dental Board's Letter-Order dated  
8 January 24, 2000 and its declared policy of restricting California OMSs from  
9 performing cosmetic oral and maxillofacial surgical procedures for esthetic reasons is  
10 unconstitutional on its face; and

11 2. A declaration that the Dental Board's Letter-Order dated January  
12 24, 2000 and its declared policy of restricting California OMSs from performing  
13 cosmetic oral and maxillofacial surgical procedures for esthetic reasons are  
14 unconstitutional as applied to the Plaintiffs; and

15 3. A permanent injunction prohibiting the Defendants from  
16 implementing, or otherwise enforcing, the policies, mandates, and interpretations set  
17 forth in its January 24, 2000 Letter-Order; and

18 4. An award to Plaintiffs for all attorneys' fees and costs incurred in  
19 bringing this action, pursuant to 42 U.S.C. § 1988; and

20 5. An order granting to the Plaintiffs all other relief to which they  
21 may be entitled at law or in equity.

22 DATED: January 25, 2001

23 FRANK R. RECKER & ASSOCIATES CO.

24 and

25 McDONOUGH, HOLLAND & ALLEN  
26 A Professional Corporation

27 By: \_\_\_\_\_  
28 ANN TAYLOR SCHWING  
*Attorneys for Plaintiffs*