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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 ATZE AKKERMAN and
11 ELIZABETH AKKERMAN; each
suing individually and on behalf of
12 the general public,
13 Plaintiffs,
14 v.
15 MECTA CORPORATION, and
DOES 1-20.
16 Defendants.

Case No. 01-10362 RSWL(RZx)

**SECOND AMENDED COMPLAINT
FOR DAMAGES FOR PRODUCTS
LIABILITY; NEGLIGENCE; LOSS
OF CONSORTIUM; BREACH OF
WARRANTY, AND FOR
INJUNCTIVE RELIEF AND
RESTITUTION FOR CONSUMER
FRAUD AND FALSE AND
DECEPTIVE ADVERTISING
PURSUANT TO BUSINESS AND
PROFESSIONS CODE §§17200 &
17500 AND WEL.& INST. CODE**

JURY TRIAL DEMANDED

18
19
20 1. This is an action for damages against defendant MECTA Corporation
21 (“MECTA”), for grievous harm inflicted upon plaintiff Atze Akkerman, both to
22 his body and his mind, by electro-convulsive therapy (“ECT”), better known as
23 “shock treatment.” The shock treatment caused Mr. Akkerman to experience
24 substantial amnesia, including the loss of his knowledge and memories of his wife
25 and their 17-year marriage, knowledge and memories of his parents, loss of
26 knowledge and abilities including musical composition and most of his ability to

1 play music, loss of his job, and the loss of all memories of his teenage children and
2 their entire family life together. In short, his past memories of those things which
3 make life most important and skills he learned to make a living and survive, have
4 been taken from him, through fraud, lies and negligence; through the manufacture,
5 sale, distribution, and propagation by the defendants and their co-conspirators of a
6 device that is extremely dangerous to human beings. This action is brought by
7 plaintiffs individually for monetary damages, and also seeks to enjoin defendants
8 from defrauding and deceiving the public in violation of California Business and
9 Professions Codes Sections 17200 & 17500. As to the injunctive and declaratory
10 relief sought, the action is brought on behalf of the general public for false,
11 misleading and deceptive advertising and deceptive business practices relating to
12 the promotion, sale and use of electro-shock therapy devices; and equally false,
13 misleading and deceptive advertising which minimizes or ignores the permanent
14 injuries and often deadly results caused by "shock therapy."

15 **PARTIES**

16 2. Plaintiff Atze Akkerman is a resident of Ventura, California.

17 3. Plaintiff Elizabeth Akkerman is a resident of Camarillo, California.

18 4. MECTA Corporation is, on information and belief, an Oregon
19 corporation, engaged in the business of manufacturing and distributing shock
20 treatment devices in California. MECTA engages in advertising and sale of its
21 goods in Ventura County, and elsewhere within this federal judicial district.

22 **JURISDICTION AND VENUE**

23 5. This action was filed in Ventura County where plaintiffs live, however
24 was removed to federal court by defendant. Defendant MECTA advertises and
25 does business in this county, state and federal district.

26 //

1 knew his wife. He no longer recognized or knew his two teenage children. He no
2 longer knew or recognized his parents. His brother, who was a close companion
3 and best friend in his childhood years, is a stranger. Mr. Akkerman has essentially
4 no memory of past events with any of his family; they are all wiped out and
5 destroyed by the force of the shock treatment.

6 10. Mr. Akkerman was taken back to his home by persons he conceived
7 to be strangers, although in the case of his wife, she had lived with him and shared
8 his life for 17 years; and as to his children, they had shared their entire lives with
9 him. He has never recovered these memories. He has never recovered these
10 intimate relationships in the months following his shock treatment.

11 11. Mr. Akkerman was formerly engaged as a musician in the Navy,
12 playing keyboards and horns. He played French horn in a local philharmonic
13 orchestra. He played professionally for various events and performances on
14 keyboard, piano, synthesizer, and various horns and wind instruments. While over
15 the following months, Mr. Akkerman recovered parts of his once immense
16 abilities to play music, for the most part the ability and knowledge was lost and
17 destroyed by the shock treatment. He has disposed of most of his musical
18 equipment as it has become useless to him.

19 12. Prior to the shock treatment, Mr. Akkerman was employed in a
20 supervisory position with the Turning Point Foundation. After the shock
21 treatment, he was unable to remember what he did in his job, did not know how to
22 perform the duties of his job and no longer knew the people he formerly worked
23 with.

24 13. Although Mr. Akkerman had no recollection of the conversation
25 with Dr. Johnson prior to his shock treatment, he was informed by his wife that
26 Dr. Johnson told them both that any memory temporarily reduced would quickly

1 return. When after nearly two months Mr. Akkerman's memory did not return as
2 promised, Mr. Akkerman contacted Dr. Johnson and sought from him a letter for
3 his employer as to the reason he was unable to perform his work. On February 28,
4 2000, Dr. Johnson represented in writing that Mr. Akkerman's memory, "will
5 improve completely soon." Relying upon both the original representations of Dr.
6 Johnson told to him by his wife, and the February 28, 2000 representations, Mr.
7 Akkerman reasonably believed that his memory would return. He patiently waited
8 for his memory to return in accordance with the representations made to him.

9 14. Over the following months, Mr. Akkerman's position with his job
10 became more and more untenable. Unable to remember what his work entailed,
11 unable to contribute, finally he was fired in February 2001 as incompetent to
12 handle a position he competently performed prior to the shock treatment.

13 15. Mr. Akkerman's prior loving and intimate relationship with his wife
14 was also destroyed by the shock treatment. While he was informed that Liz
15 Akkerman was his wife, and he attempted for months to learn what he was
16 supposed to do, feel and think as a husband, he has been unable to do so.
17 Eventually, Mr. Akkerman developed psychosomatic ailments in proximity to his
18 wife, becoming physically ill and even vomiting when he spent more than a short
19 time with her.

20 16. In May of 2000, Mr. Akkerman finally realized that if he had not
21 regained his memory as of then, over a year after his shock treatments, that he had
22 been lied to and defrauded and that his memory would not likely return. The brain
23 damage and injuries to Mr. Akkerman caused by the shock treatment exacerbated
24 his inability to recognize his injuries – as often occurs with victims of shock
25 treatment.

26 17. Mr. Akkerman has attempted to re-unite with his family and re-

1 establish what he was told was a formerly loving relationship. However, he has
2 been unable to establish a viable relationship and remains separated from them,
3 but for short visits.

4 18. Unable to work, Mr. Akkerman has been unemployed for nearly 3
5 years and lives in a recreational vehicle in his parents' backyard.

6 19. Mrs. Akkerman has lost the support, love, affection and consortium
7 she previously enjoyed with her husband, arising out of the damage caused to him
8 by the shock treatments.

9 20. Defendant MECTA knew when it sold the ECT machine to Santa
10 Barbara Cottage Hospital and promoted the use of its machines in California and
11 elsewhere, that the history and literature regarding the use of ECT is littered with
12 stories of disabling injury, death, memory loss, extensive memory loss of long
13 duration, loss of substantial memory of events prior to ECT, loss of cognitive
14 abilities and loss of ability to experience normal emotional response to life and
15 relationships, a small part of which is addressed below.

16 **FACTUAL ALLEGATIONS REGARDING THE NATURE OF**
17 **SHOCK TREATMENT AND DEFENDANTS' FRAUD**

18 21. While the psychiatrist and hospital who inflicted shock treatment on
19 plaintiff Atze Akkerman, on information and belief, did so intentionally or with
20 gross negligence and with knowledge that he would be or would be expected to be
21 severely harmed, even the psychiatrists were not provided the full scope of the
22 harm expected to be caused by the machines to living subjects, which information
23 was fully known by MECTA. Practitioners of ECT, their patients, and the public
24 at large are also the subjects of fraudulent, misleading and deceptive advertising
25 and unfair and fraudulent business conduct by defendant MECTA Corporation,
26 which distributes false consumer information and misleading testimonial

1 information regarding the dangers and effects of shock treatment, which produces
2 an inherently dangerous machine for the purpose of causing brain damage and
3 memory loss. Ignoring the official patient surveys of the states which conduct
4 such surveys – including California – defendant publicly promotes that shock
5 treatment does not cause brain damage, and falsely promotes that shock treatment
6 causes little or no long term memory loss. In fact, shock treatment “works” by
7 damaging the brain, and permanent memory loss is experienced by virtually all
8 victims of this activity.

9 22. Shock treatment was developed in the early part of this century in
10 European slaughterhouses for the purpose of incapacitating animals without
11 killing them, so that their throats could be slit and the animals more easily bled
12 while alive. Personally observing such treatment, Italian psychiatrist Dr. Ugo
13 Cerletti experimented with the practice. Cerletti and his staff bribed authorities to
14 provide stray dogs that were experimented on with shock devices and many, in the
15 process, died. Cerletti persevered however, experimenting until he found an
16 appropriate voltage and duration of shock which did not kill many of the animals.
17 Cerletti decided to try the same practice on humans, for reasons that defy rational
18 explanation. The first human victim was a derelict found in the streets of Rome.
19 Cerletti shocked the “patient” and found that since he was not killed by the
20 treatment, and was substantially quieter than he had been before meeting Cerletti
21 and his staff, that the treatment was “effective” in relieving mental illness.

22 23. The most commonly manifested “side effect“ of shock treatment was
23 that of broken bones, particularly of the spine. The patient would be strapped to a
24 table, with a rubber mouthpiece inserted to prevent the patient from biting off his
25 tongue or breaking teeth when his teeth involuntarily clenched during the
26 treatment. Electrodes would be placed on the temple of the patient, and varying

1 amounts and various durations of electricity would be forced through the brain
2 from temple to temple, causing immediate and violent convulsions, typically
3 resulting in compression fractures of the spine, broken teeth and dislocated joints.
4 Eventually, the dramatic and damaging results of shock treatment caused its
5 practitioners to apply muscle "relaxants" which made muscle contractions
6 impossible. While substantially lessening the number of bone fractures, such
7 medication, however, did not save the brain.

8 24. Early proponents of electro-shock therapy acknowledged as obvious,
9 what the current purveyors of this practice today hide: that a "change" in the
10 patient is brought about by damage to the brain and loss of memory. Such
11 concession was prevalent in the 1940s, as published by psychiatrist Walter
12 Freeman, M.D., in discussing "brain damage and the 'therapeutic' benefit resulting
13 from various psychiatric procedures, including ... shock therapy..." Freeman
14 admitted that the *intention* of these practices was to cause brain damage:

15 The apparent paradox develops, however, that the greater the damage,
16 the more likely the remission of psychotic symptoms ... It has been
17 said that if we don't think correctly, it is because we haven't 'brains
18 enough.' Maybe it will be shown that a mentally ill patient can think
19 more clearly and more constructively with less brain in actual
20 operation.

21 25. Medical reports and journals during the 1940s frequently repeated the
22 known physical damages caused by shock treatment, including "profound changes
23 in general circulation," "coronary complications," heart attacks, deaths, coma,
24 lung abscesses, and "Reversible or irreversible central nervous system changes
25 [which] must accompany the amnesia characteristic of the usual shock-induced
26 organic syndrome." Such a result was acknowledged through the 1940's and
1950's as the source of the "effectiveness" of the treatment. As noted in one study
on "experimental neurosis," caused by giving shock treatment to animals, "All in

1 all, these experiments support the growing conviction among psychiatrists that
2 electroshock and other drastic procedures, though possibly useful in certain
3 relatively recent and acute psychoses, produce cerebral damage which charges the
4 indiscriminate use of such 'therapies' with potential tragedy."

5 26. These "tragedies" were the intended result of this practice, as
6 reported by leading shock doctors in 1948 who reported the "treatment" of a
7 number of patients to reduce them to a state where they acted like small children
8 because they had shown no improvement from other psychiatric procedures:

9 We started by inducing two to four grand mal convulsions daily until
10 the desired degree of regression was reached. After about 10 days to
11 two weeks without treatment, regressed patients returned to their
12 previous levels, but usually without their symptoms. A number of
13 these patients were well enough to go home and carry on as they had
14 before the psychosis developed. We considered a patient had
15 regressed sufficiently when he wet and soiled, or acted and talked like
16 a child of four . . . Sometimes the confusion passes rapidly and
17 patients act as if they had awakened from dreaming; their minds seem
18 like clean slates upon which we can write. They are usually
19 cooperative and very suggestible, and thus amenable to
20 psychotherapy. . . This technique is a valuable asset to psychiatric
21 therapy, where less drastic measures have failed.

22 27. Damage to most patients was obvious, as during this period, a vast
23 number of victims of the treatment suffered compression fractures of the spine and
24 other broken bones. A publication from the National Institutes of Health
25 Consensus Development Conference Statement in 1985 placed the figure of spinal
26 fractures at approximately 20% of those receiving shock treatment. The NIH
27 Consensus report stated that some 40% of persons receiving ECT suffered what
28 has been referred to as "complications" from the treatment, which it noted "the
29 most common being vertebral compression fractures."

30 28. A psychiatrist who publicly argued for the effectiveness of
31 electroshock treatment claimed: "Improvement in effective disorders, follows the
32 induction of transient mental confusion which appears after treatment ... This

1 confusion coincides with recent memory impairment. This transient, induced,
2 organic, psychotic reaction makes the patient forget his worries, breaks up
3 introspection and obsessive thinking and reverses the effect, frequently changing
4 depression into mental elation.” In other words, the purpose of the “treatment” is
5 to cause memory failure and mental confusion.

6 29. Shock treatment thus came to have a well deserved reputation for
7 death, mayhem, destruction of memory and thought. Shock treatment developed
8 such a frightening notoriety thereby, that shock doctors and manufacturers such as
9 MECTA, changed the name of the treatment to avoid association with the past.
10 Thus, the treatment became known as Electroconvulsive Therapy, or “ECT,”
11 pretending that it was brain and body convulsions that caused the alleged
12 therapeutic effect, and not the electricity.

13 30. In the 1970’s, even after the use of extremely strong drugs or “muscle
14 relaxants” such as succinylcholine to paralyze the muscles to stop bones fractures
15 during convulsions, most doctors still recognized that the treatment was causing
16 brain damage and permanent deleterious effects on patients. For example, in a
17 1972 survey of psychiatrists who gave shock treatment, a large percentage
18 conceded that “treatments leave irrecoverable gaps in memory and that a large
19 number of treatments cause intellectual deterioration, seizures, or personality
20 blunting akin to the effects of lobotomy.” The NIH Consensus Statement in 1985
21 thus noted:

22 During the few minutes following stimulus, profound and potentially
23 dangerous systemic changes occur.

24 * * *

24 Depressive disorders are characterized by cognitive deficits that may
25 be difficult to differentiate from those due to ECT. It is, however,
26 well established that ECT produces memory deficits. Deficits in
memory function, which have been demonstrated objectively and
repeatedly, persist after the termination of a normal course of ECT.

1 Severity of the deficit is related to the number of treatments, type of
2 electrode placement, and nature of the electric stimulus. ... research
3 conducted as long as three years after treatment has found that many
4 patients report that their memory was not as good as it was prior to
5 the treatment.

6 31. Psychiatrists and hospitals are able to make a great deal of money
7 through the application of ECT. The purchase of a shock machine from MECTA
8 or one its rivals for approximately \$25,000 permits the application of more than a
9 dozen treatments per day billed at over \$1,000 each – often paid by the state and
10 federal health care or by insurance.

11 32. In the face of the historical evidence of the grave danger of ECT,
12 manufacturers of shock machines such as MECTA Corporation utilized false,
13 misleading and deceptive advertising to sell this dangerous product.

14 **DISTRIBUTION OF FALSE, MISLEADING AND DECEPTIVE**
15 **STATEMENTS BY DEFENDANTS REGARDING CLAIMS OF**
16 **KNOWLEDGE AS TO THE CAUSE OF MENTAL ILLNESS**
17 **AND CURATIVE EFFECTS OF SHOCK TREATMENT**

18 33. Statistics from California surveys by the California Department of
19 Mental Health indicate that over 95% of all ECT patients reporting adverse effects
20 at all, reported long term memory loss.

21 34. Plaintiff Atze Akkerman is an example of the sort of memory loss
22 damage that can be caused by shock treatment. Mr. Akkerman has no memory of
23 the assertions made to him to induce him to consent to ECT, however, the
24 minimalistic information provided to him in writing by Dr. Johnson and the Santa
25 Barbara Cottage Hospital could not remotely provide him with consent which
26 could be considered “informed” consent, as required under California law.
27 However, plaintiff Elizabeth Akkerman was present during the discussion of the
28 effects of ECT, and knows that Mr. Akkerman was told only that he would
29 experience *temporary* memory loss, and even then, primarily of alleged depressive

1 thoughts. The entirety of the worthwhile events of Mr. Akkerman's past, his
2 childhood memories, his loving relationship with his wife of 17 years, the entirety
3 of the birth, growth and nurturing of his own children, is lost to him. His former
4 love of music is gone. His life with his parents and brother is lost and forgotten,
5 forced from his memory by a dangerous electric shock.

6 35. As MECTA knows, ECT does not "work" at all – it simply causes
7 brain damage, loss of memory and loss of will to live. Some patients would not
8 complain regarding a lack of efficacy, for fear of more "treatments" and greater
9 damage. Thus, the advertising and claims regarding how ECT "works" are
10 deceptive, manipulative and fraudulent.

11 36. MECTA disseminates a pamphlet to the public and to health care
12 providers in California and elsewhere, entitled, "Electroconvulsive Therapy
13 (ECT), The Treatment, the questions and the answers," regarding the efficacy and
14 safety of shock treatment. Numerous false statements and deceptive statements
15 are made in the pamphlet, intended to encourage doctors to give patients ECT, to
16 refer patients to practitioners who give ECT, and to convince individuals that ECT
17 is safe and effective. Among the false and deceptive statements in the pamphlet
18 are the following:

- 19 • "Many people have heard that ECT can be uncomfortable or damaging, and
20 they react with fear when it is suggested as a treatment. However, the way
21 ECT is administered has greatly improved. ECT, as performed today, is a
22 safe and effective treatment for severe depression.
- 23 • "During ECT, a small amount of electrical current is sent to the brain. This
24 current produces a seizure which affects the entire brain, including centers
25 which control thinking, mood, appetite, and sleep. Repeated treatments
26 normalize the messengers in these centers. Consequently, patients return to

- 1 a higher level of functioning and begin to recover from their illness.
- 2 • “We know that ECT works – over 80 percent of depressed patients who
3 receive it respond favorably, making ECT the most affective treatment for
4 severe depression. People who have responded to ECT report it made them
5 feel “like themselves again” and as if “life was worth living again.”
 - 6 • “ECT is a very safe procedure. The rates of significant injury or mortality
7 with ECT are very low even though ECT is very commonly performed on
8 elderly patients ...”
 - 9 • “When people are seriously depressed they have a difficult time
10 concentrating and learning new material. When patients recover with ECT,
11 there is often marked improvement in concentration and many other aspects
12 of thinking. However during and shortly following treatment with ECT,
13 patients will usually experience specific difficulties with memory. Many
14 patients experience problems in remembering some events from the recent
15 past. These memory problems typically subside within a few weeks
16 following the ECT course.”
 - 17 • “Regardless of the form of ECT you receive, within a few weeks after
18 receipt of ECT, your ability to learn and remember new information should
19 return to normal. Patients with bilateral ECT may occasionally complain
20 that their memory is not as sharp as before the ECT treatments. The only
21 lasting effect you may experience is a gap in memory for events that
22 occurred in the weeks surrounding the ECT treatment. Some of this loss is
23 likely due to the ECT treatment, and some of it is likely due to the
24 difficulties in learning that arise when people are depressed.”

25 37. The pamphlet distributed by MECTA makes no mention of memory
26 loss under the sections “Are there any risks involved with ECT” or the section,

1 "Side effects and what to do about them." Brain damage is not mentioned
2 anywhere in the pamphlet. Although MECTA is aware of the vast dangers of
3 ECT, and although it had the opportunity to provide adequate warnings of the
4 danger of shock treatment and MECTA's product through such pamphlet, it failed
5 to do so, and intentionally not done so – choosing to leave consumers of this
6 "product" in ignorance of the true nature of the dangers thereof. Worse, through
7 the pamphlet MECTA has chosen to distribute, it has grossly misrepresented the
8 known dangers of the machine it manufacturers and sells, such as misrepresenting
9 that patients will experience an enhanced ability to think, when in fact virtually all
10 persons who receive ECT are impaired in their thinking and their memory. The
11 assertion, "The only lasting effect you may experience is a gap in memory for
12 events that occurred in the weeks surrounding the ECT treatment," is also false,
13 fraudulent and deceptive, as virtually all persons who receive ECT experience
14 permanent memory loss for substantial amounts of memory and abilities they
15 possessed prior to the ECT. The assertion, "Many patients experience problems in
16 remembering some events from the recent past. These memory problems typically
17 subside within a few weeks following the ECT course," is also a knowingly false
18 and deceptive statement, as MECTA knows that while some patients certainly
19 recover a large amount of their lost memory in few weeks, nearly all persons
20 receiving ECT experience massive and long lasting memory loss for years and for
21 the rest of their lives. The statement, "Some of this loss is likely due to the ECT
22 treatment, and some of it is likely due to the difficulties in learning that arise when
23 people are depressed" is also quite deceptive, by diverting the cause of the
24 memory loss to the alleged depression, and using this as a ready justification for
25 the nearly universal memory loss experienced by patients.

26

1 **FIRST CAUSE OF ACTION**

2 (Products Liability - Strict Liability)

3 38. Plaintiffs hereby incorporate by reference as though fully set forth
4 herein, paragraphs 1 to 37, above.

5 39. The Electro-Convulsive Therapy device manufactured and sold by
6 MECTA was known by MECTA to be extremely dangerous, causing memory loss
7 and brain damage to patients against whom it was used. On information and
8 belief, MECTA has known for as long as it has manufactured machines about the
9 dangers of its machines to cause brain convulsions in humans. MECTA knows
10 that the basis for the machines' effect in seeming to temporarily "relieve" some
11 mental conditions is by causing brain damage and by causing memory to be
12 eradicated.

13 40. Defendant MECTA provided no warning to Mr. Akkerman or doctors
14 or hospitals purchasing or utilizing its machines that the alleged "benefits" of its
15 machines are the direct result and sole result of brain damage and loss of memory.
16 Defendant MECTA provided no warning to Mr. Akkerman or other patients who
17 were the recipients of electric shocks from its machines, or the practitioner who
18 might use the machines, that the alleged "benefits" of its machines are the direct
19 result and sole result of brain damage and loss of memory. Defendant MECTA
20 provided no warning to Mr. Akkerman or patients who were the recipients of
21 electric shocks from its machines, or the practitioners who might use the
22 machines, that most patients never recover major portions of their memories, and
23 all patients lose some portion of their memories after "treatment" with its
24 machines. MECTA provided no warning to the purchasers and users of the
25 machines, nor to the end user patients, including Mr. Akkerman, who would
26 receive shock treatment with the machines, that bilateral shock treatment would

1 substantially increase the memory loss and brain damage.

2 41. Defendant MECTA provided no warning to the doctors and hospitals
3 purchasing the machine, or to plaintiff Atze Akkerman, that the machine which
4 would be used on him would cause him brain damage and permanent memory loss.
5 The defects in the machines sold by MECTA were both design defects and
6 inadequate or entirely absent warnings regarding its product. Plaintiffs allege the
7 machine also has a manufacturing defect, in that its machines are made in a
8 manner which is likely to cause additional harm through faulty manufacture –
9 even beyond the intended harm of ECT machines. There is no benefit to
10 consumers that remotely outweighs the damages caused to consumers arising out
11 of use of the machines against them. The danger to Mr. Akkerman and to other
12 consumers by MECTA's product is unreasonable and unfair, and cannot be
13 justified by insulating the company and the consumer with doctors or hospitals
14 who are also not provided specific facts relating to the inherent danger of the
15 product.

16 42. MECTA knew that the machine it was placing on the market would be
17 used by doctors and hospitals on patients, without inspection for defect and
18 knowing that the machine was certain to cause brain damage and loss of memory.
19 Mr. and Mrs. Akkerman, reasonably believing the representations of Dr. Johnson
20 that shock treatments would help Mr. Akkerman, and that any minimal memory
21 loss would be quickly restored, were injured thereby. MECTA knew of the defect
22 in its machines as described herein: that its design ensures brain damage and harm
23 to recipients of the shock, causing memory loss and other cognitive disabilities.

24 43. After the series of shock treatments, plaintiff Atze Akkerman was
25 unable to function at his former place of work, no longer remembering how to do
26 his job, the persons in his place of work or any of the functions of his former

1 work. Although he sought reasonable accommodation at his work for the
2 disabilities he now possesses arising from the shock treatment, he was eventually
3 found to be unemployable as a result of the shock treatments and incapable of
4 functioning in any position at his former employment, and was thus terminated.

5 44. MECTA acted with fraud, oppression and malice for the reasons set
6 forth herein, and that it knew and intended that its product would both
7 temporarily and permanently harm patients, including Mr. Akkerman, but acted
8 with a conscious disregard of the rights and safety of others out of a pecuniary
9 motive to defraud and trick patients, doctors and hospitals in order to sell its
10 product. MECTA's conduct was despicable, subjecting Atze Akkerman (and
11 many other patients in this State) to cruel and unjust hardship in disregard of their
12 rights. Defendant, MECTA, is strictly liable for failing properly to prepare and/or
13 warn of the dangerous propensities of ECT. Defendant MECTA knew that electric
14 shock treatment was defective and that those who were prescribed and
15 administered ECT would experience, and did experience, severe physical, mental,
16 and emotional damages/injuries and yet, notwithstanding this knowledge,
17 MECTA, despicably, and in willful and conscious disregard of the safety of those
18 who were prescribed electric shock treatments and of the plaintiff herein, without
19 giving any notice of the defect to the purchasers of electric shock treatment, placed
20 and persisted in placing electronic shock treatment machines in the stream of
21 commerce. Plaintiffs are entitled to compensation in the amount of no less than
22 \$2,000,000 in compensatory damages and punitive damages in an amount to be
23 determined by the jury, under this cause of action.

24 SECOND CAUSE OF ACTION

25 (Negligence)

26 45. Plaintiffs hereby incorporate by reference as though fully set forth

1 herein, paragraphs 1 to 44, above.

2 46. Any reasonably prudent manufacturer of a device intended to be
3 applied to humans which directs a potentially lethal and dangerous electrical shock
4 through the brains of the patients to receive the treatment offered, would have
5 warned plaintiffs of the dangers inherent in the machine: that the machine would
6 cause brain damage; that the machine would cause some level of memory loss; and
7 the machine would cause amnesia for events prior to the application of the shock
8 treatment. The risks inherent in shock machines are known and knowable to
9 MECTA, but, by failing to provide reasonable warning either to the purchasers
10 and users of its machines (doctors and hospitals), or to the patients victimized by
11 its machines; and by minimizing the dangers, MECTA acted in a grossly negligent
12 fashion without regard to the health, safety or lives of persons who were likely to
13 be harmed by its machines.

14 47. Plaintiffs are entitled to compensation in the amount of no less than
15 \$2,000,000 in compensatory damages, and punitive damages in an amount to be
16 determined by the jury, under this cause of action.

17 **THIRD CAUSE OF ACTION**

18 (Breach of Warranty)

19 48. Plaintiffs hereby incorporate by reference as though fully set forth
20 herein, paragraphs 1 to 47, above.

21 49. Defendant MECTA, expressly and impliedly warranted to the
22 physicians and their health-care patients, including Mr. Akkerman, that electric
23 shock treatments was a treatment fit for the use for which it was intended and was
24 of merchantable quality despite the fact that the product was unfit and unsafe for
25 use by health-care patients in light of its known propensity to cause serious side-
26 effects, including, but not limited to physical, mental and emotional injuries to

1 persons subjected to electric shock treatment.

2 50. Plaintiffs are entitled to compensation in the amount of no less than
3 \$2,000,000 in compensatory damages, and punitive damages in an amount to be
4 determined by the jury, under this cause of action.

5 **FOURTH CAUSE OF ACTION**

6 (Loss of Consortium)

7 51. Plaintiff Elizabeth Akkerman hereby incorporates by reference as
8 though fully set forth herein, paragraphs 1 to 50 above.

9 52. After the series of shock treatments, plaintiff Atze Akkerman
10 experienced complete amnesia as to his former life with his wife, plaintiff
11 Elizabeth Akkerman. In his initial state of confusion and disorientation and
12 general mental debilitation following the shock treatments, Mr. Akkerman was
13 driven to his home by his wife and/or his parents and he lived in his home with his
14 wife and two children. Atze was made to understand and was informed that
15 Elizabeth was his wife, that his children were his children, but he knew and
16 remembered none of them. Mr. Akkerman tried for a year to reunite with his wife
17 and family and recall or re-establish what he was told he once possessed – a loving
18 and close relationship. He was unsuccessful. Eventually, he developed physical
19 illnesses, nausea and occasional vomiting when required too long to remain with
20 his wife.

21 53. Mr. Akkerman eventually left the family household and moved in
22 with his parents, to attempt to ameliorate the condition and get well. Elizabeth
23 Akkerman was led to believe by the representations of Dr. Johnson in her presence
24 that the memory loss to her husband would be minimal and that his memory would
25 return. Relying upon such representations, and the representations made in Dr.
26 Johnson's letter in February 2000, Mrs. Akkerman could not reasonably know that

1 her husband was permanently injured and that he would be lost to her. It was not
2 until after May of 2001 that Mrs. Akkerman realized or could have been
3 reasonably expected to know that she was injured, and could reasonably know the
4 cause and source of her injuries.

5 54. Plaintiff Liz Akkerman is entitled to compensation in the amount of
6 no less than \$2,000,000 in compensatory damages and punitive damages in an
7 amount to be determined by the jury, under this cause of action.

8 **FIFTH CAUSE OF ACTION**

9 (Violation of Business and Professions Code 17200)

10 55. Plaintiffs hereby incorporate by reference as though fully set forth
11 herein, paragraphs 1 to 56 above.

12 57. Plaintiffs are suing on their own behalf and on behalf of all members
13 of the
14 public who have received shock treatment over the past four years.

15 58. The acts and practices described above violate Business and
16 Professions Code 17200 in at least the following respects:

17 a) Defendant, by its conduct described above, engaged in false
18 advertising in violation of Cal. Business and Professions Code Section 17200,
19 which prohibits "any unlawful, unfair or fraudulent business act or practice and
20 unfair, deceptive, untrue or misleading advertising and any act prohibited by
21 Section 17500 of the California Business and Professions Code."

22 b) Defendant sells and distributes booklets in California which
23 contain false and deceptive advertising regarding shock treatment, and instruction
24 manuals that contain false and deceptive information. It also distributes
25 information on its machines to psychiatrists and agents of hospitals and clinics.
26 MECTA realizes that shock treatment is very cheap to deliver and that

1 psychiatrists can charge a substantial fee for each shock delivered – up to \$2,000 –
2 making the practice financially attractive, notwithstanding the permanent harm
3 caused to patients receiving the treatment. MECTA capitalizes upon this financial
4 incentive by promoting to psychiatrists and hospitals the low cost of the shock
5 machine compared to the high income potential of the treatment.

6 c) The fraudulent, misleading and deceptive publications distributed
7 by MECTA are given or sold to doctors, hospitals, associations, and sold or given
8 to the public and other doctors and health care professionals.

9 d) Patients are caused the harms described above by these acts by
10 suffering physical and mental damages, including brain damage, loss of memory,
11 loss of livelihood, and loss of quality of life. Defendant's practices constitute an
12 unfair business act or practice within the meaning of Business and Professionals
13 Code section 17200.

14 e) The harm to plaintiffs and to members of the general public
15 outweighs the utility of this experimental and inherently dangerous practice upon
16 the brains of members of the public.

17 f) Defendant's practices and conduct has and is likely to continue to
18 mislead the general public and consequently constitutes a fraudulent business act
19 or practice within the meaning of Business and Professionals Code section 17200.

20 g) Defendant's acts of untrue, misleading and deceptive advertising
21 and promotion of the alleged benefits of shock treatment are, by definition,
22 violations of Business and Professionals Code section 17200.

23 59. The unlawful, unfair and fraudulent business practices and false and
24 misleading advertising of the defendants present a continuing threat to members of
25 the public in that members of the public are likely to believe defendants'
26 assertions and claims and thereby permit themselves to be subjected to shock

1 treatment without realizing the dangers and certainly the permanent damages
2 inherent in such treatment.

3 60. As a direct and proximate result of the aforementioned acts, defendant
4 MECTA received and continues to hold funds received from the sale of its shock
5 treatment machines, and funds from the sale of the pamphlets described above,
6 from doctors and hospitals who paid for the machines.

7 61. As a direct and proximate result of the aforementioned acts, MECTA
8 has received ill gotten gains. MECTA is an indirect recipient of funds provided by
9 Mr. Akkerman and other patients to doctors and hospitals and insurance
10 companies because of the false, misleading and deceptive statements by each of
11 the defendants respectively. In good conscience, defendant should make
12 restitution to the patients who have received ECT, to the state which has paid for
13 shock treatment through public welfare funds, and to insurance companies which
14 have paid for shock treatments.

15 62. Unless enjoined, defendant will continue to engage in the practices set
16 forth above in the future, as they continue in the present to disseminate the false,
17 misleading and deceptive advertising and fraudulent business practices described
18 herein.

19 63. Plaintiff prays for the relief set forth below.

20 **SIXTH CAUSE OF ACTION**

21 (Violation of Business and Professions Code Section 17500)

22 64. Plaintiffs hereby incorporate by reference as though fully set forth
23 herein, paragraphs 1 to 63 above.

24 65. Plaintiffs are suing on their own behalf and on behalf of all members
25 of the public who have received shock treatment over the past four years.

26 66. As set forth above, beginning at an exact date unknown to plaintiffs,

1 MECTA engaged in acts of false and misleading advertising as defined by
2 Business and Professions Code section 17500, with the intent to induce members
3 of the public to receive shock treatment, to their extreme and permanent detriment
4 and harm. As set forth above, beginning at an exact date unknown to plaintiffs,
5 MECTA has also engaged in acts of false and misleading advertising as defined by
6 Business and Professions Code section 17500, with the intent to induce health care
7 providers to administer shock treatment to patients in this State, to their extreme
8 and permanent detriment and harm. As set forth above, beginning at an exact date
9 unknown to plaintiffs, defendants have also engaged in acts of false and
10 misleading advertising as defined by Business and Professions Code section
11 17500, with the intent to induce insurance companies and state welfare agencies
12 administering health care assistance and funding, to pay for the administration of
13 shock treatment to patients in this State, to their extreme and permanent detriment
14 and harm.

15 67. The acts of untrue and misleading advertising by defendants
16 described above present a continuing threat to the safety, health and welfare of Mr.
17 Akkerman and to members of the public and a continuing threat to the financial
18 resources of insurance companies and state health care and welfare agencies.
19 Unless enjoined, MECTA will continue to engage in the practices set forth above
20 in the future, as they continue in the present to disseminate the false, misleading
21 and deceptive advertising and fraudulent business practices described herein.

22 Wherefore, plaintiff prays for relief as set forth hereinafter.

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1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiffs pray for judgment as follows:

3 1. For compensatory damages against MECTA Corporation in an amount
4 no less than \$10,000,000.

5 2. For punitive damages against MECTA Corporation in an amount to be
6 determined by the jury.

7 3. For injunctive relief to prohibit MECTA from engaging in false
8 advertising of the efficacy of ECT; engaging in false advertising by failing to
9 inform doctors and consumers that ECT causes brain damage, and that ECT causes
10 both temporary and permanent loss of memory in all or virtually all persons who
11 receive the treatment.

12 4. For equitable relief of requiring defendants to inform hospitals, doctors
13 and clinics utilizing ECT that the information provided to them regarding the
14 safety and efficacy of ECT was inaccurate, that ECT causes brain damage, and that
15 ECT causes permanent memory loss.

16 5. For equitable relief of requiring defendants to inform the known
17 victims of electro shock therapy that the information set forth in the pamphlet
18 distributed by MECTA is inaccurate.

19 6. For restitution by defendant to all shock treatment victims experiencing
20 brain damage and/or memory loss within the appropriate statutory period, state
21 agencies and insurance companies in California bearing the costs of shock
22 treatment. The expenses of determining the identity of all such victims to be borne
23 by defendants.

24 7. Costs and expenses of suit.

25 8. For reasonable attorneys' fees incurred in prosecuting this action as
26 provided by law.

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9. For such other relief as the Court may deem just and proper.

Dated: November 15, 2004

Respectfully submitted,

MOXON & KOBRIN

(S)

Kendrick L. Moxon
Ava M. Paquette

Attorneys for Plaintiffs
ATZE AKKERMAN and

ELIZABETH AKKERMAN