



20519707

FILED
ALAMEDA COUNTY

NOV 14 2017

CLERK OF THE SUPERIOR COURT
By *Monica A. Davis*
Deputy

1 Joseph D. Satterley, Esq. (C.S.B. #286890)
jsatterley@kazanlaw.com
2 Denyse F. Clancy, Esq. (C.S.B. #255276)
dclancy@kazanlaw.com
3 KAZAN, McCLAIN, SATTERLEY & GREENWOOD
A Professional Law Corporation
4 Jack London Market
55 Harrison Street, Suite 400
5 Oakland, California 94607
Telephone: (510) 302-1000
6 Facsimile: (510) 835-4913

7 Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

10 TERESA ELIZABETH LEAVITT and DEAN
J. McELROY,

11 Plaintiffs,

12 v.

13 JOHNSON & JOHNSON; JOHNSON &
14 JOHNSON CONSUMER, INC. (sued
individually and as successor-in-interest to
15 JOHNSON & JOHNSON CONSUMER
COMPANIES, INC.); IMERYS TALC
16 AMERICA, INC., formerly known as
LUZENAC AMERICA, INC. (sued
17 individually and as successor-in-interest to
WINDSOR MINERALS, INC., AMERICAN
18 TALC COMPANY, METROPOLITAN
TALC CO. INC., and CHARLES MATHIEU
19 INC.); CYPRUS AMAX MINERALS
COMPANY (sued individually, doing
20 business as, and as successor-in-interest to
AMERICAN TALC COMPANY,
21 METROPOLITAN TALC CO. INC., and
CHARLES MATHIEU INC.); CYPRUS
22 MINES CORPORATION (sued individually,
doing business as, and as successor-in-interest
23 to AMERICAN TALC COMPANY,
METROPOLITAN TALC CO. INC., and
24 CHARLES MATHIEU INC.); DELTA
LINES, INC.; and DOES 1-100,

25 Defendants.

Case No. **RG 17882401**

**COMPLAINT FOR PERSONAL
INJURIES AND LOSS OF CONSORTIUM**

DEMAND FOR JURY TRIAL

Kazan, McClain, Satterley & Greenwood
A Professional Law Corporation
Jack London Market • 55 Harrison Street, Suite 400 • Oakland, California 94607
(510) 302-1000 • Fax: (510) 835-4913 • www.kazanlaw.com

GENERAL BACKGROUND AND OTHER ALLEGATIONS

I.

The Plaintiffs: Teresa Elizabeth Leavitt is the physically injured Plaintiff. Her mesothelioma was caused by asbestos exposures for which Defendants bear responsibility. Dean J. McElroy is Ms. Leavitt's husband. They live in San Leandro, California.

II.

The Defendants: All the Defendants are listed in the case caption. The true names of defendants sued as Does are unknown to Plaintiffs. Each of the Defendants was the agent, employee and/or joint venturer of his co-defendants and was acting in the full course and scope of the agency, employment and/or joint venture. For some liability theories, some defendants are classified as follows:

No.	Type	Defendants
1.	Talc Defendants	JOHNSON & JOHNSON; JOHNSON & JOHNSON CONSUMER, INC. (sued individually and as successor-in-interest to JOHNSON & JOHNSON CONSUMER COMPANIES, INC.); IMERYS TALC AMERICA, INC., formerly known as LUZENAC AMERICA, INC. (sued individually and as successor-in-interest to WINDSOR MINERALS, INC., AMERICAN TALC COMPANY, METROPOLITAN TALC CO. INC., and CHARLES MATHIEU INC.); CYPRUS AMAX MINERALS COMPANY (sued individually, doing business as, and as successor-in-interest to AMERICAN TALC COMPANY, METROPOLITAN TALC CO. INC., and CHARLES MATHIEU INC.); CYPRUS MINES CORPORATION (sued individually, doing business as, and as successor-in-interest to AMERICAN TALC COMPANY, METROPOLITAN TALC CO. INC., and CHARLES MATHIEU INC.); and DOES 1-50.
2.	Conduct Defendants	DELTA LINES, INC.; and DOES 51-100.

III.

1
2 **Alternate Entities:** At all times herein mentioned, each of the named Defendants and
3 DOE Defendants 1-100 was the successor, successor in business, successor in product line or a
4 portion thereof, parent, subsidiary, wholly or partially owned by, or the whole or partial owner of
5 or member in an entity researching, studying, manufacturing, fabricating, designing, modifying,
6 labeling, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting,
7 servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding,
8 manufacturing for others, packaging and advertising a certain substance, the generic name of
9 which is asbestos, and other products containing said substance. Said entities shall hereinafter
10 collectively be called "alternate entities." Each of the herein named Defendants is liable for the
11 tortious conduct of each successor, successor in business, successor in product line or a portion
12 thereof, assign, predecessor in product line or a portion thereof, parent, subsidiary, whole or partial
13 owner, or wholly or partially owned entity, or entity that it was a member of, or funded, that
14 researched, repaired, marketing, warranted, re-branded, manufactured for others and advertised a
15 certain substance, the generic name of which is asbestos, and other products containing said
16 asbestos. The Defendants, and each of them, are liable for the acts of each and every "alternate
17 entity"; and each of them, in that: (i) there is an express or implied agreement of assumption of
18 liabilities between the Defendant and each such "alternate entity"; (ii) the transaction between the
19 Defendant and each such "alternate entity" amounts to a consolidation or merger of the two
20 corporations; (iii) the transaction between the Defendant and each such "alternate entity" includes
21 the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the
22 seller's debt; (iv) the transaction between the Defendant and each such "alternate entity" is such
23 that the purchasing corporation is a mere continuation of the seller; (v) there has been a virtual
24 destruction of Plaintiff's remedy against each such "alternate entity"; or (vi) Defendants, and each
25 of them, have acquired the assets, product line, or a portion thereof, of each such "alternate entity"
26 because they (a) have caused the destruction of Plaintiff's remedy against each such "alternate
27 entity," (b) each such Defendant has the ability to assume the risk-spreading role of each such
28 "alternate entity," and (c) that each such Defendant enjoys the goodwill originally attached to each

1 such "alternate entity."

2 Defendant	Alternate Entity
3 JOHNSON & JOHNSON CONSUMER, INC.	JOHNSON & JOHNSON CONSUMER COMPANIES, INC.
4 IMERYS TALC AMERICA, INC.	LUZENAC AMERICA, INC. WINDSOR MINERALS, INC. AMERICAN TALC COMPANY METROPOLITAN TALC CO. INC. CHARLES MATHIEU INC.
9 CYPRUS AMAX MINERALS COMPANY	AMERICAN TALC COMPANY METROPOLITAN TALC CO. INC. CHARLES MATHIEU INC.
12 CYPRUS MINES CORPORATION	AMERICAN TALC COMPANY METROPOLITAN TALC CO. INC. CHARLES MATHIEU INC.

16 IV.

17 **The Products:** The Defendants and/or their predecessors have for many years
 18 manufactured, sold, distributed, designed, formulated, developed standards for, prepared,
 19 processed, assembled, tested, listed, certified, marketed, advertised, packaged and/or labeled,
 20 and/or otherwise placed into the stream of commerce, asbestos-containing products, including talc
 21 and friction products.

22 V.

23 **The Asbestos Exposures:** Ms. Leavitt was exposed to asbestos as follows:

24 No.	Type	Description
25 1.	Exposure to talcum products.	Ms. Leavitt was directly exposed to asbestos from Defendants' asbestos-containing talc powder products from 1966 to 1986. Since birth and during her teenage years, Ms. Leavitt's mother exclusively applied Johnson & Johnson talc powder products on Ms. Leavitt every day.

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

No.	Type	Description
		While Ms. Leavitt was attending high school from 1982 to 1986, she purchased and applied Johnson & Johnson talc powder products. During that time, Ms. Leavitt used Johnson & Johnson talc powder products every day, including as many three times per day during the summer months and at least three times per week as a dry shampoo.
2.	Exposure to asbestos that Ms. Leavitt's father tracked into the family's home and vehicles.	From 1968 to 1984, Ms. Leavitt was continually exposed to airborne asbestos that her father, David W. Leavitt, unknowingly tracked into the family's home and vehicles. During those years, Ms. Leavitt lived in the same household as her parents and her father worked as a rate man for Defendant DELTA LINES, INC. in Emeryville, California. At that site, Ms. Leavitt's father was near mechanics and other individuals who worked with asbestos-containing products including, but not limited to, friction materials for trucks and trailers. Such work released toxic asbestos fibers and adhered on the clothing, shoes, person, and personal effects of Ms. Leavitt's father. He then unknowingly transported such asbestos fibers into the family's home and vehicles, thereby exposing Ms. Leavitt.

VI.

Venue: Venue is proper in Alameda County because Ms. Leavitt's exposures to Defendants' asbestos-containing products occurred in Alameda County.

VII.

The Harm: Ms. Leavitt has mesothelioma, an incurable and inevitably fatal cancer. The mesothelioma has subjected and continues to subject Ms. Leavitt to physical pain, mental suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation, emotional distress, and other similar harm. The mesothelioma has caused economic loss, including loss of income and loss of earning capacity. The mesothelioma will continue to inflict these harms on Ms. Leavitt in the future, ceasing only when it causes her untimely death.

Ms. Leavitt's injuries have caused, and will cause, Mr. McElroy to experience loss of consortium. Mr. McElroy's harm includes the loss of love, companionship, comfort, care,

1 assistance, protection, affection, society, moral support, sexual relations; and other similar harm.
2 Mr. McElroy seeks compensation only for such harm occurred, and will occur, during the period
3 from Ms. Leavitt's mesothelioma diagnosis until her untimely death.

4 Plaintiffs rely on the liability theories described below.

5 **FIRST CAUSE OF ACTION FOR STRICT PRODUCTS LIABILITY**

6 **I.**

7 **Design Defect:** All Talc Defendants, and DOE Defendants 1-50, have for many years,
8 manufactured, sold, distributed, designed, formulated, developed standards for, prepared,
9 processed, assembled, tested, listed, certified, marketed, advertised, packaged and/or labeled,
10 and/or otherwise placed into the stream of commerce, asbestos-containing products. First, Talc
11 Defendants' products were defective and unsafe for their intended purpose and foreseeable use in
12 that when used, handled, mixed, or otherwise disturbed, said products would result in the release,
13 and therefore inhalation of, hazardous and dangerous asbestos fibers by exposed persons,
14 including Ms. Leavitt. Second, the defect existed in all of the said products when they left the
15 possession of the Talc Defendants. Third, Ms. Leavitt developed mesothelioma. Fourth, each
16 product's failure to perform safely was a substantial factor in causing Ms. Leavitt's mesothelioma.

17 **II.**

18 **Failure-to-Warn Defect:** All Talc Defendants, and DOE Defendants 1-50, are strictly
19 liable for their products' failure-to-warn defects. First, these Talc Defendants and/or their
20 predecessors have for many years, manufactured, sold, distributed, designed, formulated,
21 developed standards for, prepared, processed, assembled, tested, listed, certified, marketed,
22 advertised, packaged and/or labeled, and/or otherwise placed into the stream of commerce,
23 asbestos-containing products. Second, each product had potential risks that were known or
24 knowable in light of the scientific and medical knowledge that was generally accepted in the
25 scientific community at the time of design, manufacture, label, distribution, and sale. Third, the
26 potential risks presented a substantial danger when each product was used or misused in an
27 intended or reasonably foreseeable way, because each product caused hazardous asbestos to
28 become airborne. Fourth, ordinary consumers would not have recognized the potential risks. Fifth,

1 these Talc Defendants failed to adequately warn or instruct of the potential risks. Sixth,
2 Ms. Leavitt developed mesothelioma. Seventh, the lack of sufficient warnings or instructions was
3 a substantial factor in causing Ms. Leavitt's mesothelioma.

4 **III.**

5 **Manufacturing Defect:** All Talc Defendants, and DOE Defendants 1-50, are strictly liable
6 for their products' manufacturing defects. First, these Talc Defendants and/or their predecessors
7 have for many years, manufactured, sold, distributed, designed, formulated, developed standards
8 for, prepared, processed, assembled, tested, listed, certified, marketed, advertised, packaged and/or
9 labeled, and/or otherwise placed into the stream of commerce, asbestos-containing products.
10 Second, each product contained a manufacturing defect when it left these Talc Defendants'
11 possession. Specifically, each product differed from the design or specifications or from other
12 typical units of the same product line, because each product caused hazardous asbestos to become
13 airborne. Third, Ms. Leavitt developed mesothelioma. Fourth, each product's defect was a
14 substantial factor in causing Ms. Leavitt's mesothelioma.

15 **IV.**

16 **State of the Art:** The following facts are illustrative, but not exhaustive, of the evolution
17 of the knowledge of the health hazards of asbestos and what was known and knowable to Talc
18 Defendants.

19 Health hazards from asbestos exposure were identified in the 1890s. During this time, the
20 Lady Inspector of Factories in Great Britain noted that individuals working with asbestos were
21 suffering various lung injuries.

22 Talc Defendants since the early 1900s possessed medical and scientific data that raised
23 concerns regarding the presence of asbestos in talcum powder and that demonstrated the existence
24 of health hazards to those exposed to asbestos-containing talcum powder products. Talc is a
25 hydrous magnesium silicate, an inorganic material that is mined from the earth. Talc is used in the
26 manufacture goods, such as paper, plastic, paint and coatings, rubber, food, electric cable,
27 ceramics, and cosmetics. In its loose form and as used in consumer powder products, talc is known
28 as "talcum powder."

1 Geologists and mining companies, including Talc Defendants, have long known that the
2 deposits in the earth that are associated with talc are also associated with the formation of
3 asbestos. Asbestos is a commercial and legal term, rather than a geological or scientific term,
4 referring to six now-regulated magnesium silicate minerals that occur in fibrous form, including
5 the serpentine mineral chrysotile, and the amphibole minerals actinolite, anthophyllite, tremolite,
6 amosite and crocidolite. The United States Geological Survey on Commercial Talc production in
7 1965, as well as those dating back to the 1800s in the United States, note the presence of tremolite,
8 anthophyllite and chrysotile commonly among those minerals found within talc deposits.

9 As early as the 1920s, the term “asbestosis” was used to describe pulmonary fibrosis
10 caused by asbestos exposure. Case reports in Great Britain and the United States detailed
11 asbestosis in various workers. By 1929, lawsuits for disability related to exposure to asbestos were
12 filed against Johns Manville.

13 In the late 1930s, case reports were published addressing the relationship between asbestos
14 and cancer. In 1931, the United Kingdom allowed workers to receive compensation for asbestosis.
15 In 1936, California’s Division of Industrial Safety issued Safety Orders establishing the standard
16 of care for work with asbestos. The same year, the State of Illinois enacted legislation recognizing
17 asbestosis as a compensable occupational disease under its Occupational Disease Act.

18 In March of 1933, Waldemar C. Dreesen of the United States Public Health Service
19 reported to the National Safety Council the results of a study conducted among tremolite, talc, and
20 slate workers. The study indicated that the talc was a hydrous calcium magnesium silicate, being
21 45 percent talc and 45 percent tremolite, and the National Safety Council stated that the “results of
22 the study seemed to indicate a relationship between the amount of dust inhaled and the effect of
23 this dust on the lungs of the workers.” As early as 1934, the National Safety Council was
24 publishing information stating that “a cause of severe pulmonary injury is asbestos, a silicate of
25 magnesium.” In the September 1935 issue of National Safety News, an article entitled *No Halfway*
26 *Measures in Dust Control* by Arthur S. Johnson reported lowered lung capacity resulting from
27 “asbestosis” and “similar conditions” that developed “from exposure to excess of many mineral
28 dusts relatively low in free silica content.” The article further noted that claims for disabilities

1 from workers who alleged exposure to “clay, talc, emery, and carborundum dusts” had “claims
2 prosecuted successfully.” The article concluded that “[i]n the absence of adequate diagnoses,
3 occupational histories and a more satisfactory method of adjudicating claims than prosecution at
4 common law, we must conclude that it is necessary to find a practical method for controlling all
5 mineral dusts.”

6 By the 1940s, asbestos carcinogenicity was noted in reviews in fields of industrial
7 medicine, cancer research, and pneumoconiosis. In 1946, the American Conference of
8 Governmental Industrial Hygienists established a maximum allowable concentration for
9 occupational exposure.

10 During the 1940s and 1950s, asbestos hazards were discussed in popular magazines,
11 including Scientific American (January 1949) and Newsweek (May 15, 1950), as well as the
12 Encyclopedia Britannica (1952). On April 7, 1959, the Los Angeles Times and Wall Street Journal
13 reported that California health officials did additional research linking asbestos with cancer.
14 Following a number of subsequent reports in the New York Times, Paul Brodeur published a
15 series of articles in the New Yorker.

16 In addition, beginning in the 1940s and 1950s, it was recognized that individuals who
17 worked with asbestos materials, as well as those who did not work directly with asbestos products
18 but only had relatively brief or intermittent exposures to asbestos products, could develop fatal
19 asbestos diseases.

20 In 1955, Richard Doll published a study linking asbestos to lung cancer.

21 In 1960, Chris Wagner published a study linking asbestos to mesothelioma.

22 In the early 1960s, Dr. Irving Selikoff engaged in studies of groups of asbestos workers.
23 By 1965, he had conducted various studies, published several articles, conducted special scientific
24 symposia, been interviewed by the New York Times, and organized the international conference
25 on the “Biological Effects of Asbestos” under the auspices of the renowned New York Academy
26 of Sciences. The results of these presentations were published in Volume 132 of the Annals of the
27 New York Academy of Sciences published in 1965.

28 In 1968, a study presented at the American Industrial Hygiene Conference and published

1 in the American Industrial Hygiene Association Journal concluded that “[a]ll of the 22 talcum
2 products analyzed have a . . . fiber content . . . averaging 19%. The fibrous material was
3 predominantly talc but contained minor amounts of tremolite, anthophyllite, and chrysotile as
4 these are often present in fibrous talc mineral deposits . . . Unknown significant amounts of such
5 materials in products that may be used without precautions may create an unsuspected problem.”
6 [Cralley, L.J., et al., *Fibrous and Mineral Content of Cosmetic Talcum Products* (1968) 29 Am.
7 Ind. Hyg. Assoc. J. 350-354.]

8 In 1969, product-liability lawsuits were brought against asbestos manufacturers. Under the
9 Walsh Healy Act, federal contractors with contracts of more than \$10,000 were required to adhere
10 a workplace standard of no more than 12 fibers per cubic centimeter of air. In 1970, OSHA
11 established the first Federal guidelines for workplace asbestos exposure, which took effect in
12 1971. In 1972, the American Conference of Governmental Industrial Hygienists listed asbestos as
13 a carcinogen.

14 A 1976 follow-up study conducted by researchers at Mount Sinai Hospital in New York
15 concluded that “[t]he presence in these products of asbestiform anthophyllite and tremolite,
16 chrysotile, and quartz indicates the need for a regulatory standard for cosmetic talc... We also
17 recommend that evaluation be made to determine the possible health hazards associated with the
18 use of these products.” [Rohl, A.N., et al., *Consumer Talcums and Powders: Mineral and*
19 *Chemical Characterization* (1976) 2 J. Toxicol. Environ. Health 255-284.] The results of the
20 Mount Sinai study were soon picked up and reported by both the New York Times and the
21 Washington Post that same year. The study and subsequent newspaper articles listed explicitly
22 popular consumer cosmetic talcum powders as containing high percentages of asbestos.

23 In the early 1970s, the U.S. Food and Drug Administration began an inquiry into whether
24 to regulate and require warnings on consumer talcum powder products. Talc Defendants, who
25 were part of an an exclusive lobbying and advocacy group representing companies engaged in the
26 cosmetic products industry, repeatedly conspired and worked in concert to block efforts to label
27 and warn consumers regarding the dangers associated with cosmetic talcum powder products.

28 Several reports, studies, and guidelines published as early as the 1930s, including

1 California's Dust, Fumes, Vapors, and Gases Safety Orders, all recognized that asbestos is a dust
2 which creates health hazards, and that certain precautions are required to mitigate human exposure
3 to dust. Such measures include, but are not limited to, using water to suppress the dust at its
4 source, as well as providing those who might be exposed to dust with adequate ventilation,
5 showers, and changing facilities. These same measures that were recommended to protect workers
6 from asbestosis in the 1930s would also have substantially reduced the risk that bystanders,
7 household members, and other persons would contract mesothelioma from inhaling asbestos-
8 containing dust that those who worked with and around asbestos and asbestos-containing products
9 carried into their households on their person and personal effects. Talc Defendants, and each of
10 them, knew or should have known that anyone, including household members of those who used
11 asbestos-containing products were at risk of developing an asbestos-related disease after inhaling
12 dust from such asbestos-containing products.

13 All Talc Defendants failed to place any warning on their talc and talcum powder products
14 or ever disclose the fact that these products contained asbestos at any point, up to and including
15 present day, despite the clear hazard and direct information that their products did contain
16 asbestos.

17 SECOND CAUSE OF ACTION FOR NEGLIGENCE

18 I.

19 **General Negligence:** All Defendants, and DOE Defendants 1-100, inclusive, are liable for
20 their general negligence. First, Defendants failed to use reasonable care to prevent harm to others,
21 because they caused hazardous asbestos to become airborne. Second, Defendants unreasonably
22 acted and failed to act. They acted in ways that a reasonably careful person would not do in the
23 same situation, and failed to act in ways that a reasonably careful person would do in the same
24 situation. Third, Ms. Leavitt developed mesothelioma. Fourth, each Defendant's general
25 negligence was a substantial factor in causing Ms. Leavitt's mesothelioma.

26 II.

27 **Negligent Design, Manufacture, Supply, Testing, Packaging, and Labeling of**
28 **Products:** All Defendants, and DOE Defendants 1-100, are liable for their negligent design,

1 manufacture, marketing, supply, testing, packaging, and labeling of asbestos-containing products.
2 First, these Defendants designed, manufactured, sold, distributed, formulated, developed standards
3 for, prepared, processed, assembled, tested, listed, certified, marketed, advertised, packaged and/or
4 labeled, and/or otherwise placed into the stream of commerce, asbestos-containing products.
5 Second, these Defendants were negligent in manufacturing, selling, distributing, developing
6 standards for, processing, assembling, testing, certifying, marketing, advertising, packaging and/or
7 labeling, and/or otherwise placing into the stream of commerce, asbestos-containing products
8 because they caused hazardous asbestos to become airborne. They failed to use the amount of care
9 that a reasonably careful person would use in similar circumstances to avoid exposing others to a
10 foreseeable risk of harm. Third, Ms. Leavitt developed mesothelioma. Fourth, each Defendant's
11 negligence was a substantial factor in causing Ms. Leavitt's mesothelioma.

12 **III.**

13 **Negligent Failure to Warn about Products:** All Talc Defendants, and DOE Defendants
14 1-50, are liable for their negligent failure to warn about their products. First, these Talc Defendants
15 designed, manufactured, marketed, distributed, packaged, labeled, and sold asbestos-containing
16 products. Second, these Talc Defendants knew or reasonably should have known that each product
17 was dangerous or was likely to be dangerous when used or misused in a reasonably foreseeable
18 manner, because each product caused hazardous asbestos to become airborne. Third, these Talc
19 Defendants knew or reasonably should have known that users would not realize the danger.
20 Fourth, these Talc Defendants failed to adequately warn of the danger or instruct on the safe use of
21 each product. Fifth, a reasonably careful person under the same or similar circumstances would
22 have warned of the danger or instructed on the safe use of each product. Sixth, Ms. Leavitt
23 developed mesothelioma. Seventh, each Defendant's negligent failure to warn or instruct was a
24 substantial factor in causing Ms. Leavitt's mesothelioma.

25 **IV.**

26 **Negligent Failure to Recall and Retrofit Products:** All Talc Defendants, and DOE
27 Defendants 1-50, are liable for their negligent failure to recall and retrofit their products. First,
28 these Talc Defendants designed, manufactured, marketed, distributed, packaged, labeled, and sold

1 asbestos-containing products. Second, these Talc Defendants knew or reasonably should have
2 known that each product was dangerous or was likely to be dangerous when used in a reasonably
3 foreseeable manner, because each product caused hazardous asbestos to become airborne. Third,
4 these Talc Defendants became aware of this defect after each product was sold. Fourth, these Talc
5 Defendants failed to recall and retrofit each product. Fifth, a reasonably careful person under the
6 same or similar circumstances would have recalled and retrofitted each product. Sixth, Ms. Leavitt
7 developed mesothelioma. Seventh, each Defendant's negligent failure to recall and retrofit each
8 product was a substantial factor in causing Ms. Leavitt's mesothelioma.

9
10 **V.**

11 **Negligent Hiring, Supervision, and Retention of Employees:** All Conduct Defendants,
12 and DOE Defendants 51-100, are liable for their negligent hiring, supervision, and retention of
13 employees. First, these Conduct Defendants' employees were unfit and incompetent to perform
14 the work for which they were hired. Second, these Conduct Defendants knew or should have
15 known that their employees were unfit and incompetent, and that this unfitness and incompetence
16 created a particular risk to others because they engaged in activities that caused hazardous asbestos
17 to become airborne. Third, the employees' unfitness and incompetence harmed Ms. Leavitt
18 because she developed mesothelioma. Fourth, each Defendant's negligence in hiring, supervising,
19 and retaining its employees was a substantial factor in causing Ms. Leavitt's mesothelioma.

20 **VI.**

21 **Negligent Management of Property:** All Conduct Defendants, and DOE Defendants 51-
22 100, are liable for their negligent management of property. First, these Conduct Defendants
23 owned, leased, occupied, and/or controlled the property. Second, these Conduct Defendants were
24 negligent in the use or maintenance of the property, because they engaged in activities that caused
25 hazardous asbestos to become airborne. They failed to use the amount of care that a reasonably
26 careful person would use in similar circumstances to avoid exposing Ms. Leavitt, her father, and
27 others to a foreseeable risk of harm. Third, Ms. Leavitt developed mesothelioma. Fourth, each
28 Defendant's negligence was a substantial factor in causing Ms. Leavitt's mesothelioma.

VII.

1 Ms. Leavitt's mesothelioma.

2 **THIRD CAUSE OF ACTION FOR FRAUD**

3 **I.**

4 All Talc Defendants, including DOE Defendants 1-50, are liable for committing fraud,
5 including both fraudulent misrepresentation and fraudulent concealment (nondisclosure).

6 **II.**

7 **Fraudulent Misrepresentation:** All Talc Defendants, and DOE Defendants 1-50, are
8 liable for their fraudulent misrepresentations.

9 First, each Talc Defendant, via its employees, agents, advertisements, or any other
10 authorized person or document, represented that certain facts were true when they were not. To the
11 extent they are not already named herein, the specific identities of these employees, agents,
12 advertisements, or any other authorized person or document are maintained in Talc Defendants'
13 records. Such records remain in the exclusive control of Talc Defendants pursuant to Talc
14 Defendants' respective document-retention policies. While Plaintiffs do not currently know the
15 specific advertisements or names of the employees, agents, or any other authorized person who
16 made the representations, they will have access to this information once discovery has commenced
17 and will be able to specifically name the advertisement as well as the employee, agent, or any
18 other authorized person.

19 Second, Talc Defendants represented that the products they manufactured, supplied, or
20 specified for use were not hazardous to humans. These representations were made before and
21 during the years that Ms. Leavitt was exposed to Talc Defendants' asbestos. Such representations
22 were made either directly to Ms. Leavitt, or to a third party intending and reasonably expecting
23 that the substances of these misrepresentations would be repeated to Ms. Leavitt.

24 Third, Talc Defendants knew that the representations were false when they made them, or
25 they made the representations recklessly and without regard for their truth.

26 Fourth, Talc Defendants intended that Ms. Leavitt and/or the same class of persons as
27 Ms. Leavitt rely on the representations or their substance.

28 Fifth, Ms. Leavitt reasonably relied on Talc Defendants' representations or the substance

1 of these representations.

2 Sixth, Ms. Leavitt developed mesothelioma.

3 Seventh, Ms. Leavitt's reliance on these representations was a substantial factor in causing
4 her mesothelioma.

5 **III.**

6 **Fraudulent Concealment (Nondisclosure):** All Talc Defendants, and DOE Defendants 1-
7 50, are liable for their fraudulent concealment (nondisclosure).

8 First, each Talc Defendant made affirmative statements that were so misleading (e.g.,
9 misleading "half-truths") that they gave rise to a fraud cause of action even in the absence of a
10 specific relationship or transaction as between Talc Defendants and Ms. Leavitt. Specifically, Talc
11 Defendants stated that their products could be used safely while concealing they were in fact lethal
12 because they released asbestos fibers.

13 Second, Talc Defendants (i) had exclusive knowledge of material facts not known to
14 Ms. Leavitt (as set forth above); (ii) actively concealed these material facts from Ms. Leavitt; (iii)
15 made partial representations but also suppressed material facts, as set forth above; and (iv) made
16 factual representations, but did not disclose facts which materially qualified those representations.
17 Such nondisclosures included Talc Defendants representing their products as safe when used as
18 intended and as fit for the particular purpose for which they were marketed, while not disclosing
19 the facts that these products contained asbestos that would become airborne during the intended
20 and foreseeable use of the products, rendering them dangerous and unfit for their intended
21 purpose.

22 Third, each Talc Defendant entered into a relationship and/or a transaction with
23 Ms. Leavitt sufficient to give rise to a duty to disclose. For example, Ms. Leavitt used or otherwise
24 encountered Talc Defendants' products that were purchased either directly from Talc Defendants,
25 Talc Defendants' authorized dealer or supplier, or any other entity upon which Talc Defendants
26 derived a direct monetary benefit directly from Ms. Leavitt's purchase and use of the products. As
27 for another example, Talc Defendants directly advertised their products to those in California and
28 internationally, as a symbol of freshness, cleanliness, and purity. Talc Defendants advertised and

1 marketed this product as the beacon of “freshness” and “comfort”, eliminating friction on the skin,
2 absorbing “excess wetness” helping keep skin feeling dry and comfortable, and “clinically proven
3 gentle and mild.” The Talc Defendants compelled women through advertisements to dust
4 themselves with this product to mask odors. Talc Defendants derived direct monetary benefit from
5 these individuals’ use of these products because Ms. Leavitt decided to use or purchase Talc
6 Defendants’ products.

7 Fourth, Ms. Leavitt did not know of the concealed facts.

8 Fifth, Talc Defendants intended to deceive Ms. Leavitt by concealing the facts, and/or by
9 making certain representations without disclosing additional facts that would have materially
10 qualified those representations.

11 Sixth, had the omitted information been disclosed, Ms. Leavitt reasonably would have
12 behaved differently.

13 Seventh, Ms. Leavitt developed mesothelioma.

14 Eighth, each Talc Defendant’s concealment was a substantial factor in causing
15 Ms. Leavitt’s mesothelioma.

16 **IV.**

17 **Conspiracy to Commit Fraudulent Misrepresentation:** Plaintiffs hereby incorporate by
18 reference the allegations of Paragraph II of this Third Cause of Action as if fully stated herein.

19 All Talc Defendants, and DOE Defendants 1-50, are liable for their conspiracy to commit
20 fraudulent misrepresentation. First, Talc Defendants were aware that their conspirators, which
21 included all co-defendants and others, planned to commit fraudulent misrepresentation against
22 Ms. Leavitt. Second, Talc Defendants agreed with their conspirators and intended that the
23 fraudulent misrepresentation be committed. Third, Ms. Leavitt developed mesothelioma. Fourth,
24 each Talc Defendant’s participation in the conspiracy was a substantial factor in causing
25 Ms. Leavitt’s mesothelioma.

26 **V.**

27 **Conspiracy to Commit Fraudulent Concealment (Nondisclosure):** Plaintiffs hereby
28 incorporate by reference the allegations of Paragraph III of this Third Cause of Action as if fully

1 stated herein.

2 All Talc Defendants, and DOE Defendants 1-50, are liable for their conspiracy to commit
3 fraudulent concealment. First, Talc Defendants were aware that their conspirators, which included
4 all co-defendants and others, planned to commit fraudulent concealment against Ms. Leavitt.
5 Second, Talc Defendants agreed with their conspirators and intended that the fraudulent
6 concealment be committed. Third, Ms. Leavitt developed mesothelioma. Fourth, each Talc
7 Defendant's participation in the conspiracy was a substantial factor in causing Ms. Leavitt's
8 mesothelioma.

9 VI.

10 **Knowledge of Hazards:** At all times pertinent hereto, all Talc Defendants, and DOE
11 Defendants 1-50, owed Ms. Leavitt a duty, as provided for under applicable law including Civil
12 Code section 1708, to abstain from injuring their person, property, or rights. In violation of that
13 duty, all Talc Defendants, including DOE Defendants 1-50, committed acts and omissions, when a
14 duty to act was imposed, thereby proximately causing injury to Ms. Leavitt. Such acts and
15 omissions consisted of acts falling within Civil Code section 1710, and more specifically were (i)
16 suggestions of fact which were not true and which the Talc Defendants did not believe to be true,
17 (ii) assertions of fact of that which was not true, which the Talc Defendants had no reasonable
18 ground for believing it to be true, (iii) factual representations which did not disclose additional
19 facts that materially qualified those representations, and (iv) the suppression of facts when a duty
20 existed to disclose them. Each and any of these acts or omissions gives rise to a cause of action for
21 violation of Ms. Leavitt's rights as provided for in applicable law, including but not limited to
22 Civil Code sections 1708 and 1710.

23 Since 1924, all of the Talc Defendants have known and possessed of the true facts
24 (consisting of medical and scientific data and other knowledge) which clearly indicated that the
25 materials and products referred to herein were and are hazardous to the health and safety of
26 Ms. Leavitt, and others similarly situated. Talc Defendants engaged in the following acts and
27 omissions:

28 (a) Talc Defendants did not label any of the aforementioned asbestos-

1 containing materials and products as to the hazards of such materials and
2 products to the health and safety of Ms. Leavitt, and others in their position
3 using these products when the knowledge of such hazards was existing and
4 known to Talc Defendants, and each of them, since 1924. By not labeling
5 such materials as to their said hazards, Talc Defendants, and each of them,
6 caused to be suggested as a fact to Ms. Leavitt that it was safe for her to use
7 such materials, when in fact these things were not true and Talc Defendants
8 did not believe them to be true;

9 (b) Talc Defendants suppressed information relating to the danger of using the
10 aforementioned materials by requesting the suppression of information to
11 Ms. Leavitt, and the general public concerning the dangerous nature of the
12 aforementioned materials to all persons; including users, bystanders and
13 household members, by not allowing such information to be disseminated in
14 a manner which would give general notice to the public and knowledge of
15 the hazardous nature thereof when Talc Defendants were bound to disclose
16 such information;

17 (c) Talc Defendants sold the aforementioned products and materials to the
18 public, including Ms. Leavitt and others without advising them of the
19 dangers of use of such materials and to those persons' household members,
20 when Talc Defendants knew of such dangers, as set forth herein and above,
21 and had a duty to disclose such dangers. Thus, Talc Defendants caused to be
22 positively asserted to Ms. Leavitt, and the public that which was not true
23 and which Talc Defendants had no reasonable ground for believing it to be
24 true, in a manner not warranted by the information possessed by said Talc
25 Defendants, and each of them, of that which was and is not true, to wit, that
26 it was safe for Ms. Leavitt to use such materials and that it did not pose a
27 risk of harm;

28 (d) Talc Defendants suppressed and continue to suppress from everyone,
including Ms. Leavitt, medical, scientific data, and knowledge of the
accurate results of studies including, but not limited to, Waldemar C.
Dreesen of the United States Public Health Service's 1933 report to the
National Safety Council the results of a study conducted among tremolite,
talc and slate workers. The study indicated that the talc was a hydrous
calcium magnesium silicate, being 45 percent talc and 45 percent tremolite,
and the National Safety Council stated "The results of the study seemed to
indicate a relationship between the amount of dust inhaled and the effect of
this dust on the lungs of the workers." As early as 1934, the National Safety
Council was publishing information stating that "a cause of severe
pulmonary injury is asbestos, a silicate of magnesium." In the September
1935 issue of National Safety News, an article entitled "No Halfway
Measures in Dust Control" by Arthur S. Johnson reported lowered lung
capacity resulting from "asbestosis" and "similar conditions" that developed
"from exposure to excess of many mineral dusts relatively low in free silica
content." The article further noted that claims for disabilities from workers
who alleged exposure to "clay, talc, emery, and carborundum dusts" had
"claims prosecuted successfully." The article concluded that "[i]n the
absence of adequate diagnoses, occupational histories and a more
satisfactory method of adjudicating claims than prosecution at common law,
we must conclude that it is necessary to find a practical method for
controlling all mineral dusts."

- 1 (e) Talc Defendants belonged to, participated in, and financially supported the
2 Industrial Hygiene Foundation, Asbestos Information Association and the
3 Asbestos Textile Institute (ATI) and other industry organizations which
4 actively promoted the suppression of information of danger to users of the
5 aforementioned products and materials for and on behalf of Talc
6 Defendants, and each of them, thereby misleading Ms. Leavitt to her
7 prejudice through the suggestions and deceptions set forth above in this
8 cause of action. ATI's Dust Control Committee, which changed its name to
9 the Air Hygiene Committee of ATI, was specifically enjoined to study the
10 subject of dust control; discussions in such committee were held many
11 times of (i) the dangers inherent in asbestos and the dangers which arise
12 from the lack of control of dust, and (ii) the suppression of such information
13 from 1946 to a date unknown to Plaintiffs at this time;
- 14 (f) Commencing in 1930 with the study of mine and mill workers at the
15 Thetford asbestos mines in Quebec, Canada, and the study of workers at
16 Raybestos-Manhattan plants in Manheim and Charleston, South Carolina,
17 Talc Defendants knew and possessed medical and scientific information of
18 the connection between inhalation of asbestos fibers and asbestosis, which
19 information was disseminated through the ATI and other industry
20 organizations to all other Talc Defendants, and each of them, herein.
21 Between 1942 and 1950, Talc Defendants, and each of them, knew and
22 possessed medical and scientific information of the connection between
23 inhalation of asbestos fibers and cancer, which information was
24 disseminated through the ATI and other industry organizations to all other
25 defendants herein. Thereby, Talc Defendants suggested as fact that which is
26 not true and disseminated other facts likely to and did mislead Ms. Leavitt
27 for want of communication of true facts, which consisted of the previously
28 described medical and scientific data and other knowledge by not giving
Ms. Leavitt the true facts concerning such knowledge of danger, when Talc
Defendants were bound to disclose it;
- (g) In 1968, a study presented at the American Industrial Hygiene Conference
and published in the American Industrial Hygiene Association Journal
concluded that "[a]ll of the 22 talcum products analyzed have a . . . fiber
content...averaging 19%. The fibrous material was predominantly talc but
contained minor amounts of tremolite, anthophyllite, and chrysotile as these
are often present in fibrous talc mineral deposits . . . Unknown significant
amounts of such materials in products that may be used without precautions
may create an unsuspected problem." [Cralley, L. J., et al., *Fibrous and
Mineral Content of Cosmetic Talcum Products* (1968) 29 Am. Ind. Hyg.
Assoc. J. 350-354.] But Talc Defendants failed to warn Ms. Leavitt and
others similarly situated of the nature of the said materials, to wit:
dangerous when breathed, causing pathological effects without noticeable
trauma, when possessed with knowledge that such material was dangerous
and a threat to the health of persons coming into contact therewith and
under a duty to disclose it.
- (h) Talc Defendants concealed from Ms. Leavitt, and others similarly situated
the true nature of their exposure, the fact that Talc Defendants knew that
exposure to respirable asbestos meant that Ms. Leavitt would inhale this
asbestos, significantly increasing her risk of developing asbestosis, lung
cancer, and mesothelioma; that Ms. Leavitt that had in fact been exposed to
respirable asbestos; that the materials to which Ms. Leavitt was exposed
would cause pathological effects in the human body without noticeable or

1 perceptible trauma to warn her of injury; and Talc Defendants engaged in
2 these acts and omissions while under a duty to and bound to disclose this
information;

- 3 (i) Talc Defendants failed to provide information to the public at large and
4 buyers, users and physicians of Ms. Leavitt for the purpose of conducting
5 physical examinations of anyone whom came in contact with asbestos as to
6 the true nature of the hazards of asbestos, in order for such physicians to
7 diagnose, and treat individuals coming into contact with asbestos, in that the
8 materials to which Ms. Leavitt had been exposed would cause pathological
9 effects without noticeable trauma, even though Talc Defendants were under
10 a duty to supply such information and such failure was and is likely to
11 mislead persons including Ms. Leavitt as to the dangers and risk of harm to
which they were exposed; and
- 12 (j) Talc Defendants affirmatively misrepresented that asbestos-containing
13 products were safe to use and handle, when Talc Defendants knew such
14 statements were false when made, or made said false statements recklessly
15 and without regard for whether the statements were true.

16 Each of the foregoing acts, suggestions, assertions, and forbearances to act when a duty
17 existed to act, the said Talc Defendants, and each of them, having such knowledge, Ms. Leavitt
18 did not have such knowledge and would breathe such material innocently, was done falsely and
19 fraudulently and with full intent to induce Ms. Leavitt to purchase the asbestos-containing
20 products without awareness of the risks of asbestos exposure to herself and to members of her
21 household, and to cause them to remain unaware of the true facts, all in violation of Civil Code
22 sections 1708 and 1710.

23 BASIS FOR PUNITIVE DAMAGES

24 I.

25 **Malice, Oppression, and Fraud:** Plaintiffs hereby incorporate by reference the allegations
26 of all causes of action as if fully stated herein. All Defendants, and DOE Defendants 1-100, are
27 liable for punitive damages because they engaged in the conduct that caused Ms. Leavitt's harm
28 with malice, oppression, and/or fraud.

First, the Defendants committed malice in that they acted with intent to harm when they
caused Ms. Leavitt's asbestos exposures, and because their conduct was despicable and was done
with a willful and knowing disregard of the rights and safety of others.

Second, the Defendants committed oppression in that their conduct was despicable and
subjected Ms. Leavitt to cruel and unjust hardship in knowing disregard of her rights.

1 Third, the Defendants committed fraud in that they intentionally and fraudulently
2 concealed and misrepresented material facts and did so intending to harm Ms. Leavitt and with
3 reckless disregard for whether their fraud would harm Ms. Leavitt.

4 The Defendants' conduct constituting malice, oppression, and fraud was committed by,
5 authorized by, and adopted by one or more officers, directors, and managing agents within the
6 corporate hierarchy of each Defendant, who acted on behalf of each Defendant.

7 **PRAYER FOR DAMAGES**

8 **I.**

9 Plaintiffs pray for judgment against all Defendants for:

- 10 1. All economic and non-economic compensatory damages in excess of \$25,000;
- 11 2. Punitive damages according to proof;
- 12 3. Pre- and post-judgment interest;
- 13 4. Costs of suit; and
- 14 5. Such other relief as is fair, just, and equitable.

15 **DEMAND FOR JURY TRIAL**

16 **I.**

17 Plaintiffs hereby demand a trial by jury on all issues so triable.

18
19 DATED: November 13, 2017

KAZAN, McCLAIN, SATTERLEY & GREENWOOD
A Professional Law Corporation

20
21
22 By: 

23 Joseph D. Satterley
Denyse F. Clancy

24 Attorneys for Plaintiffs
25
26
27
28